Australian Banking Association

20 May 2022

Ms Elizabeth Kelly PSM
Statutory Review of the Consumer Data Right
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Ms Kelly

Statutory Review of the Consumer Data Right

The Australian Banking Association (**ABA**) welcomes the opportunity to comment on Treasury's Statutory Review of the Consumer Data Right (**CDR**).

Banks are at the forefront of implementing the CDR and continue to make the significant investments needed to ensure the benefits of data sharing are maximised while also maintaining the safety and security of customer data. ABA members have invested over $1 billion to meet the regulatory requirements to establish data sharing under the CDR and continue to invest in developing capabilities towards becoming Accredited Data Recipients (ADRs) or forming use cases that benefit consumers.

As CDR functionality and coverage expands to other sectors of the economy, the banking industry supports a legislative framework that allows for the development of more use cases in a stable regulatory environment. To this end, the ABA makes a number of suggestions to better support this transition to an economy-wide CDR in a manner that balances the policy objectives of innovation and competition with the safety, security and privacy of customer data.

Our view

While banks continue to invest in the systems and technologies required to ensure compliance with their CDR data holder obligations, take-up remains low, with one ABA member reporting less than 0.2% of their digitally active customers consenting to share data. Low uptake is the result of various factors including low levels of consumer awareness and the small number of use cases. To ensure more consumers benefit from the CDR, governance improvements are required to enable more ADRs to come on board and more innovative use cases to develop.

In particular, with only three ABA members being ADRs, many banks observe the complexity of data holder obligations that diverts resources from them becoming ADRs and investing in new and innovative use cases. We support the inclusion of more datasets to ensure the regime becomes economy-wide and recognise that the expansion of datasets should prioritise what will drive the greatest value to consumers and cross-sector innovation, rather than requiring data holders to undertake a 'deep dive' and build for niche and complex products that are unlikely to benefit consumers.

Further, the ABA considers there is significant room for regulatory simplification and streamlining regulatory requirements to bring down the regulatory burdens and cost of compliance, which is particularly critical for new designations and smaller entities that will increasingly bear a significant financial burden for participating in the CDR as data holders.

Finally, we consider there is a need to ensure the phased implementation of write access in a manner that prioritises payment initiation and ensures alignment with broader payment system reforms arising from the Farrell Payments Review.

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Key recommendations

To support greater uptake, improve regulatory processes and encourage innovative use cases, the ABA recommends that:

1. The government prioritises the rollout of CDR datasets and regulatory obligations that ensure the best outcome for consumers

The government should prioritise rollout of the CDR to products of high value for retail consumers and small businesses, and this should empower ADRs to build on key datasets which present the highest value propositions to consumers. The ABA notes the current approach of taking an 'all in' approach to banking datasets has been done without a clear evaluation on the benefits for consumers or the value of those datasets as CDR data. For example, products used by mainly institutional clients are within scope, which are unlikely to be used by those clients nor retail consumers or small businesses.

Similarly, the ABA recommends the government prioritise changes to policy settings only after evaluating the costs and benefits to consumers and allow policy settings to bed down before making further changes. For example, the changes to the model for joint accounts (from opt in to opt out) without evidence of consumer benefit or clear understanding of the risks for consumer outcomes undermines the objective that the CDR should work to the benefit of consumers. Such changes also divert bank resources away from becoming ADRs and developing use cases that benefit consumers.

2. Policymakers and regulators improve governance structures and streamline regulatory requirements

The governance structure for the CDR is yet to mature and is currently held back by a lack of effective co-ordination between the rules, technical standard-setting and enforcement. With the growth of the CDR to new sectors, there is a need to develop a holistic approach to streamline requirements and bring down the cost of compliance.

The complexity of these requirements poses a significant cost for data holders. One potential solution to simplify and streamline requirements is to bring together all aspects of the governance of the CDR – from setting the rules, standards, accreditation, registration and enforcement, under a single authority.

