AUSTRALIAN
RETAIL
CREDIT
ASSOCIATION

20 May 2022

Secretariat
Statutory Review of the Consumer Data Right
The Treasury
Langton Cres
Parkes ACT 2600

By email: CDRstatutoryreview@treasury.gov.au

Dear Sir or Madam

Statutory Review of the Consumer Data Right issues paper

Thank you for the opportunity to provide a submission in response to the Statutory Review of the Consumer Data Right issues paper.

ARCA is the peak industry association for businesses using consumer information for risk and credit management. Our Members include Australia's leading banks, credit unions, finance companies, fintechs and credit reporting bodies and, through our Associate Members, many other types of related businesses providing services to the industry. Collectively, ARCA's Members account for well over 95% of all consumer lending in Australia.

While our Members include both current and future data holders, ARCA's focus in respect of the Consumer Data Right (CDR) is the potential for the system to improve the responsible and efficient provision and management of credit to Australian consumers. That is, how credit providers (and business providing services to credit providers) may act as an accredited data recipient to obtain and use CDR data (with the consent of the customer) to help assess and manage credit ('credit use case').

Our feedback below is given in response to Question Two in the issues paper:

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

As an initial observation, we note that at times the CDR implementation process has not given sufficient attention to the credit use case, even though it is likely to be one of the most beneficial to consumers and competition in the near term. In fact, we believe that consumer exposure to CDR through the credit use case (i.e. as consumers apply for credit), will be critical to the acceptance and adoption of the CDR by Australian consumers.

We are, however, pleased to note the more recent attention given to the credit use case. For example, the Open Finance Sectoral Assessment identifies the ability to use CDR data to support a lender's assessment of a customer's credit worthiness and compliance with responsible lending obligations as a key use case (see page 14). Likewise, the issues paper notes the potential, using the CDR, for "quickly and easily applying for a mortgage by the push of a button" (page 7).

In seeking to ensure the credit use case is supported by the CDR legislative framework, we have made submissions at most of the important implementation stages. Those submissions emphasise the need to ensure that the consent-based framework allows credit providers to have an appropriate level of certainty as to their ability to access the data necessary for their legitimate purposes though the system. That is, a credit provider which is basing its loan assessment processes on being able to access the necessary data through the CDR must have reasonable certainty that it will be able to access all the necessary data and use it for all its reasonable purposes.

While improvements have been made to the rules over the last few years[1], we consider that the current consent model which requires accredited data recipients to allow the complete itemisation of consent (i.e. data set by data set; purpose by purpose; able to be withdrawn at any time), still stands in the way of credit providers being able to fully embed the CDR in their credit assessment and management processes.

We recognise that the consent-based model is fundamental to the operation of the CDR and that consumers must remain in control of how their data is used. However, we have, from the earliest stages of Open Banking, raised the potential to allow for the use of 'standardised consents' for certain common and high-value use cases (such as the credit use case). Such standardised consents would define an agreed set of data that can be used for an agreed range of uses (and, potentially prohibit some uses) and, on that basis, accredited data recipients could present a simplified and 'bundled' consent to the consumer (rather than being required to present a more complicated, itemised range of consents).

[1] Including, for example, to the data minimisation principle which originally prohibited the use of CDR data to develop and improve credit assessment and scoring models by credit providers as those uses did not relate directly to the products or services sought by the consumer. However, while the data minimisation principle now contemplates those types of uses, by requiring specific itemised consent of the customer to those purposes, the rules still place significant roadblocks in the way of credit providers using the CDR for credit use cases.

Rather than diminishing the ability of consumers to consent to how their data is accessed and used, we consider that this approach would increase the likelihood that the consent is genuine and fully informed by simplifying the consent presented to the consumer.[2] [3]

We were pleased to note that the 'Recommended additional consent measures' (page 133 – 138) discussed in the Future Directions for the Consumer Data Right report ('the report') appears to support this approach. Particularly Recommendation 6.20 that states that "industry and consumer groups should be encouraged to develop and endorse standard wording for Consumer Data Right consents for specific purposes" (Recommendation 6.20).

However, while there appears to be strong support for the introduction of a standardised consent model, the report is ambiguous as to whether the use of those consents would include a bespoke rules regime that could allow for the improvements discussed in our submission to the ACCC. We are also not aware of any current activity being undertaken to give effect to the recommendations of the report (i.e. any specific encouragement by Treasury to implement standard wording). However, we do note that prior to the Government releasing its response to the Future Directions report in December 2021, the data standards body had already released a decision proposal in May 2021[4] that discussed and ultimately rejected (in September 2021) pursuing in the near term the concept of 'purpose based consents' - which appeared to reflect a concept very similar to standardised consents. Putting aside the merits of the concept and the rationale for the decision taken, we do not consider that this was the appropriate timing nor forum for raising such a fundamental development of the CDR regime. For example, consultation on the concept would only have been visible to those accessing the "github" platform used by the data standards body.

For that reason, in respect of Question Two in the issues paper, we recommend that the statutory review of the CDR consider whether the legislation needs to explicitly provide for the concept of 'standardised consents', including the allowance for bespoke rules applying to the use of such consents.

Multiplication of regulatory regimes

We have previously noted that credit providers that utilise the CDR regime will be subject to the requirements of the privacy safeguards, Australian Privacy Principles and the requirements of Part IIIA of the Privacy Act (applying to credit reporting data). In relation to the CDR regime, the differences in requirements applying for data held by a credit provider versus data being received by a credit provider as an accredited data recipient (ADR) under the CDR regime can, from purely a technical and operational manner, represent a significant barrier to participation in the CDR e.g. the challenges of siloing data held by the credit

[2] To be clear, this would only apply to those use cases covered by the standardised consents. Accredited data recipients would still be free to seek consent for any other legitimate purposes, subject to complying with the ordinary requirements relating to obtaining consent.
[3] We note that the Financial Right Legal Centre has recently raised concerns that CDR data could be used to inappropriately target vulnerable consumers (news article and submission). We consider that our proposal could help minimise this risk by embedding appropriate safeguards in the standardised consent (which could, for example, mirror some of the protections in Part IIIA of the Privacy Act applying to credit reporting). While a credit provider would not be required to use the standardise consent (and so not be subject to those restrictions) it would make it much easier to identify and focus regulatory attention on those who did not.
[4] https://github.com/ConsumerDataStandardsAustralia/standards/issues/183

provider under the different regimes. We believe these challenges are holding back many credit providers actually participating as ADRs under the CDR regime, which means the potential consumer benefit from CDR are being substantially constrained. Hence, we consider more needs to be done to find a solution through the regulatory framework to overcome these barriers.

[redacted]

Yours sincerely,

[redacted]

Mike Laing
Chief Executive Officer