



29 October 2020

Mr Paul Franklin
Executive General Manager
Consumer Data Right
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

By electronic mail: ACCC-CDR@acc.gov.au

Dear Mr Franklin,

Consumer Data Right Rules Expansion Amendments – Consultation Paper

Visa Worldwide Pte. Limited (Visa) welcomes the opportunity to provide comment on the Australian Competition and Consumer Commission's (ACCC) consultation, *Consumer Data Right Rules Expansion Amendments* (the Draft Rules).

The Consumer Data Right (CDR) has the potential to provide significant opportunities to Australian consumers and businesses, and to accelerate the development of a vibrant digital economy. Since the foundational CDR rules were published in 2018, there have been several significant developments to advance their purpose and implementation, including implementing guidelines for data-sharing in the banking sector, the CDR Privacy Safeguard Guidelines published by the Office of the Australian Information Commissioner, the Accreditation Guidelines published by the ACCC, Treasury's announcement of the expansion of the CDR beyond banking to the energy sector, and finally, that 'read access' is live as of 1 July 2020 for Australia's largest banks.

As the CDR continues to evolve, Visa is committed to enhancing and leveraging the CDR for the benefit of Australian citizens and businesses, as well as the economy at large. For example, in February 2020, we submitted comments on the ACCC's consultation *Facilitating participation of intermediaries in the CDR Regime*.¹ Additionally, in July 2020, Visa submitted a response to the consultation on *Draft rules that allow for accredited collecting third parties (intermediaries)*.² In parallel, we have also had the opportunity to engage with other Australian regulators on CDR matters and recently submitted a response to Treasury's consultation on whether to expand the CDR to 'write access' in 2020.³

¹ Visa's public submission to "Facilitating participation of intermediaries in the CDR Regime" is available at <https://www.accc.gov.au/system/files/CDR%20Rules%20-%20intermediaries%20consultation%20submission%20-%20visa.pdf>.

² Visa's public submission to "Draft rules that allow for accredited collecting third parties (intermediaries)" is available at <https://www.accc.gov.au/system/files/Visa%20%2820%20July%202020%29%20.pdf>.

³ Visa's public submission to Australia Treasury is available at <https://treasury.gov.au/sites/default/files/2020-07/visa.pdf>.

In this context, we are delighted to offer the ACCC our perspective on the Draft Rules. Our response below is divided into three sections. In the first section, we provide our initial observations on the Draft Rules. Specifically, we advocate that a flexible, principles-based approach to the CDR – including with respect to accreditation – is likely to be more effective than an overly prescriptive approach. In the second section, we highlight our support of the ACCC's proposed tiered accreditation levels, but caution against regulatory mandates that may unnecessarily limit the role of participants in the CDR ecosystem, interfere with commercial incentives or arrangements, or limit the type of data that can be shared. We also support greater flexibility for both individual and business consumers to share their CDR data if properly guided by consumer consent and preferences. To illustrate this point, we propose that in order to facilitate improved consumer experiences, consumers should be provided with clear choices to exercise meaningful control over how their personal information is used, with whom it is shared, and for what purpose. In the third and final section, we note that we view this consultation response as a first step toward a collaborative conversation about the most effective way to ensure intermediaries can contribute to a dynamic and innovative CDR ecosystem.

In closing, Visa again commends the ACCC's efforts – and those of other Australian regulators – in addressing the opportunities and challenges that arise when transitioning towards a data-sharing economy, particularly in the early stages of Australia's journey. Visa is available to provide assistance, including on development of the Draft Rules, as the ACCC continues its efforts to ensure an inclusive and vibrant data-sharing framework in Australia.

Yours sincerely,



Julian Potter
Group Country Manager, Australia, New Zealand & South Pacific

I. INITIAL CONSIDERATIONS ON THE PROPOSED RULES

(1) A flexible, principles-based approach to data sharing will encourage adoption and boost innovation

The ACCC's consultation on the Draft Rules provides a timely opportunity to amend and/or create new rules during the early stages of Australia's Open Banking journey which are conducive to new and emerging business models and can ensure the CDR's long-term success and sustainability. Specifically, we commend the ACCC's acknowledgement that it is seeking to develop the Draft Rules through a flexible and principles-based approach.

Visa's global experience in Open Banking indicates that a flexible, principles-based approach to consumer data sharing – where marketplace dynamics can drive and meet consumer demand – is more effective than an overly interventionist approach. Given that the data-sharing ecosystem in Australia is still nascent, and that there are early intentions to apply it to a broad number of sectors, an overly-prescriptive approach at this stage could stifle innovation, inhibit different business models from emerging, and may ultimately result in delayed consumer adoption across the economy.

