

Ms Elizabeth Kelly PSM
Chair, Statutory Review of the Consumer Data Right
Commonwealth Treasury
Langton Parkes ACT 2600

Sent via email: CDRstatutoryreview@treasury.gov.au
cc: CBAOpenBanking@cba.com.au

20 May 2022

Dear Ms. Kelly,

Subject: Statutory Review (the Review) of the Consumer Data Right

The Commonwealth Bank of Australia (CBA) welcomes the opportunity to comment on the independent review of the Consumer Data Right (CDR) pursuant to section 56GH of the *Competition and Consumer Act 2010 (Cth)*. Following the commencement of Open Banking in 2020, there have been significant developments in the policy and regulatory framework for CDR including the *Farrell Inquiry into Future Directions for the Consumer Data Right (the Farrell Report)* in December 2020, which recommended the future expansion of the CDR.

The CDR ecosystem has continued to grow steadily with more participants accredited and further sectors designated. The Review is therefore timely and a necessary component of the policy objectives of the CDR to deliver consumer benefits as well as encourage competition and opportunities for product and service innovation.

Our comments respond to the Review Terms of Reference sequentially in this submission.

Introduction

The CBA supports the continued expansion of the CDR as a valuable platform to empower individual consumers and small to medium enterprises (SMEs) to derive value from their data. Consumer data sharing through CDR enables consumers to make more informed decisions about products and services that are better suited to their needs and that will help them to plan for and achieve their future financial goals. It will also help create more competition and innovation in the marketplace, benefitting consumers and businesses, and result in increased productivity across the Australian economy.

The CBA maintains that the core principles of safety, security and privacy should continue to be upheld for all ecosystem participants as the CDR continues to expand.



Key components of this submission

1. **Streamlined regulatory oversight** – Treasury’s role in policy development and rule making for CDR should be consolidated, strengthened and appropriately resourced to successfully drive the economy wide roll-out of CDR and achieve the policy aims.
2. **Simplified regulatory framework** – There is an opportunity to simplify and better coordinate the CDR regulatory framework (the framework) consisting of Legislation, Rules, Technical and Consumer Experience (CX) standards (the standards). The current framework requires data holders and accredited data recipients (ADRs) to allocate a significant amount of time and resources to deliver and maintain compliant solutions. More effective coordination of the overall regulatory approach could be achieved by consolidating oversight of the standards and reducing the frequency of rule changes.
3. **Expansion of CDR economy-wide** - CDR will only reach its full potential when it becomes economy-wide, encompassing broader data sets from across the private sector and Government. To achieve this goal, the expansion of CDR to new sectors and datasets should be accelerated.
4. **Level playing field** – Sharing of consumer data by participants within the CDR framework should be supported by the principle of reciprocity to maintain competitive neutrality as per the Future Directions in CDR Inquiry recommendations.
5. **CDR and advice** – Consideration should be given to the aims and outcomes of the independent Quality of Advice Review, which is currently open for consultation, to determine the nexus between the CDR and advice. As the ecosystem grows, it is foreseeable that a platform like the CDR can become a mechanism through which financial advice is provided. As such, it will be important to assess whether accredited and sponsored participants within the CDR ecosystem are, or should be, also subject to the advice obligations under the Corporations Act 2001 (Cth) to ensure consumer protections remain.
6. **Write access functionality** – The Government’s response to the Farrell Report endorsed the recommendation to introduce write access functionality to the CDR, which the CBA supports. We recommend that implementation form part of the Treasury Payments Roadmap and occur after payments reforms are completed. This will enable the CDR to leverage the PayTo infrastructure which will deliver many aspects of the requested CDR payments functionality. As stated in the Farrell Report response, payment specific action initiation should be prioritised over general action initiation. In parallel, Government should continue to prioritise and accelerate the roll-out of CDR economy wide. Another important consideration accompanying write access will be to assess the requirements for CDR participants to be appropriately accredited to provide payment instructions, particularly given the need to retain strong levels of safety and security to maintain consumer trust in banking and payments.

We believe that the recommendations in this submission will assist the delivery of an economy wide, sustainable and comprehensive CDR framework for the benefit of consumers, business and the broader Australian economy. The CBA remains committed to assisting the Government to advance the outcomes of the CDR regime to benefit consumers, promote innovation and drive competition.

Response to the Review's Terms of Reference

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

The objectives of the legislation are appropriate in the context of promoting the public interest. We believe that the most effective measure to support economy-wide expansion of the CDR is the introduction of cross sector datasets. For example, data from big tech, the insurance sector, loyalty programs as well as government-held consumer data.

We further note that significant investment has been made by ecosystem participants to build the technical and operational infrastructure required to comply with CDR. As the CDR continues to expand and grow, it should enable participant focus to shift to the development of innovative use-cases.

Recommendation

Continue with expansion and acceleration of CDR to include broader government and private sector datasets to enable more innovative customer value propositions.

2. Do the existing assessment, designation, rule-making and standard setting requirements of the CDR framework support future implementation of the CDR, including to Government held datasets?

Future implementation of the CDR should be aimed at growing the CDR ecosystem to include both government held and private sector consumer datasets to support the policy aims of CDR and delivery of consumer benefits.

To support stability within the existing framework, changes to rules and standards should occur according to a predictable cycle, for example every 6 months, with sufficient implementation time provided.

Recommendation

Better coordinate rule and standard changes, aligned to a cycle of regular release dates with appropriate implementation time provided to allow for effective and sustainable compliance.

3. Does the current operation of the statutory settings enable the development of CDR-powered products and services to benefit consumers?

We acknowledge that the implementation of CDR to date has been driven largely by compliance, and recognise that as the CDR matures and stabilises, the development of more strategic customer value propositions will emerge.

