# Statutory Review of the Consumer Data Right

Jamie Leach – APRIL 2022
FDATA A&NZ www.fdata.global

# Contents

# 1. Foreword

Open Finance, a precursor to the Consumer Data Right, began as a grassroots movement, campaigning for the legal rights of consumers and businesses to have control of their financial data and share this data with businesses of their choice digitally. It is part of a broader suite of Open Data initiatives to empower consumers and small businesses to access, change and benefit from the data held about them by governments and institutions.

The proliferation of the initiative has gathered notable momentum; various markets around the world are assessing, adopting or implementing laws and regulations to support it. In the European Union (EU), Canada, United States of America (USA), Mexico, Brazil, India, Japan, Russia, New Zealand, South Korea, Singapore, and many other significant markets, Open Finance is already at varying stages of review, policy development, or policy development implementation.

The concept of Open Data is extending across the globe into multiple jurisdictions simultaneously. Whilst the approach has varied, the principle of delivering logical, safe and understandable solutions has prevailed worldwide. It is important to note that no two jurisdictions have designed and adopted the same version as any other country.

Open Banking is simply a subset of the financial services product verticals that could be made to move to an open architecture model. The EU has brought forward legal and regulatory frameworks to push toward an early-stage version of Open Banking that focuses on the availability of payment accounts through the Second Payment Services Directive (PSD2). This framework is underpinned by existing instruments, such as the GDPR. Under PSD2, money can also be moved and viewed by a suitably regulated DRI.

Despite these positive market developments, there is still much to understand about the versatility of Open Banking to unlock economic potential and improve the financial well-being of customers. In addition to exploring these opportunities, there are also risks and ethical considerations which will be critical factors for Governments and regulators in developing Open Finance policies moving forward.

Research is needed to understand, measure, and forecast the considerable impact of Open Finance on society and shape public policy to ensure Open Finance creates positive disruption

and the appropriate flows of capital allocation in markets and assess the techniques of regulation.

Australia has much to learn from other jurisdictions. To date, there has been a severe lack of interoperability cross borders. We can consider the Australian market in isolation; however, consumers and trade are becoming increasingly global in their approach and in doing so, we are doing this nation a disservice. Both consumers and participants show frustration over navigating multiple regulatory environments and varying customer experiences depending on where they transact, despite massive inroads to normalisation and standardisation of platforms and processes in Financial Services. Participants and users of the Consumer Data Right seek to do the same things in Australia as they can in the United Kingdom, South Korea, Indonesia, Singapore, UAE, USA, New Zealand, Philippines, Brazil, Chile, Japan, and many other participating jurisdictions.

# 2. About FDATA

The Financial Data and Technology Association is the not-for-profit trade association leading the campaign for Open Finance across many markets. It is also a focal point of that industry knowledge in the financial community. FDATA was initiated in the UK when the Government considered adding account data access to the Second Payments Services Directive in 2013 and was formalised in 2014.

In addition to working with EU policy makers, FDATA was heavily involved in the UK Open Banking Working Group in 2015. In 2016 the working group's output was published by HM Treasury as the Open Banking Standard.

Having helped UK regulators to shape the agenda that led to the formation of the UK Open Banking Implementation Entity (OBIE), FDATA has been represented in the Open Banking Steering Group. We have also played a significant role in helping OBIE drive high-quality standards and ensure that regulators and policy makers have been fully involved in the challenging areas.

The effort of coordination to common standards was recognised when FDATA was invited to develop an engagement programme amongst policy makers in many different markets. Having already launched new chapters in North America in 2017 and Australasia in 2019, the FinTech community requested to continue developing across other markets. FDATA Global now has active chapters in APAC and South America from 2019, and the mandate is to expand in Asia and establish an African chapter in 2021.

Adding to the broad scope of its international representation, FDATA has also been heavily involved in the UK in developing input to assist the Pensions Dashboard programme. This assistance is in addition to representation in the Steering Group of the Open Savings and Investment programme run by TISA, in the FCA Open Finance Advisory Group and several initiatives in digital identity.

This work is intended to be an organic, iterative document and updated as the story unfolds in subsequent versions. It is specifically designed as a high level and convenient reference guide in this edition. It will continue to expand to provide more depth in technical and regulatory matters in subsequent editions.