In this context, Visa believes there is a significant and essential role for intermediaries that can contribute value and economic efficiency for all CDR ecosystem participants. We commend the ACCC for recognising the important role intermediaries can play in engaging with data holders and facilitating consumer data requests. Intermediaries are fundamental in facilitating a robust data-sharing environment that is conducive to innovative goods and services for consumers, businesses, and financial institutions. A secure environment for enabling data availability makes it easier for developers to create innovative products and services that consumers can use and trust across multiple accounts. For consumers, this environment gives rise to a sense of security in data-sharing and facilitates data-sharing that can respond to consumer needs and demand.

Against this backdrop, we address below some specific issues relating to the Draft Rules.

II. SPECIFIC ISSUES RAISED IN THE DRAFT RULES

(1) Increasing the number and types of businesses that can participate in the CDR through tiered, accreditation levels and expanding the way accredited parties can work together

(a) Tiered, risk-based accreditation levels can ensure broad participation in the CDR ecosystem if the underlying requirements are not onerous and burdensome. Regulatory mandates should not limit the roles of participants in the ecosystem, interfere with commercial arrangements, or limit the type of data that can be shared.

Visa commends the ACCC for consulting on a set of proposals that would allow for a greater number and type of businesses to facilitate consumer data-sharing through a tiered approach to accreditation. The ACCC indicates in its consultation paper that

"[f]or the consumer benefits of the CDR to be fully realised, it is critical for there be a broad range of accredited data recipients participating in the system. Broad participation is required to achieve the competition and innovation objectives of the regime, and for the CDR to support Australia's digital economy."⁴ Visa wholeheartedly supports the ACCC's approach and agrees that this will be an important component for the successful implementation and adoption of the CDR in Australia.

We note that the Draft Rules propose three new discrete tiers of restricted accreditation: (1) Limited Data Restriction; (2) Data Enclave Restriction; and (3) Affiliate Restriction. At a general level, we support the ACCC's efforts in anticipating the types of business models and relationships that may emerge as the CDR ecosystem develops. Creating levels of accreditation beyond the 'unrestricted' level is an important step toward broadening the types and range of potential participants in the ecosystem. However, we caution against incorporating too many regulatory mandates when developing accreditation models, as this may result in overly limiting the roles of providers and principals, interfere with commercial incentives or arrangements, or limit the type of data that can be shared. This is particularly advisable at this early stage of Australia's Open Banking journey when the CDR ecosystem is just beginning to grow and where we may not yet be able to anticipate the business models and relationships that may emerge.

First, and as Visa has noted in previous submissions, a CDR ecosystem that provides for different levels of accreditation and data access will result in lowering entry barriers for entities that might not otherwise require an unrestricted level of accreditation, given the scope and nature of services provided and the level of risk presented. A flexible and agile approach to accreditation is more likely to lead to broad industry participation, both from new and emerging participants, such as start-ups and fintechs, as well as from traditional participants, such as financial institutions and payment networks. This will result in a vibrant CDR ecosystem based on innovation, consumer choice, and resiliency of data sharing across multiple sectors.

The Draft Rules intend to allow lower-accredited participants to enter into arrangements with higher-accredited participants (usually at the unrestricted level). This is the case, for example, in the proposed Data Enclave Restriction level and the Affiliate Restriction level, which would allow for third parties accredited at a lower level to access the data collected by a data enclave provider or a sponsor, respectively. An important element to the success of these business models is how the accreditation process and requirements are managed. For example, in the case of the Data Enclave Restriction level, it is important that the process and requirements to gain the lower level of accreditation are not onerous or burdensome, but instead, adequately reflect the scope of services to be delivered and the risk presented. With respect to the Affiliate Restriction level, it is important that the sponsor is able to certify in a flexible and agile manner that the affiliate meets necessary – but tailored – requirements. An accreditation process and accreditation requirements developed without such adaptability and agility risks stifling innovation and adoption of data-sharing across the CDR ecosystem.

⁴ Draft Rules, page 9.

Second, the accreditation levels should allow the relationships among different parties in the ecosystem to evolve through commercial agreements guided by consumer demand and preferences. A core principle of a consumer data-sharing model should be to allow natural marketplace forces to drive commercial relationships among ecosystem participants and product design. As consumer data sharing flourishes in Australia, different roles will emerge, as noted above – from service providers to developers to intermediaries – many of which are still not possible to anticipate or predict.

