# TELSTRA CORPORATION LIMITED

## Submission to the Australian Government's Statutory Review of the Consumer Data Right

**20 May 2022**

## Introduction

We welcome the opportunity to comment on the Australian Government's Statutory Review of the Consumer Data Right (**CDR**) Issues Paper (**the issues paper**).

Our core objective is to encourage application in the telecommunications sector which maximises the operational efficiency and customer benefits while minimising the cost to industry (and therefore to consumers) of what is expected to be a high-cost regulatory intervention. By aligning the design of CDR to tangible and beneficial use cases, industry can achieve a *minimum viable product* (**MVP**) approach.

Telstra has previously expressed our support for CDR and continue to believe that providing customers with their data in a common, accessible format will enable them to make better, more informed decisions and help drive competition and innovation across the economy. In the following submission we provide insights on our experience with CDR to-date, as both an energy retailer and telecommunications company.

We express the following principles for consideration in this Statutory Review:

1. An (**MVP**) approach should be utilised when setting CDR rules and standards for new sectors. Establishing clearer links between data users and data uses when defining data scope for sectors will help minimise costs to industry.
2. The need for targeted sectoral reviews (for example after the first year of commencement) to assess whether the CDR has delivered intended outcomes and where adjustments may need to be made. This is important under an MVP approach to enable adaptability and change in scope (particularly as new data users / uses come to light). These reviews would also reveal whether assumptions on application (such as 12 months being an appropriate amount of build time for a data holder) are appropriate.
3. Taking the time for sectoral onboarding – the process experienced by the telecommunications sector was concurrent webinars on CDR basics along with detailed consultations on the scope and impact of data standards and rules to the telecommunications sector.
4. A second-round cost-benefit analysis should be completed post-designation but before the rules for the sector are finalised. This will help ensure the scope is appropriate and proportionate to deliver customer benefits.

Incorporating these principles into the future of CDR will help ensure that data holders are not subjected to unnecessarily high costs of implementation as a result of significant depth and scope in required data which may not be utilised by CDR participants, or to the extent to which the costs would be justified.

**Question one -** *Are the objects of Part IVD of the Act fit-for-purpose and optimally aligned to facilitate economy-wide expansion of the CDR?*

The current objects identified under 56AA of Part IVD of the Competition and Consumer Act 2010 (CCA) are to enable safe, efficient, and convenient disclosure of consumer information – either directly to the consumer, or an accredited third party.

*Measure of success*

It is difficult to appropriately assess whether the objects are fit-for-purpose as there does not appear to be a clear measure of success for CDR. Treasury is yet to undertake a review of the implementation in the banking sector to determine whether the scope of eligible customers, data etc are appropriate.

The recent experience in the telecommunications sector for expansion into CDR demonstrates a focus on an expanded scope of data sets with an assumption that use cases will then come to fruition. To facilitate a more efficient and effective economy-wide expansion, we recommend that Government consider an MVP approach. Without clear KPIs the governments approach of a deep application of CDR in new sectors will not be able to be informed by previous sector application and make it difficult to determine whether such depth in application is appropriate or effective for customers.

*Minimum Viable Product*

Efficient and convenient data access must be balanced with competitive neutrality and the promotion of public interest. We believe that this is more effectively done as the CDR regime is evolved in sectors over-time, rather than seeking to do a deep, expansive application at the outset.

An MVP approach is particularly important to the future sectors which do not have the same blueprint which was available to the banking sector (modelled on the UK Open Banking system[1]), and the energy sector, (modelled on a program of work undertaken by HoustonKemp at the direction of the Council of Australian Government (COAG) Energy Council[2]).

Where a deep application of the CDR is sought for a sector, across varying consumer types and a wide-range of data, the objective of an economy-wide expansion of the CDR will be harder to achieve. This will be unavoidable as each sector has their own rules, requirements, and approach to assisting and servicing consumers. Economy-wide expansion will be best achieved when a shallow application of the CDR (such as publicly available product reference data) is applied cross-sectorally, rather than seeking wide application to all available consumer and consumer adjacent data for each sector.