The Australasian Chapter of FDATA continues to work closely with Federal Ministries such as the Treasury Department and Department of Finance, Federal Regulators including the ACCC and OAID, and all echelon of industry in the pursuit of the most effective Consumer Data Right environment and the highest level of Open Finance available to consumers across the region.

Our membership has grown significantly over the past eighteen months, including Digital Banks, Regional Banks, Intermediaries, Credit Bureaus, Technology Providers, Platform Providers, Privacy Platforms, Deep Data Houses, Insights Brands, Fintechs Energytechs, Proptechs and Out of the Box Providers. Our membership includes several International Brands that have entered this market after dominating the United Kingdom, the United States and Europe. It is truly an exciting time to be involved in Open Data in Australia.

# 3. Summary

FDATA commends the Australian Government for commissioning the Statutory Review of the Consumer Data Right, as led by reviewer: Ms Elizabeth Kelly PSM.

In today's fast-paced, technology-enabled world, there is a race amongst brands and regions to solve some of our most significant challenges and enhance the consumer experience, often driven by one of the most valuable assets we hold in 2022, data.

The opportunity to pause, reflect, assess and consider that a slight deviation from the current plan may be necessary will result in a more robust, more fit-for-purpose, globally leading regime that will be unprecedented. This regime can provide a gateway for leveraging our nation's data and supporting an economy-wide evolution to become truly technology-focused.

FDATA ANZ is pleased to offer this submission in direct response to the invitation to provide feedback by the reviewer and her staff. Please accept this shortened submission considering the call for direct feedback on a series of five questions. If a longer-form expanded report is deemed advantageous, please do not hesitate to reach out.

We have chosen to provide a series of responses and recommendations to the 19 questions, considering the following:

- **FDATA Member's Views:** As a membership-based organisation, FDATA collects, collates and shares the views and opinions of our members, who are active participants within the banking and fintech community.
- **Global Participants:** As a global trade association, our experience and participation within the United Kingdom, European, North American, South American and Australasian markets influence our advice and feedback on the creation, introduction and evolution of the Open Banking and Consumer Data Right in Australia.
- **Industry Experience:** The regional representatives and associated staff of FDATA have worked within the banking, finance, energy and telecommunications sectors within

their respective geographies. This experience is employed within the collective contribution and community discussions facilitated by FDATA's membership.

As shared in previous feedback and formal submissions, FDATA supports the principle of mirroring existing financial services practices to simplify the transition from account management to Open Banking/Open Finance consent wherever possible. This mirroring has two distinct benefits:

Firstly, the requirements and responsibility for information sharing on behalf of the ADIs/DHs are uniform. This mirroring ensures a consistent approach to information sharing and assists in the narrative and training of staff.

Secondly, the ability of consumers to engage in an Open Data solution that echoes the permissions and operations of their accounts is paramount. That account may hold their money and data; by increasing trust in the regime, trust in their ADI/ADH, and trust in the end-product they are attempting to share their data with, the Consumer Data Right will flourish.

FDATA understands the appeal of developing one set of rules that can be employed across all sectors. The nuances of subsequent sectors, such as Energy and Telecommunications, with different treatments for account ownership, customer identification, account authorities and account payers will not translate directly to the same consent mechanisms as the rules designed for Open Banking. Open Finance, however, will more closely resemble the traditional practices and regulatory approach of Open Banking, and there will be an amount of direct translation and familiar processes.

There is a need to increase trust across the regime further. Trust in the quality of the data. Trust in the ability of a consumer to direct their data to be shared with a party of their choosing. Trust in accredited participants by aligning the CDR to existing legislative instruments and regulations. Trust that the true potential for Open Data is being considered, with a use-case focus on datasets, rather than placing the focus mainly on encouraging the data holders to participate and comply. Suppose we focus on the four core principles of the CDR. In that case, the much-needed tweaks and final pieces of the puzzle can be introduced, and we can supercharge this environment to better our economy and consumers of all shapes and sizes.

# 4. Independent Review Questions

## Consultation questions

### A. Question 1:

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

No. The objectives of Part IVD of the Competition and Consumer Act 2010 are not fit-for-purpose in their current format. They are not optimally aligned to facilitate the adoption of the Right, nor the economy-wide expansion of the Consumer Data Right. At its core, Sections 56AA and 56AB of Part IVD of the Act speak in brief clauses, touching upon central concepts of 'consumers', 'competition' and the 'public interest'. This has been lost in adoption in several ways.