Ecosystem participants should be free to manage the terms of their commercial relationships. This will allow for new business models and relationships to emerge which will, in turn, lead to new products and services for the benefit of consumers. This will be important not just in the early stages of consumer data sharing in Australia, but also in the later stages when the ecosystem is evolving and gaps in products, services, or providers may become evident, and industry will need to create marketplace solutions. Regulation or prescriptive mandates that result in limiting commercial relationships, the manner in which risk can be allocated between parties, or the design and delivery of products and services, could not only hinder innovation at large, but may unnecessarily delay the uptake of data sharing. Moreover, commercial arrangements will be underscored by the protections afforded to consumers from Australia's data privacy and consumer protection laws. Tiered levels of accreditation must, therefore, provide participants with flexibility to structure their arrangements, demonstrating such consideration for the various business models within which these parties may operate and allowing them to choose the arrangement that best fulfills their objectives.

(b) A general level of restricted accreditation may be effective if guided by appropriate standards of data security and consumer protection.

Lastly, the ACCC is seeking views on risk-based restrictions that could apply to a lower level of accreditation, including views on whether, and in what way, an approach based on volume could provide an appropriate basis for developing levels of accreditation. Visa supports risk-based frameworks that appropriately focus on consumer choice, transparency, and data security. In the spirit of flexibility, we believe effective approaches may be based on volume or any number of characteristics provided they meet appropriate standards of data security and consumer protection.

(2) Greater flexibility for consumers to share their CDR data

(a) The disclosure of CDR data by accredited parties to non-accredited third parties will increase the uptake of data-sharing. This type of data sharing should not be contingent on the provision of goods or services by a non-accredited third party but, instead, be driven by consumer consent.

Visa applauds the ACCC for its focus on transparency and consumer choice, both in the broader CDR framework as well as in the Draft Rules presently under consultation,

which contemplate providing greater flexibility for consumers to share their CDR data. Specifically, we note that the ACCC's proposed amendments would allow consumers to consent to sharing CDR data with trusted advisers within certain professions – for example, lawyers and accountants – in order to potentially receive services.⁵ It is worth noting that the proposed amendments represent an expansion of the current CDR regime by allowing consumers to share CDR data with third parties (trusted advisers) without the need for these third parties to be accredited, but which may be governed by professional regulatory regimes and the protections of the Privacy Act 1988 when relevant.

Visa believes that allowing the disclosure of CDR data by an accredited person to non-accredited third parties will encourage uptake of the CDR regime by lowering entry barriers for fintechs and other third parties – in this case, trusted advisers within specific professions. The collection, use, and disclosure of a consumer's CDR data from an accredited person to a non-accredited third party should, similar to other data sharing within the CDR regime, be guided by consumer protection and preferences.

In the consultation paper, the ACCC requests stakeholder input on whether disclosures of CDR data to trusted advisers by Accredited Data Recipients (ADRs) should be limited to situations where the ADR is providing a good or service directly to the consumer. We believe that where a consumer consents to sharing their CDR data with a designated trusted adviser, this should not be dependent on the provision of goods or services by that adviser – instead, the consumer's consent should be the determining factor.

For example, ADRs should be able to provide CDR data to third parties whether they are providing goods or services to the consumer or simply operating, as the ACCC states, as "mere conduits". By allowing third parties to serve as conduits, market forces can adapt to consumer needs and demands and, therefore, contribute to greater flexibility for consumers to share their CDR data. As we have noted in previous submissions, Visa encourages the ACCC to avoid placing artificial barriers around potential use cases that could benefit from the CDR. We instead recommend allowing the key principles of the regulation – transparency, security and consumer preferences – to drive the implementation of this framework well into the future. A principles-based framework that highlights transparency will evolve more fluidly for future use cases and technologies than specific transparency requirements such as, for example, dashboards.

In addition to potentially allowing consumers to share data with trusted advisers, the proposed amendments also contemplate permitting ADRs to disclose 'insights' derived from CDR data to any person with a consumer's consent. The ACCC notes that examples of 'insights' may include income and expense verification, verification of payments, and/or lending assessments. This derived data can then be shared with third parties to encourage provision of products and services to consumers.

⁵ It is important to note that the proposed amendments authorise an ADR to disclose CDR data to non-accredited persons at the consumer's request; however, the rules do not *require* ADRs to offer this functionality to consumers [emphasis added]. Our comments in this section, therefore, apply in instances where the ADR offers the functionality to consumers.

We welcome the ACCC's practical and principles-based approach in permitting disclosure of insights or derived CDR data without prescribing the specific products and services which may be offered to consumers. However, consumers should have transparency into the fact that such insights are disclosed to third parties and for what purposes. Provided consumer consent is properly obtained, a number of potential use cases for such insights can be facilitated even if the underlying 'raw' CDR data is not disclosed.

