INSTITUTE OF
PUBLIC
ACCOUNTANTS®

Comments to ACCC on the CDR rules expansion amendments

October 2020

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Mr Paul Franklin
Executive General Manager
Consumer Data Right Division
Australian Competition and Consumer Commission
Level 2, 23 Marcus Clarke St
CANBERRA ACT 2601

By email: **ACCC-CDR@accc.gov.au**

Dear Mr Franklin

Consumer Data Right (CDR) rules expansion amendments

The Institute of Public Accountants (IPA) welcomes the opportunity to comment on the CDR rules expansion amendments.

IPA is one of the three professional accounting bodies in Australia with 40,000 members in Australia and across 80 countries. Three-quarters of our members work in or are advisers to the small business and SME sectors.

IPA is in support of the CDR which provides for consumers to have greater control over their own data, including the ability to share their data with trusted third parties.

Our comments on the consultation paper are provided from the perspective of our members who are accountants, Registered Tax Agents, BAS Agents, licensed credit providers and holders of financial services licenses, as well as from the perspective of small businesses and in the public interest.

In preparing our comments we have liaised with IPA members and software providers, though this has been limited by the restricted consultation timeframe.

It would be fair to say we have found a large degree of confusion among stakeholders as to the implications and requirements of the proposed amendments to the CDR Rules. Among our members there is a general lack of understanding of what requirements will be imposed on them and most are reliant on their accounting software providers to ensure their own compliance. We believe there are differing views among stakeholders of the impact of the proposed amendments. In order to provide clarity and given the significance of the proposed changes, an extended consultation period is warranted. Whilst we are supportive of CDR and believe in its benefits for consumers and for accountants, we also believe it is critical to ensure its effective design and implementation.

Another general comment is that the CDR should rely as much as practicable on existing and understood frameworks and processes. This is the common approach of government and should be applied in the case of the CDR. Accordingly, existing systems and processes developed and used by other government agencies such as the Australian Taxation Office (ATO) should be utilized. We understand that the existing security and other frameworks used in conjunction with the ATO would be appropriate for use in the CDR context. This is another aspect which warrants exploration and we

are unsure from the consultation paper as to whether this has been undertaken. It is imperative that consumers are provided with a seamless experience in order to build confidence in the system and to facilitate its take up. If trusted advisers such as accountants and tax agents can be efficiently incorporated into the CDR system, then the objective of enabling consumers to share their data to their benefit will be enhanced.

We refer to section 5 of the consultation paper *Greater flexibility for consumers to share their CDR data.* We note that it is proposed to "authorize an Authorised Data Recipient (ADR) to disclose CDR data to non-accredited persons at the consumer's request, however, the rules do not require ADRs to do so. Therefore, disclosures to non-accredited persons will only occur where an ADR wishes to offer this functionality to consumers. The ADR would not be precluded from charging a fee for this service". Our concern is that this takes too much of the control from the consumer and gives it to the ADR. If the ADR decides that it is too onerous or costly, then what is the compulsion for them to provide this functionality. Consumer pressure may be insufficient. Charging a fee (to who and how much) could also prove to be a barrier. Striking a balance needs to be considered.

The consultation paper (pp29-30) recognizes that unaccredited third parties such as accountants are subject to regulatory requirements. We contend that this fact needs to be given greater weight and should prove sufficient despite not being subject to every requirement under the CDR. A thorough analysis of the regulatory requirements to which accountants and other professional advisers are subject would indicate that these requirements, especially around privacy, should be sufficient. In any event, a requirement to delete CDR data should not be insurmountable and should not be used as a reason to limit disclosures (which is problematic in itself). Including warnings to consumers as suggested should be adequate.

Consultation question 16: To which professional classes do you consider consumers should be able to consent to ADRs disclosing their CDR Data? How should these classes be described in the rules? Please have regard to the likely benefits to consumers and the profession's regulatory regime in your response.

In terms of classes of trusted advisers, we suggest that those who are either recognized in legislation or who hold a statutory registration may provide the level of confidence required under the CDR Rules. We believe that accountants should be defined as 'qualified accountants' in accordance with section 88B of the *Corporations Act 2001*, as these accountants are subject to regulatory and professional requirements. Not all accountants are members of a professional accounting body and therefore, are not subject to the same requirements. This would be consistent with the approach that these non-accredited persons are subject to sufficient regulatory requirements (as noted above) and therefore, should be included in the CDR without further regulatory requirements. We believe that any further regulation would simply become too onerous and may undermine the objectives of enabling consumers to have the choice and flexibility of consenting to the provision of their CDR data to their professional adviser so they can receive the professional services they require. The CDR Rules should have the overlay of the principles of simplicity and efficiency. For instance, an accountant who is a member of one of the professional accounting bodies and is also a Registered Tax Agent, is subject to multiple regulatory requirements.

Further, it is likely that not all consumers will be aware of these types of requirements and therefore, we contend that the ADR should have the responsibility of ensuring that the trusted adviser comes under one of the prescribed classifications. This may also prove educative for consumers.

Consultation question 17: Should disclosures of CDR data to trusted advisors by ADRs be limited to situations where the ADR is providing a good or service directly to the consumer? If not, should measures be in place to prevent ADRs from operating as mere conduits for CDR data to other (non-accredited) data service providers?

IPA believes it is unnecessary to restrict disclosures by an ADR to situations where the ADR is themselves providing a good or service to the consumer. As the consultation paper acknowledges there would be occasions where the consumer wants to share their CDR data with their trusted adviser and not receive a good or service from the ADR. We contend that the primary consideration should be to enable the consumer to share their CDR data with their trusted adviser. Given the nature of the relationship as '*trusted* adviser', the regulatory requirements to which the trusted adviser is subject and the checks and balances built into accounting software, then these should provide sufficient safeguards. Further, this could be part of a review of the CDR Rules in due course to ensure the Rules are operating as intended and without unintended consequences.

Consultation question 18: Should disclosures of CDR data insights be limited to derived CDR data (i.e. excluding 'raw' CDR data as disclosed by the data holder)?

The definition of 'insights' as being *derived* CDR data and the question of what can be disclosed in terms of derived or *raw* data needs further consideration. However, we believe that the primary principle should be to enable consumers to share their CDR data, however defined, with their choice of trusted adviser, with a seamless experience to encourage confidence and take up. Making a distinction in the types of data may add an unnecessary level of complexity and confusion for consumers. In addition, the services provided by many accountants and tax agents through their accounting software (including bank data feeds) would include a mix of types of data. Again, making the distinction in types of data would add an unnecessary level of complexity which impacts not only the accountant but also the consumer/ client.

In conclusion, the IPA stresses the importance of enabling a seamless experience for consumers, including small businesses, to share their CDR data with their trusted advisers, in a cost-effective manner. In the age of COVID-19 and the need to assist small businesses to stay viable, we believe this will be imperative.

If you have any queries with respect to our comments please don't hesitate to contact [redacted] at [redacted].

[redacted]

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