Finally, an MVP approach will help ensure that sectors are able to build up capability and minimise risks of unforeseen consumer impacts (e.g. readiness, maturity, testing). As noted above, both the energy and banking sectors had blueprints to help shape the application, the telecommunications sector does not have this blueprint, but also has an ambitiously set broader scope of products expected to be captured (e.g. fixed line, fixed-wireless, mobile, etc). This only expands the risks for unforeseen consumer impacts, with little prospect of review.

*Reciprocity*

The principle of reciprocity was established as a key principle under the CDR regime, as it imports elements of fairness and allows consumers to request access to or transfer of additional data sets.[3] In particular, Treasury noted that a CDR system which applies equally for both data holders and data recipients, will be more vibrant and dynamic than one in which accredited data recipients are solely receivers of data, and data holders are largely only transmitters of data.[4]

Based on the principles and scenarios identified under the CDR Act, and the desire to have CDR apply economy-wide, we would encourage greater use of the principle of reciprocity to ensure competitive neutrality in the CDR regime.

*Sectoral onboarding*

Effective economy-wide expansion of the CDR will also require consistency in upskilling and onboarding potential sectors both pre and post consultation processes. The sectoral assessment for telecommunications consultation was one of the first times many telecommunication companies had been engaged on the CDR. With hundreds of pages of compliance obligations and guidance materials

[1] UK Open Banking
[2] Facilitating access to consumer electricity data (Houston Kemp Report).
[3] See Explanatory Memorandum 2018 CDR Bill 1.123
[4] Ibid, 1.124

across the CDR Act, Rules, OAIC Privacy Safeguard guidelines, accreditation guidelines, and the vast array of technical standards covering consumer experience, information security, engineering and data, it is incredibly difficult for those new to the CDR to effectively engage in a four-week consultation process on how the CDR should apply to their sector.

We recommend that there be workshops and introductions for new sectors before any formal consultation commences. We recognise that there have been variations of this facilitated by Treasury or Data61, but these are often happening concurrently with live consultation processes which significantly impedes and organisation's ability to effectively engage internally to be informed in any submission.

*Additional assessments*

We recommend that there should be at least two rounds of consultation for sectoral assessment, first to look at the potential scope of data to be designated, and second to look at the potential costs to a sector. This would enable new sectors to build on knowledge and understanding built through the first engagement and have a deeper appreciation of the CDR regime.

There should also be a second-round cost-benefit assessment through the CDR Rules setting process, to ensure that the proposed scope and application for the sector remains cost-effective and delivering an overall benefit.

We understand that Treasury will not be revisiting the cost-benefit assessment under the Rules to ensure that the scope remains proportionate to their desired application. This results in the cost of innovation moving from the innovators to those deemed 'data holders'. The objective of encouraging competition should be party-neutral (whether a party is a data holder or accredited data recipient), and therefore costs for participants should continually be reviewed and assessed in a robust framework.

**Question Two -** *Do the existing assessment, designation, rulemaking, and standards-setting statutory requirements support future implementation of the CDR, including to government-held datasets?*

Being clear on what the practical use cases are for all the designated data across each different service/product type has an ongoing importance in the future of CDR. For example, through the process of consultation for the sectoral assessment in telecommunications, and up to the final designation instrument, the proposed scope of data has been somewhat limited. However, the scope for telecommunications is still significantly broad (including historical requests) which have very little connection to use cases.

There should be greater clarity provided through sectoral assessment and the designation process that the proposed application, and proposed scope (particularly specific data sets) will benefit consumers in the short term. If these are not demonstratable, we encourage these to be out of scope for the initial sectoral application under an MVP approach.