We also observe that the current inability to test software products in a synthetic environment has made it harder to develop use cases. For example, the lack of an integrated test environment has made testing new data recipients harder, and makes testing API changes and new APIs challenging. We are pleased to note the recent announcement by Government of a CDR sandbox may address this issue.

Recommendation

We support the introduction of a sandbox. Testing requirements should match current data standards to avoid re-work.

4. Could the CDR statutory framework be revised to facilitate direct to consumer (D2C) data sharing opportunities and address potential risks?

Depending on the format in which it is enabled, D2C could negate the need for participants to become accredited and erode the safe data sharing protections that the CDR provides (i.e., a consumer downloads their data and then can share it a format that isn't protected). We believe that CDR offers a safe, secure and reliable mechanism to share consumer data and that a D2C option is not necessary at the present time.

Recommendation

Defer direct to customer considerations until the CDR is sufficiently evolved and stable and the D2C consumer value proposition is evident.

5. Are further statutory changes required to support the policy aims of CDR and the delivery of its functions?

As previously stated, the challenges presented by a complex regulatory framework need to be balanced with the objectives of consumer benefit, innovation and competition in the marketplace for products and services accessible via the CDR. To achieve this, the addition of complementary datasets beyond banking, and those already identified for future designation across the economy should be prioritised.

We suggest a number of recommendations and examples below where the existing framework could be enhanced to support future implementation.

- A review of the current CDR incident management system should take place. The *ACCC/OAIC Compliance and Enforcement Policy for the Consumer Data Right (May 2020)* sets out the approach that the ACCC and the OAIC have developed "to encourage compliance and prevent breaches of the CDR regulatory framework". The Policy states that the regulatory approach will be "principles based", and that a "strategic risk based approach to compliance and enforcement" will be adopted. To drive consistency and efficiency of incident management across the ecosystem, consideration should be given to the introduction of a reporting threshold, and the



ACCC should provide guidance on reporting according to this threshold. This would provide for greater certainty in the reporting obligations framework and allow participants to more effectively allocate resources.

- The Act and Rules could better incentivise innovation in relation to the credit application use case, which is a use case that would provide valuable and immediate benefits to customers seeking to access credit. Access to CDR data has the potential to significantly improve the speed and accuracy of credit assessments. However, authorised deposit taking institutions (ADI's) with complex legacy IT systems may face significant compliance hurdles when trying to enable this highly beneficial use case. The Act and Rules should work in concert to permit ADIs to handle CDR data ingested for the credit application use case as a data holder (rather than an ADR) with the applicant's agreement. Indeed, the Explanatory Memorandum (EM) describes a switch from ADR to data holder obligations in these types of circumstances and the definition of data holder in the Act includes the switch¹. Unfortunately, the Rules make it a condition that the switch may only occur after a consumer has acquired a product, ruling out pre-acquisition use cases like credit applications². This example demonstrates how the complex CDR regulatory framework, with multiple overlapping instruments, may be unintentionally stifling innovation.
- Replacement of certain Australian Privacy Principles (APPs) with the more stringent standard required by the CDR Privacy Safeguards (the safeguards) may make it difficult for the CDR to have broad cross-sector applicability. The utility of two privacy regimes that are largely aligned should be reviewed in the context of the future expansion of the CDR.

Recommendations

Introduce appropriate reporting thresholds and regulatory guidance to support more effective and efficient reporting, incident management and compliance.

Conduct a deeper assessment of the regulatory framework to determine points of regulatory overlap and friction, and eliminate overlap and duplication.

Other matters

- **Reciprocity** – The CBA supports the Farrell Report recommendation to extend the principle of reciprocity to ensure transparency and competitive neutrality amongst ecosystem participants. Participants from non-designated sectors who enter the CDR as ADRs should be required to share equivalent data to that they are receiving. This will further stimulate innovation and deliver greater consumer benefit.

1. ¹Explanatory Memorandum to *Treasury Laws Amendment (Consumer Data Right) Bill 2019*, pg 19; s56AJ(4) of the *Competition and Consumer Act 2010* (Cth);
2. cl.7.2(2)(b) of Schedule 3 of the *Competition and Consumer (Consumer Data Right) Rules 2020* (Cth)



- **Screen-scraping** – The practice of screen-scraping should be reviewed and prohibited once the CDR is in an appropriately mature state. This is consistent with the Farrell Report.
- **Establishing Liability** - Ensuring clear liability principles in the event of a consumer loss will be crucial for the success of write access. For example, where the liability rests to compensate consumers for lost funds when the payment instruction has been generated via a third-party ADR app. Third party licence holders should, under the licence, be required to comply with a commensurate liability framework. The CBA looks forward to engaging in future consultations on progressing write access.
- **KYC flag - AML/CTF** - customer due diligence processes are heavily regulated by AUSTRAC, and CBA questions whether a KYC 'flag' would of its own accord be sufficient for future account creation use-cases in the financial services sector. We recommend Treasury work with AUSTRAC and with the Digital Transformation Agency, which has developed the Trusted Digital Identity Framework, to better assess how account creation can be enabled digitally within a robust regulatory and legal framework to avoid regulatory duplication by attempting to solve for digital identity via the CDR.
- **Consumer awareness campaign** - Continued consumer trust and confidence is critical for the future success of the CDR. Low consumer awareness has been a barrier to uptake in other jurisdictions, as it has been in the Australian context. The CBA encourages the Government and the Regulators to support education for consumers on the use and benefits of the CDR regime to increase engagement and drive consumer benefits.

The CBA looks forward to working with Treasury on the future development of the CDR and welcomes the opportunity to discuss our submission in more detail. Should you wish to do so please contact me on 0417 065 382, or via email at Katherine.Sleeth@cba.com.au.

Yours sincerely,

Katherine Sleeth
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