(b) The extension of the CDR framework to business consumers has the potential of providing broad benefits to Micro, Small, and Medium Enterprises.

Finally, Visa notes that the proposed amendments seek to encourage greater participation in the digital economy by extending the CDR framework to include business consumers and secondary users. As a CDR presents unique opportunities to create and deliver innovative products and services that may not otherwise be available to a significant number of Australian consumers, so can a well-developed CDR provide these benefits to Micro, Small, and Medium Enterprises (MSMEs). This, in turn, can help consumers and MSMEs unlock economic opportunities through innovative new financial services in addition to traditional banking services.

(3) Facilitating improved consumer experiences

(a) Consumers should be provided with clear choices to exercise meaningful control over how their personal information is used, with whom it is shared, and for what purposes.

Visa believes successful consumer data sharing should feature consumer-centric data management design and be supported by robust data use principles and practices, including informing consumers of how and where their data is used. When presented with an opportunity to enable financial services or access information that requires consumers to share their personal data, consumers should be provided with clear choices to exercise meaningful control over how their personal information is used, with whom it is shared, and for what purpose.

We note that the proposed amendments generally seek to facilitate improved consumer experiences, and support consumer comprehension and trust in the CDR regime by providing consumers and accredited persons with greater control over consent. As an overarching principle, we suggest that further consideration may be given to ensuring that CDR consumers are provided with an appropriate level of information at the relevant stages, and that the required timing of such information should be closely linked to the consent process.

As discussed in Section 7.1 of the consultation paper, the current CDR framework contains certain obligations in relation to banking products that are in scope of 'joint accounts'. Data holders currently may choose to offer joint account management services exclusively through offline channels. The Draft Rules would require data

holders to, at a minimum, offer joint account management services online, or both online and offline. Visa believes that requiring data holders to offer joint account management services both online and offline, and allowing consumers to set preferences as part of the authorisation process, will be an important step towards improving consumer experiences. The proposed rule changes to offer both 'pre-approval' and 'co-approval' will provide consumers with a greater level of individual control over sharing CDR data from their joint accounts.

We also appreciate that the ACCC has taken a balanced approach in requiring notice if a joint account holder amends an authorisation, but does not require the approval of those amendments to the authorisation. The ACCC wisely notes that this balanced approach considers important consumer experience risks, including 'approval fatigue' and delays in the ability to disclose data, while maintaining proper oversight and protection to each of the joint account holders.

Section 7.2 of the consultation paper discusses proposed changes to the ways in which consumers can amend their consent, with the goal of expanding functionality and providing robust consumer control in a non-prescriptive format. We agree with the ACCC that a consumer should have the right to update their preferences or withdraw consent at any time. The proposed rules represent a significant step towards both increased consumer control and improved consumer experience by streamlining the process for amending consents in a non-prescriptive manner rather than requiring new consents. Furthermore, we appreciate that the proposed rules recognise that accredited persons may also invite consumers to amend their consents where this would provide a benefit. To provide the greatest benefit to the consumer, Visa believes accredited persons should offer consumers the ability to amend their consents at any time, except where or when it is not practicable. To provide additional benefit, we propose that the process for amending authorisations should be simplified, to the extent possible.

Section 7.3 proposes a 'separate consents' approach to the use and collection of data in an effort to create more flexibility for accredited persons and the enabling of more granular consent options. While this may provide consumers with increased transparency over their data, we note that there is a risk of either consumer confusion if the distinct consent options are not clearly presented or of consent fatigue if this proposal is implemented in a way that is too granular.

Similarly, the 'point in time' redundancy approach described in Section 7.4 will enable a more flexible approach to use CDR data where 'consent to collect' has been withdrawn, while avoiding the costs associated with separating and deleting CDR data from within larger data sets, as well as the feasibility of doing so. However, this approach may result in consumer confusion if, when withdrawing authorisation for a data holder to disclose CDR data, consent is not automatically revoked for an ADR to use that data. To mitigate consumer confusion and ensure transparency, we encourage clear notice as provided in the point in time approach example within Section 7.4 of the consultation paper.

Finally, we support the proposed rules described in Section 7.7 that will allow ADRs to seek express consumer consent to use consumers' CDR data for research purposes, including product and/or business development purposes, beyond the initial provision of goods or services.

III. CONTINUED ENGAGEMENT AND PARTNERSHIP

In closing and as outlined above, Visa has submitted comments on the CDR to the ACCC and Treasury throughout the last several years. We are committed to remaining highly engaged with Australian government agencies as the CDR framework evolves.

Visa appreciates the opportunity to provide our perspectives on the ACCC's Draft Rules. We look forward to supporting the Australian Government as it transitions to a data-sharing economy.