Despite consumers having a variety of methods of access to their data and the ability to share it with a wide variety of technology today, the Consumer Data Right promised a safer, digitally enabled method for the consumer to enhance their experiences. However, some examples have reduced how Consumer Data can be accessed and utilised.

Despite the apparent intentions of Scott Farrell in his report following the 'Review into Open Banking', between the drafting of the legislation, the development and ratification of the rules, the identification and implementation of technical and data standards, and the continuing compliance and enforcement of participants, the Consumer Data Right has deviated from that intention. It has morphed into a challenging environment that remains partially unfinished and will make it increasingly difficult for consumers to share their data.

In the absence of a fit-for-purpose privacy framework, the Consumer Data Right is misaligned to, directly contradicting, and insufficient in other ways of existing Acts, Safeguards, and Principles. Depending on the application, the definition of consumer data differs substantially, as does the concept of disclosure, data usage and which one may or may not share their

identifiable data. Depending on the framework, such as the Freedom of Information Act, the Australian Taxation Offices Digital Service Provider framework, the Privacy Principles or the CDR, the defining features remain the consumer (both individuals and legal entities), disclosure with consent over the associated data. We urge the Minister to ensure that current data protections are not over-engineered due to a perceived increased risk around the Consumer Data Right. Other frameworks continue to operate adequately without the sheer level of prescription seen throughout the drafting of the CDR legislation and multiple versions of the rules, irrespective of the sector designation.

A Consumer is entitled to direct their data to be shared with a third party to receive a good or service under the Privacy Safeguards. However, during the construction of the Consumer Data Right, such rights have been compounded by both requiring data to be disclosed to accredited parties while designing a complex accreditation environment. The CDR accreditation process exceeds other legislative frameworks designated by Federal entities such as the Australian Taxation Office. Is there a need to raise the bar in cybersecurity, infosec environment and accreditation, or has this been the by-product of the rules development team attempting to 'protect the consumer from themselves?

There is a need to consider cross instrument alignment to uphold the original intention of creating an optimal model for data sharing in Australia. Potential approaches that could help achieve this goal include exploring alternative models for risk-based data sharing or moving away from a prescriptive legislative model to something more flexible and adaptive. Regardless of which specific approach is chosen, greater attention must be paid to ensuring that the Consumer Data Right is ultimately well-designed and can successfully foster continued economic development across all sectors, irrespective of their designation order.

One method of achieving the overarching goal is to encourage the rules development teams and the regulators to work hand in hand with the market. As has been adopted in other jurisdictions, there is a need to strike a balance between designing a functional regulatory environment with clear, aligned policy whilst allowing market forces to drive CDR application to the designated sectors and future sectors forward at their own pace.

## B. Question 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?

No. Australia has chosen to establish separate teams and responsibilities for the development, maintenance, compliance and enforcement of the Consumer Data Right. Whilst jurisdictions such as the United Kingdom and Brazil have established an independent entity to oversee the deployment and ongoing operations of Open Banking, Australia's fragmented and fractured approach has created further misalignment, delays, assumptions and, in some cases, a false responsibility to carry out the priorities of others to the detriment of the overall Right.

Responsible parties have been created/empowered to independently manage technical and data standards, registration and accreditation, legislative drafting and preparation of the rules. Because the rules are set independently from the standards, there is no overarching unique identifier between sectors to allow for cross-sectoral data sharing. This model, if continued, will only exacerbate the designation and introduction of future and subsequent sectors.

FDATA supports the creation of a single regulator overseeing the Consumer Data Right. This singularity will support consistent, fit-for-purpose rules implementation and standards development across all included sectors. The single regulator will assume the responsibility for the standardisation currency of technical and data standards, establishing a central testing agency for the preparation and accreditation of participant's technology, and ongoing maintenance of the accreditation directory and compliance/enforcement activities.