3. Align the rollout of payments initiation with broader payments work

The ABA supports prioritising payments initiation as the first application of write access in the banking designation, consistent with the stated government view. However, we recommend that payments initiation occur only after key changes to the payments system regulations have taken effect, including a payments licence, as recommended by the Farrell Payments Review.

Given the risks involved in payments initiation, the ABA also recommends a thorough consultation with industry ahead of implementation to better address risks and understand the key linkages with adjacent policy developments and strategies, whether in payments, digital identity or in relation to government data sharing through the data availability and transparency.

Further comments and recommendations are provided to the questions in the attached document.

Thank you for the opportunity to provide feedback. If you have any queries, please contact me.

Yours sincerely,

Prashant Ramkumar
Associate Policy Director
Australian Banking Association

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Answers to consultation questions

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

Consumers

A core object of the CDR regime is to create more choice and competition by enabling consumers to use and share their data. The regime was initially implemented for individual consumers and subsequently for businesses.

While earlier ACCC guidance indicated that data holders could meet CDR requirements by sharing data for applicable accounts where available on their primary digital business channel, recent changes to guidance have increased the scope of account data to be made available to data relating to accounts held by institutional clients where they're 'publicly offered'. ACCC guidance requires data holders to determine whether a product is 'highly negotiated' in which case it is not publicly offered. This can be difficult to assess in practice as large institutional clients with multiple accounts may have structured loans which are highly negotiated but associated transaction accounts which are not.

The ABA supports small and medium sized businesses having access to the CDR, but we question the need to take an overly detailed approach in the banking designation that captures products used by complex institutional clients and not retail customers or small to medium businesses.

We note on this point that there are limits as to who is an eligible customer under the telecommunications and energy sectors. For example, in the energy sector, to be eligible for data sharing the consumer needs to have an account that uses less than 5GWh per year. There are also considerations to exclude enterprise telecommunications clients from being eligible customers CDR.

The ABA agrees with such limits, as implementing the CDR for datasets used by complex clients requires significant resources and are unnecessary given the sophisticated nature of these clients and the fact that they are not likely to require the CDR to understand or alter their arrangements. This allocation of effort seems misplaced and will cause significant issues if applied to other sectors, as it will slow the delivery of real innovation for retail customers that will benefit from the CDR.

A better approach is to bring in datasets of more highly used consumer products from industries across the economy to encourage cross-sector innovation and the development of new products and services.

ABA Recommendation: The rollout of the CDR should prioritise datasets with the biggest impact for consumers and small business, and products that are unlikely to be used by retail consumers or used primarily by institutional and sophisticated clients should be left to the market to be included in the CDR.

Safely, efficiently and conveniently

The objects of the Act specify that the CDR should enable consumers to disclose their data safely, efficiently and conveniently. The concern from banks predominantly relates to the importance of 'safety' particularly as CDR data is extended to trusted advisers and sponsors that do not carry the same regulatory or information security requirements that data holders and ADRs are required to comply with. This has been raised in earlier consultations, and the view of government appears to have been that there are sufficient safeguards in place for trusted advisers, such as legal and professional obligations.

The ABA does not consider such obligations as sufficiently protective of sensitive customer data and do not cater for the types of risk exposures that customers face. We support stronger safeguards and protections that are reflective of the obligations of ADRs and data holders to ensure the safety of customer data. We note that consistent security protocols and protections underpin the confidence of consumers to use the CDR, and without that confidence consumers may not seek to share data.

Question 2: Do the existing assessment, designation, rule-making and standards-setting statutory requirements support future implementation of the CDR, including to government-held datasets?

The layers of regulatory requirements

While there have been some positive developments that assist banks with compliance such as the CDR sandbox which banks look forward to using, The ABA observes that it is particularly challenging for data holders to manage the multiple layers of requirements (designation, rulemaking and standards setting, Zendesk guidance). These multiple layers mean that, operationally, there is a high level of 'maintenance' for data holders, even when there are actually no substantive changes for the sector. Furthermore, there is no materiality threshold for reporting rectification items to the ACCC, with everything needs to be reported to the ACCC, regardless of risk, size and impact. This high level of maintenance, monitoring and reporting is costly and will have implications for future sectors that will experience similar burdens to implement the CDR.