The issues paper states that the rollout of the CDR in the telecommunications sector is *expected to create many benefits for consumers, including better product comparison, tailored product recommendations, and services that help consumers save time and money in accessing telecommunications related products.* We recommend these assumptions on benefits be more closely analysed throughout the sectoral assessment and again through the setting of rules and standards to ensure that the scope is appropriate when measuring costs and benefits. This can be achieved through focusing on supporting a digital economy under the CDR, engaging thoughtfully with industry with mechanisms for review and reconsideration, to ensure that what is imposed is a low-cost solution with a clear objective and pathway to benefits for customers.

If there is an expectation that use cases can be built out over time, we would encourage this to be considered through targeted sectoral reviews or by creating a mechanism for interested stakeholders to request an extension of the CDR rules and standards. Similarly, there should be an opportunity for data holders to seek de-scoping (i.e. certain sets of data are not being requested and the cost for maintaining them in a CDR ready-state is not justified).

*Rules change request*

In the energy sector, the Australian Energy Market Commission (**AEMC**) is responsible for facilitating rule change requests to the energy rules and laws within the National Energy Customer Framework (**NECF**). Any stakeholder including governments, industry participants and consumers can request rule changes through the AEMC. The AEMC then manage the rule change process and consult and decide on rule change requests. This is done in accordance with processes set out in the law, the central focus of which is the long-term interests of consumers and the efficient operation of the market.

One opportunity for the future of the CDR is to facilitate a rules change process for interested stakeholders to seek amendments to the sectoral or general application of the CDR. This may be targeted at a particular sector (e.g. either requesting an extension of captured data sets, or seeking the removal of certain data sets which have demonstrated little customer benefit), or general rules. The overall objectives of the rule change process should be aligned with those within the CDR Act in ensuring safe, effective and convenient disclosure of customer data in a way which is deemed appropriate under a robust cost-benefit analysis.

Unlike the AEMC however, the rule change body under CDR would be able to consider whether the requested expansion is appropriate for an economy-wide CDR, or otherwise necessary for a specific sector. It should be incumbent on this body to re-assess the cost-benefit assessment to ensure the costs are justified. From an economy-wide perspective, this may be for things such as customer hardship data, which Telstra has encouraged a consistent approach on across all sectors (as informed by consumer groups and advocates).

**Question Five** - *Are further legislative changes required to support the policy aims of CDR and the delivery of its functions?*

There are a number of adjacent legislative reviews and changes happening at the same time including the Privacy Act Review, the introduction of the Data Availability and Transparency Act, and cyber legislative guidelines. It is important to ensure there is proactive alignment across these digital reviews and changes to ensure organisations can be confident that the solutions they are designing are aligned and consistent across the organisation.

*Privacy review*

The introduction of tailored privacy safeguards for the CDR regime continues to be a point of concern for the privacy community as it creates a range of inconsistencies for organisations. These inconsistencies occur two-fold, 1) for the differences between the privacy safeguards and the Australian Privacy Principles (APP), and 2) for the differences in the application of privacy safeguards and APPs depending on whether an organisation is acting as a CDR data holder or a CDR accredited data recipient.

The Privacy Act review is considering significant changes to what requirements and standards organisations will be subject to. We consider the Privacy Act review, and this Statutory Review of the

CDR as an opportunity to remove inconsistencies between the privacy safeguards and APPs and instead have one framework for businesses and organisations operating in Australia.

At present, it is unclear what potential impacts the Privacy Act review will have on matters such as anonymisation/de-identification, correction requests, the destruction of personal information, overseas disclosures and a possible right to erasure, amongst other matters.[5]

Simplicity and consistency in privacy obligations will benefit both businesses and consumers in understanding their rights and responsibilities and will also aide situations where businesses may operate internationally (and therefore be subject to a range of international privacy requirements as well).

[5] Our response to the Privacy Act Review Discussion paper is available here: https://consultations.ag.gov.au/rights-and-protections/privacy-act-review-discussion-paper/consultation/view_respondent?show_all_questions=0&sort=submitted&order=ascending&_q__text=telstra&uuId=812073440