Regarding the current consultation and sectoral assessments performed by the Treasury Department and the Data Standards Body, FDATA commends attempts to engage with open contribution and consider the various stances of participants and recipients. Given the complexity of initial development activities and the inclusion of consultation around iterations of Open Banking rules and subsequent sectors, the market is showing signs of consultation

fatigue. It is anticipated that this will subside as the regime is established and the need to govern participation tiering and data sharing parameters.

It is preferable that the timing of submission deadlines should allow sufficient time for regulators to consider market responses and to make changes/rulings then. This has not always been the case, with incredibly short timeframes followed by announcements on proposed changes in close succession. This may be purely coincidental; however, these condensed timeframes reduce confidence in the regulators and result in less assistance as the Right continues to be developed.

Despite the current channels for notification of technical issues and concerns, multiple FDATA members have shared a failure in these matters being addressed and rectified. Increased communication via these channels will alleviate these concerns and encourage future collaboration by market participants.

## Public Datasets

Within the Horizons Framework table, the future inclusion of Government (Public) Datasets was raised. FDATA supports the inclusion of public datasets that can augment use cases created through the sharing of consumer data. However, the delayed creation and glacial introduction of the Data Sharing and Release Legislation, coupled with the current data literacy of the Australia Public Sector as identified by members of PM&C, threatens the compatibility of public datasets.

In addition, there is no alignment between authorisations, requesting and consenting for data to be shared. There are no alignments between technology rails or APIs. There is a prevalence within the public sector to reject requests for data sharing if they are not supportive of the intended end-use or they fear that the sharing of or use of the data may currently or in the future breach an identifiable party's privacy. Suppose there is no clear direction for public data to be shared between government offices. How can we expect a CDR request for access to an Education Record or a Vehicle Registration to be fulfilled?

Rather than scrap Public Datasets from the CDR, a concerted effort much be made to find a way to include them in the CDR, as this will supercharge the adoption of CDR through the development of complex and beneficial use cases.

## C. Question 3:

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

No, there is an emphasis on building the rails and then leaving the market to fulfil consumer needs. But the prescriptive nature of the framework limits the potential use cases. It does not mirror existing digital practices or those yet to be developed by an increasingly digital-enabled population.

Several unaddressed critical elements must be solved to finalise the CDR.

- The designation of CDR intermediaries is a crucial aspect of growing the CDR ecosystem. FDATA members believe that innovation is more likely to come from various participants, all competing to build the best Data recipient experience for consumers rather than from the ADIs. This new segment of CDR participants is not currently recognised under the CDR rules.

- As each new sector is introduced, there is a dire need to create a straight-through consent mechanism without a common unique identifier to establish authentication tokenisation. Banks identify customers via a customer identification number, irrespective of retail or business banking. Energy companies associate the identifier with a metering device and an address. Telecommunications providers will issue an account ID or base usage on device identification numbers. Without introducing a common identification framework or including a Digital Identity, cross-sectoral data sharing will be impossible from a consent perspective.

- In the provision of business data sharing, there are significant barriers to adoption, ranging from the lack of differentiation between business data and personal data, to the CDR prohibiting current data sharing rights of business customers to share their data with whomever they direct to procure goods or services, the continuing

misalignment and contradiction of the CDR to other legislative instruments such as the ATO and AFSL in cyber requirements and data deletion mandates, and the lack of clarity around data classification and requirements treatment and management of such data ongoing. Unless Australian small businesses are empowered under the CDR with the same rights to securely share their permissioned data with emerging technologies as they have today, the innovation that removes further friction from business processes and improves productivity will not be enabled under the CDR.

Key objectives of the CDR are ensuring consumers retain in control of their data, can control who has access to their information, and that it is rolled out in a way that does not disrupt existing market practices. By ringfencing who falls within this category, we are concerned that the definition of "trusted advisor" risks limiting a consumer's ability to place trust in existing advisors who fall outside of the definition, undermining these key objectives. Many SMEs rely on bookkeepers, who may not otherwise have formal qualifications, to keep their business afloat. Disrupting this practice by excluding bookkeepers from the definition of 'trusted advisor' and limiting a consumer's ability to control who they trust with their data, fundamentally risks undermining the usability of the CDR and risks existing market practices.