The issues partly arise from a lack of industry visibility of release schedules, particularly on the decision proposals and technical guidance such as CX guidance. The regular maintenance iteration calls where consultations on changes are meant to occur are less useful with all sectors on a single call which results in a lot of time invested in matters that are not relevant between one sector and another.

Furthermore, the decision proposal process is overwhelming in terms of the number of system changes and tweaks that are proposed with short consultation timeframes. Such consultations result in data holders having to choose which consultations they can participate in due to stretched resources.

Regulatory bodies

The ABA notes that the multiple parties involved in CDR regulation – Treasury, ACCC, the DSB and the OAIC – should roll out changes in a manner that is co-ordinated. This means releasing all regulatory requirements relating to a particular issue – from rules changes, standards, decision proposals and guidance – closely together, with a clear lead time for implementation.

On the multiple regulators, banks have further observed there is considerable confusion on issues as to whom to raise them with, and there have been instances where neither the ACCC or DSB have taken responsibility for an issue and consequently data holders are not able to find a resolution.

One example of this is the Dynamic Client Registration issue, which banks have sought to resolve with the DSB but have been informed it was a matter for the ACCC to then be told by the ACCC that it's a matter for the DSB. Unclear ownership is creating issues for ecosystem participants now and will continue to pose issues for other designated sectors unless resolved.

ABA Recommendation: For the system to work well in the future and cater for an ever-growing ecosystem, there should be a streamlined way to access, deliver and communicate changes made to the CDR rules and standards. This should include:

- Rules and standards releases that follow a predictable cycle, with sufficient time to consult, comply, and integrate to the software management and oversight process. This would mean that all changes to the rules, standards, and updates to the privacy safeguard guidelines would be channelled through a single release schedule which provides sufficient lead time for participants to prepare for the changes.
- Development of an information management and dissemination mechanism. The ACCC's CDR portal was adequate in providing information for the initial data holders to facilitate a consistent interpretation of the rules. However, ADIs that launched after the four major banks could not access the advice easily and in a timely manner. A lack of ongoing guidance will create a risk of compliant but inconsistent implementations across data holders.
- Implementation of cohesive oversight and management of participant solutions testing which includes:
    - The facility to undertake end-to-end ecosystem testing.
    - An expanded coverage of the CTS which also validates key parameters to ensure all participants are aligned in their interpretation of the Register standards.

- Implementation of a structured incident management system that enables the appropriate balance between participant confidentiality and ecosystem awareness of issues. Maintaining skilled and trained resources to work with the current incident management system is costly for all participants (ADRs and data holders alike).
    - As the incident management system matures, clearer rules need to be established to define severity and to guide how to close older incidents. Severity ratings are currently defined arbitrarily by the participant who raises the incident (with no genuine triage or validation). Aged incidents can remain open for many weeks simply because the participant who originally raised the incident does not respond to the resolution, clarification or response from the other party.
- Clear threshold on reporting on rectification items so that very minor and technical rectifications can be resolved without the requirement to report. This will reduce the regulatory burdens on industry while ensuring key and significant matters come to the attention of the regulator.

Governance

In practice, much of the above could be achieved through a single entity that is responsible for the implementation of the CDR, including the rules, standards, registration, accreditation and enforcement. Banks support Treasury continuing to play its role in setting policy and providing strategic direction, but the current structure where the rules, standards and enforcement are made by different entities provides significant uncertainty for industry and often results in a lack of co-ordinated action.

