



23 October 2018

Mr Daniel McAuliffe
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The Treasury
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Via email Daniel.McAuliffe@treasury.gov.au

Dear Daniel

Consumer Data Right Industry Designation

The ABA would like to thank you for the opportunity to comment on the Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2018. This instrument establishes banking as the first industry to fall under the Consumer Data Right (“**CDR**”).

ABA members welcome the CDR, which will empower customers when they search for products and services. Members are working to design and implement open banking ahead of the July 2019 start date. ABA members have several observations on the industry designation.

Firstly, we believe the instrument should more industry specific, rather than broad as currently drafted. We understand that this is the first industry designation, and energy and telecommunications will follow, and that Treasury may be seeking to use the banking industry as a template instrument. However, we believe that each industry would be better served by a designation tailored to their industry, rather than a broad instrument that is attempting to serve as a template. This approach would resolve many of the following comments we make.

We also believe using the terminology used in the CDR exposure draft should also be used in this document. For example, using the term CDR Consumer consistently through the document would be more appropriate than the current drafting, which creates confusion in Sections 6 and 7. In addition, we consider that Sections 6 and 7 should be restructured in order to ensure that the requirements are clear. That is, Section 6 is about “user of product” while Section 7 is about “use of the product”, however Section 7(c) covers information about an authorisation given by the person. This may create confusion and uncertainty.

ABA members also require further clarity regarding some specified classes of information, contemplated in Section 6. For instance, it is not clear what is intended to be captured by the requirement in 6(2)(b) regarding information relevant to the person’s eligibility to use a product or a feature of a product. This could capture a wide variety of information that banks may or may not store.

ABA members note the term “associate” is not appropriate in this context and would capture a number of arrangements not intended to be covered under the CDR and miss other that it should cover. The definition of “associate” under the ITAA 1936 covers relationships such as relatives, partners, trustees, spouses, children. This becomes broad and would place in scope relatives who are not intended to be covered under the CDR and who have not consented to the sharing of the information. On the other hand, it would not cover arrangements like a credit card where an additional card has been provided to someone who does not fall under the term “associate”.

We also believe that the designation instrument would be stronger if it has greater precision around the datasets in scope and was specific rather than illustrative. This would provide greater certainty for participants and confidence that the Rules and Standards will align with the policy intent of Government.

For example, Section 7 contemplates sharing information on “the persons who are authorised to use or access, or view information relating to, the account.” However, depending on the level of detail



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required, this may be challenging for some ABA members, who store information in multiple and disparate sources.

Additionally, Section 7 (note) on direct debits raises questions among the ABA membership. A direct debit is a third party authorisation. But a scheduled payment and a payee address book is a service offered to the account holder for the purposes of making a payment from the product. The ABA believes the industry designation should cover all three explicitly as it unlikely that all three could be covered under a single agreed term.

Also in Section 7, the instrument is written as if there is a single balance associated with an account, which is not always the case. We believe Treasury should follow Data61 and choose the balance consistent with what is shown on ATMs or online channels.

In Section 8, further clarity is required on “interest rate” in Section 8. A number of banking products have multiple interest rates, notably a credit cards, which typically have a purchase interest rate and a cash advance interest rate. Therefore, greater clarity would assist participants understanding if all or one of these interest rates are to be disclosed.

On a separate point, Section 8 refers to “eligibility criteria a person must meet in order to be supplied a product” goes to commercially sensitive information around credit models. The ABA believes that members should only be required to disclose the criteria they currently disclose, and that this should be done via a free text field.

Our final observation is that other digital innovations that hold bank-like data should also fall within the scope of the industry designation. For example, data held in digital wallets is similar to a banking product data and should fall within the scope of the industry designation where a provider of a digital wallet becomes an accredited data recipient.

Thank you again for the opportunity to comment on the industry designation. If you have any questions or points of clarification, please contact me on my details below.

Yours sincerely

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