- The CDR was not intended to be prescriptive to the point it constrains innovation or moderates the adoption of technology across Australia's population. The four classes of Insights are insufficient for current market requirements without considering the future advances and consumer demands. They are also intended for Open Banking use cases and fail to consider subsequent sectors. An energy provider that is asked to provide an insight into the sustainability of a customer will not be permitted. An application providing vehicle purchases will not be able to confirm that a purchasers hold the required class of licence in order to operate the desired vehicle. An insight disclosure of a property being flood-affected during a purchase will not be facilitated.

- Aside from the increased obligations of ADRs in creating and maintaining validation pathways to comply with data sharing obligations, the CDR has failed to sufficiently justify the necessity to disregard Privacy Principles and the Privacy Safeguards in adding additional layers of burden and barriers to adoption. The designation of the Trusted Advisor, whilst iterative, has once again surpassed the Privacy Act by attempting to control the consumer under the guise of enhanced protections and risk assessments. The notion that one classification of Trusted Advisor poses a greater risk to another class simply based on the formality of the Industry Association, or the fine line between fiduciary obligation versus code of conduct is an overreach.

## D. Question 4:

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

Yes and No. In short, direct-to-consumer data sharing already exists in traditional formats and is currently utilised by individuals and business consumers on an ongoing basis. Under the CDR, the core principle of consent is voluntarily expressed, explicit in nature, time-bound and revokable. Direct to Consumer data sharing can be more easily managed with the standardised nature of CDR datasets; however, the framework does not need to be amended but instead enacted.

The Productivity Commissioner argued that this type of data sharing is critical in providing a comprehensive Consumer Data Right. The Commission recognised that Direct-to-Consumer data sharing would empower consumers and further increase competition across the market to provide improved products and services through innovation and increase market momentum.

The Act implicitly depicts that a consumer should be able to access and use the data held by businesses in designated sectors in any manner they wish. The only variable in this notion is the designation of sectors, which currently include Banking and Energy. It is not a question of if the Act should be revised to facilitate this type of data sharing but rather end the reluctance to provide this Right.

Concerning SMEs and Business Customers, they currently have the right to direct data be shared with service providers to receive goods and services. The CDR intended to empower further this market segment with an enhanced experience powered by standardised data. The sharing of data could be seen as another form of a business transaction or an element of a transaction. Business consumers should be trusted to obtain the advice and services they need with the freedom to share their data as they see fit. It is not the Act's role to dictate who they may legally conduct business transactions with.

## E. Question 5:

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

Yes. Here is our opportunity to align the various sectors, close the gaps in policies and rules, align with existing legislation and privacy laws, and build an actual consumer-centric digital sharing environment powered by one single set of technical standards.

We have a genuine opportunity to build the remaining pieces of the framework and balance risk versus reward whilst ensuring that consumers have greater opportunities for data sharing in a safe, secure manner, not less than they had yesterday.

FDATA has always advised that the CDR must be developed with modern business operations at its core. As a digital power of attorney, the Right must maintain consumer trust and business operability, encourage market competition, enhance innovation and consumer participation. This will only occur if it is possible for brands to participate and the consumer to access a use case that functions in the expected manner.

The CDR should enhance existing processes and policies, not compete or circumvent them unnecessarily. Recognising existing protections in place, ensuring consistency and interoperability with existing regulatory and legislative requirements, and minimising business and consumer disruption will be crucial to its future success.

# 5. Additional Considerations

## Data Quality

Persistent concerns shared by the market over data quality appear to be largely unanswered. Whilst other jurisdictions have invested in external and independent technology to monitor the health of the API environment, Australia has chosen not to adopt a similar monitoring platform. FDATA members regularly share concerns around poor quality data, delays in data being received (in some cases up to 24 hours by major ADIs), missing fields, erroneous data fields, garbled and inconsistent data, with the current challenges, including GitHub and the ACCC compliance and enforcement teams. The UK indeed experienced similar difficulties initially, but the UK chose to establish a dedicated testing function and a sandbox for API validation and testing in a production environment. This made a substantial difference in entering brands and the overall confidence of the market and the consumer experience.

## Delays in Rules Delivery

The delays in finalising rules and standards for Joint Accounts, Business Products, and Complex Accounts have proven costly to the market. They have eroded executive confidence in the value-proposition of the Consumer Data Right. FDATA has advocated for the "finishing" of Open Banking, and we believe that this should be the proper priority of the regime before introducing subsequent sectors. There are genuine businesses at the heart of the Consumer Data Right, with genuine balance sheets and stakeholders. Our members recognise the potential for a data-enabled transformation, but the process with which this has occurred to date has been disjointed.