To take an example, the non-functional requirements (NFRs) that are set by the DSB were made mandatory without sufficient notice to members and are not aligned with industry practice. This was arguably a significant policy change but appeared to have very little input from either the ACCC or Treasury. When industry approached the ACCC for guidance regarding enforcement, no clarity was provided. Treasury indicated no interest in engaging on the issue, and industry is still yet to receive adequate guidance on the NFRs and their implementation. This example illustrates the types of co-ordination problems to emerge from multiple bodies with overlapping remits. A single regulator that considered all aspects of implementation could reduce these co-ordination issues and ensure that overlaps of responsibilities are appropriately addressed.

This is particularly relevant in the context of a growing CDR ecosystem that will eventually extend to most sectors in the economy. The complexity of the current framework will only increase over time as the CDR expands, and there will be a need to significantly improve governance to streamline activities such that different entities across the economy can easily access and understand their obligations.

ABA Recommendation: The governance of the CDR should be simplified and consolidated under a single regulator with powers to set rules, technical standards, conduct accreditation, registration and enforcement. Treasury should retain policy responsibility for CDR and set the strategic direction.

Question 3: Does the current operation of the statutory settings enable the development of CDR-powered products and services to benefit customers?

The ABA observes there are a range of improvements to the statutory settings that could be made to ensure greater take-up of CDR powered products. Some examples are provided below.

Credit assessments

One example of where the current statutory settings are inhibiting the development of use cases is in relation to credit assessments. Credit assessments provide an important use case for CDR data by enabling consumers to more easily refinance and switch credit providers.

Currently, the CDR rules limit the use of CDR data for the purposes of credit decisions, by allowing this data to be retained only if the CDR consumer acquires a product. In cases where the customer does not acquire the product these details cannot be retained for future offers or purposes.

The ABA proposes that Clause 7.2 of Schedule 3 of the CDR rules be amended to expand the condition to circumstances where a consumer applies for and/or acquires a product. This would enable more use cases to be developed in credit assessments.

Payments initiation

The ABA recommends that the rollout of payments initiation occur in the context of broader payment system reforms as recommended by the Farrell Payments Review. ADRs seeking to initiate payments using CDR may need to meet a number of new regulatory obligations to protect consumers and ensure appropriate regulatory oversight. A thorough consultation should be undertaken when implementing payments initiation, and should consider a range of issues, including:

- Further accreditation for payments initiators: The payments initiation regulatory framework will require ADRs to comply with additional regulatory requirements so that these parties are appropriately accredited to intermediate payment instructions on behalf of the consumers.
- Privacy: It will be necessary to consider whether the current privacy settings remain appropriate for payments initiation. For example, it is unclear how default privacy settings will be maintained or extended if and when the CDR incorporates payments initiation. The risk is that extension of the same settings could create serious consequences for individuals, such as those experiencing economic abuse. For example, this might occur if one joint account holder (JAH) is able to create or change the personal data recorded for the other account holder for the purposes of withholding information about the account from them. The ABA has previously raised concerns regarding the opt out joint accounts model and note that this framework will pose even more risks once write access is introduced.
- Complaints handling: It is critical that consumers are able to make complaints and have them resolved in an efficient and effective manner. Under the Comprehensive Credit Reporting framework, consumers are currently empowered to make complaints about consumer credit reporting to the Australian Financial Complaints Authority (AFCA) and entities are required to be signatories to AFCA. In a similar vein, where consumers suffer a loss due to an error by a third party, they should be able to complain to AFCA and third-party providers should be required to be members of AFCA.
- Establishing Liability: Establishing clear principles about liability in the event of loss to a consumer will be crucial for the success of payments initiation and write access more broadly. For example, where does the liability to compensate the consumer lie when a consumer loses funds where they have initiated payment from an account with a data holder, but that payments initiation instruction has been generated via a third-party ADR app?

ABA Recommendation: Payments initiation should be introduced after a payments licence, and the regulatory framework should be reviewed to ensure sufficient protections are in place for consumers, particularly in relation to privacy, complaints handling and liability. An opt-in model for joint accounts could also be reconsidered in this context.