## Business Consumers

There are several points of contention between Business Data and Personal Data. Whilst the legislation considers all individuals and legal entities (Body Corporates) have the right to access and direct their data to parties in providing goods and services, somewhere between the review and the current version of the rules, we have not catered for large businesses.

Corporate accounts remain unmandated and un-discussed and have created significant hurdles to the 2.4 million SMEs directing their data to current critical applications.

The CDR promised a real-time, enhanced, safer method of business sharing their data, with auditable activity logs for data transmissions and the necessary cyber environments to support this. However, the misalignment between critical policies and, in some cases, legislation instruments has resulted in a mammoth barrier for businesses of all sizes in adopting technology to augment their operations.

## Data Definitions

With the speed of technological development and globalisation, the missed opportunity for shared terminology and definitions around data and devices is tragic. The concept that CDR data is any data derived from mandated files and/or touches CDR data forever and ever until the data can no longer be attributed to the original individual/entity is near-sighted and a blatant overreach by the regulator. This significantly affects the concept of derived data and materially enhanced data, both legally defined and considered in other formats of legislation and regulation.

One area that is significantly impacted and largely unresolved is the financial management software industry. This sector provides essential operational, productivity, and compliance-related services to SMEs and corporations alike. This industry is already driven by sharing consumer data via either screen scraping or direct feeds. It allows consumers to share their data with validated third parties via regulated consent mechanisms. However, the design of the Consumer Data Right, which promised to augment and enhance existing practices, has seriously placed these consented directions in jeopardy and has forced the FMA's to remain on the sidelines until these crucial issues are remedied. FDATA has held direct talks with all regulators, the Treasury rules development team, the Data Standards Body, associated Industry Bodies and the Minister directly, failing to address this issue.

**If the CDR rectified the FMA data-sharing barriers, Australia could turn on 2.4million users overnight, with up to an additional 3 million individual users.**

## Reasonable steps for Data Sharing with Trusted Advisors

Another significant barrier to customer participation in the CDR is the requirement that an ADR cannot disclose CDR data to a trusted adviser unless it has taken reasonable steps to confirm the person to whom the data is to be disclosed is a member of a class of trusted advisers set out in the CDR Rules (rule 7.5A(3)). Currently, there is no national register of accreditation across the six categories. An accountant with a large consultancy firm, such as Deloitte, may be employed as part of a corporate tax team one day but not the next. Should the ADR be required to make regular enquiries with the consultancy firm to validate their employment? In addition, the notification process for Financial Advisers upon leaving a contractual relationship of an AFSL holder or similar accredited party can be up to 30 days. This will lead to the ADR failing to comply with the requirement through no fault of their own. It is one thing to introduce flexible rules to encourage market development; it is another to create 'grey areas' where the industry may become paralysed through fear of failing to comply.

## Insights

FDATA commends the inclusion of Insights into the Consumer Data Right; however, the inclusion of four prescriptive insights, of which three are statements of fact rather than insights, has failed to meet the market's needs.

By definition, Data Analytics is the process of turning unstructured data into a structured form to derive future value. The definition of an insight is knowledge and understanding gained through the application of Analytics which derive new business and consumer value.

Consent is covered in the Privacy Principles and Safeguards. Who can tender consent, for what reason, to whom to provide a good or service is covered. The lack of a definition for disclosure has created an opportunity to re-examine the concept of Insights within the CDR and realise their supreme value to the consumer when shared with their chosen service provider. There is no need to provide the market with a limited quantity of acceptable insights as a market-driven approach will yield new use cases that will meet customers' expectations faster than the regulator can continue to amend the rules.

## CDR Metrics and Scoreboards

Regulators and policy setters often ask FDATA how 'success' can be measured. In 2021, FDATA ANZ's membership developed a scorecard that considered five distinct segments in measuring KPIs on the performance of the CDR. The segments include Participation Goals (next 12 months), Participation Metrics (Output), Data Holder (Input), API Metrics (Input) and API Performance Metrics (Output). We would be happy to provide a copy to the reviewer if requested.

## Designation of Subsequent Sectors

The inclusion of Open Finance to the Consumer Data Right, more so than Open Energy or Open Telecommunication, will see direct data sharing between like-organisations for the first time. This will only serve to highlight the incomplete framework further. Issues around data quality and functional/non-functional requirements have primarily gone unanswered. Difficulties around compliance testing and the role of intermediaries will be exaggerated due to the nature of the Open Finance market. There is no straight-through consent mechanism nor form of sharable or tokenised credential (digital identity) that will allow consent to be amended or withdrawn between providers/sectors. There is also a need to develop a dashboard to assist consumers, both individuals and businesses, in managing their current/past consents to whom they have granted access to their data, for what purpose and timeframe. This difficulty also flows down from the perspective of the data holders, which are expected to manage multiple data-sharing requests from a consumer via a predominantly autonomous system, unable to discern duplications or extensions/amendments of consents.

## Screen Scraping

Screen scraping has existed within financial services and across all data-sharing practices for more than two decades. Screen scraping has existed for many reasons, including data aggregation, increased data field collection, and cost parameters. The market has not sought to maintain scraping over the introduction of a fully functioning CDR environment; however, the current state of CDR related data-sharing is substandard to the majority of screen-scraping applications. Unless the data quality issues are addressed, scraping customers will

experience a heightened experience. Unless the narrow designation of datasets and including data fields are addressed, the breadth of scraped data will continue to outperform CDR shared data. In one example shared with the DSB and the ACCC Commissioner, a scraped dataset provided 104 data points to the customer, whilst the Open Banking equivalent only supplied 31 data fields. It is preferable upon creating a broad and deep CDR data-sharing ecosystem that the CDR becomes the primary method of data sharing, as has been decided in many other jurisdictions.

## Public Awareness and Education

FDATA has been passionately lobbying for a public awareness and education program to be developed in collaboration with the industry. Both the ACCC and the Treasury Department have received funding for these works, but neither completing this element. One of the United Kingdom Treasury's greatest regrets was the decision not to raise awareness of Open Banking. They estimate it to be the greatest retardant of consumer adoption, to the demise of several participants and brands. Initial claims of fraud within the regime were primarily incorrect, with a misunderstanding about the technology and the lack of digital awareness leading to unnecessary concerns from consumers. Over time, these claims have dissipated, and user numbers slowly increase after several years.

## Interoperability

In 2021, the Treasury Department performed a comprehensive assessment and comparison exercise to learn from numerous international jurisdictions, including the UK, Brazil, Canada and Singapore. Despite adopting the FAPI technical standards, little consideration has been given to aligning this framework with our closest trading partners. With the globalisation of organisations, and increasingly the consumer, the lightning pace of technology advancements, digital wallets, and the blurring of the lines between big-tech and the provision of financial services, there is a need to align the CDR in interoperability and consumer expectations. An ADH or ADR operating in Australia is expected to create and comply with one of the most onerous data-sharing regimes but will be expected to build a separate offering to trade in the UK or Europe and another environment in Canada or Brazil. Australia is missing a unique opportunity to reduce trade barriers and encourage international brands to participate in this technology-led revolution. In addition, those brands with payment provisions are deliberately withholding their introduction over fears around a

continually changing payments industry. Their reluctance to enter this market impedes innovations and increased competition that would have otherwise benefited the consumer.

**As per our previous responses:**

FDATA supports and encourages a CDR that closely aligns with traditional practices as familiar to accredited participants and, most importantly, as familiar to the consumer. Keeping the consumer, choice, convenience, and confidence at the centre of CDR development, we commend the Government and the market's continued efforts to deliver a fit-for-purpose, secure and consumer-focused solution.

The ability for consumers to choose their operating practices, coupled with the instant nature of digital banking, will enforce the consumers' choice to share any or all of their data for any purpose that they believe will enrich their experience or enhance their life. In addition to suitably informed account holders, the real-time nature of data-sharing will increase the adoption of open banking and enable growth in product/service offerings for consumers and businesses alike.

The Consumer Data Right is a pivotal opportunity to promote digital transformation, enhancing Australia's economy. We highly encourage the CDR to be finalised with haste to achieve these momentous objectives.

Please do not hesitate to contact me should you have any questions or request further input.

Kind regards,

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