Government held datasets

The uptake of the CDR could be significantly enhanced through the inclusion of consumer data held by governments. For example, enabling the inclusion of taxation data in the CDR would enable a comprehensive picture of a consumer's financial position and could support a range of use cases, for example, streamlined credit applications for small business.

The ABA strongly supports the inclusion of federal and state government held datasets, and notes the experience of the United Kingdom, where the inclusion of government-held data has led to a significant growth in the number of active users in their open banking system.

The risk of standardisation

The ABA notes that the current trend towards greater prescription in data standards and technical requirements can inhibit the growth of innovative offerings and lead to a standardisation, which is undesirable from a consumer choice perspective.

Banks compete on a wide range of products and seek to innovate with new offerings to develop more compelling customer propositions compared with their competitors. The CDR may unlock greater competition for these products by allowing customers to more conveniently use their data to see what other offerings better suit their needs.

However, the ABA observes that regulation of the CDR should not be used to drive homogenous outcomes in products and should instead encourage and enable data holders to innovate. Current efforts to standardise data requirements with specific technical details can limit product innovation and narrow the scope of offerings provided to customers. It can also limit competition to a few comparable variables such as price and rate rather than give the fuller picture of what the consumer is likely to receive through bundling of products or other features such as customer service.

The ABA understands that ADRs would like to receive the same or similar data from banks so they can make useful comparisons and propositions for customers. However, concerns that are often raised that customer data is not useful because it does not compare across other providers does not mean the data is inaccurate or invalid but may simply reflect the different way the data is captured by banks or may include different features that are not easily comparable.

The solution in such circumstances is for ADRs to use data analytics tools and to develop more sophisticated ways of presenting the data rather than seeking to change data standards and add more granular product data fields that drive homogeneity and introduce unnecessary rigidity in the way products are designed or developed.

Question 4: Could the CDR statutory framework be revised to facilitate direct to consumer data sharing opportunities and address potential risks?

Consumers are able to request their data from banks directly using a range of methods, including through online banking, regular statements, or more detailed data that is generated from reports.

Banks further note that they have not observed customer demand for direct-to-consumer sharing, nor have they identified use cases in this area, and it presents significant risks for customers who may be susceptible to fraud or scams which will not be protected once the data leaves the CDR environment.

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

Reciprocity principle

The Inquiry into the Future Directions of the Consumer Data Right recommended (Rec 6.9) that reciprocal obligations of an ADR to respond to a consumer's data sharing request should not by limited by the sectoral designation of that ADR but should apply even where they hold equivalent data on sectors which are not designated. The government did not agree to this recommendation, citing the potential impact on disincentivising some firms from becoming ADRs.

The ABA supports the Farrell recommendation, and consider it is essential for competitive neutrality that businesses from non-designated industries entering the CDR as data recipients be required to share data that was deemed to be equivalent to the data they were wishing to receive. We further consider this would encourage a functioning economy of data exchange and ensures that customers are able to fully utilise their data from across industries.

It is clear that designing a system of economy-wide reciprocity would have a resource impact for regulators and ADRs, but the ABA considers it vital for consumers to fully benefit from the CDR and to ensure fair competition between designated and non-designated industries.

ABA Recommendation: the government should provide for a broader application of the reciprocity principle to enhance consumer choice and improve competitive outcomes.

Integration with PayTo

Banks are rolling out integration with the New Payment Platforms' new PayTo platform which enables consumers to use third party authorisations to make payments on their behalf. The consent process

under this PayTo model is quite different to the consent flow as envisaged by the CX guidelines under the CDR and will potentially create interoperability issues unless addressed.

The ABA supports greater alignment of these requirements now to ensure that as banks continue to build for both the CDR payments initiation and PayTo, they can do so in a manner that ensures interoperability between the two as this will ensure a better consumer experience.

ABA Recommendation: The technical requirements for payments initiation should ensure integration with NPP PayTo so that there is interoperability between the two.