



Amazon Web Services, Inc. ▪ 410 Terry Avenue N. ▪ Seattle, WA 98109

Friday 10 May 2019

Australian Competition and Consumer Commission
Submitted via email: ACCC-CDR@acc.gov.au

Re: Consumer Data Right draft rules

Amazon Web Services, Inc. (“**AWS**”) supports the work the Australian Competition and Consumer Commission (“**ACCC**”) is doing to develop the Consumer Data Right (“**CDR**”). We welcome the opportunity to provide comments to the ACCC on the draft CDR Rules for the banking sector (the Rules).

Further to the submission by Amazon.com, Inc on October 12, 2018, this submission makes specific comments on behalf of AWS. In particular, the definition of an “outsourced service provider” and the need for uniformity of concepts and terminology in relation to other relevant legislation, regulations, and standards.

Outsourced service provider

(Draft Rule 4.8 – Use and disclosure of data collected pursuant to consumer data requests under this part)

Draft Rule 4.8(1) states that an accredited data recipient may “*use or disclose*” collected data (e.g. CDR data) by providing it to an outsourced service provider for that provider to “*use*” the data to provide goods or services to the accredited data recipient. Draft Rule 4.8(3)(b) subsequently defines a person as an outsourced service provider if they have a contract with an accredited data recipient that includes requirements on the outsourced service provider which mirror Schedule 1 “*to the extent relevant having regard to the goods or services*” provided.

AWS proposes that draft Rule 4.8(3)(b) is amended to clarify the meaning of “*to the extent relevant having regards to the goods or services*”. This clarification could utilize the Office of the Australian Information Commissioner’s¹ (“**OAIC**”) *Privacy Act 1988* (Cth) guidelines on the terms “*use*”² and “*disclose*”³. Specifically, AWS proposes that the outsourced service provider’s contract should mirror Schedule 1 only to the extent that the outsourced service provider

¹ See the Office of the Australian Information Commissioners Australian Privacy Principle 6 Guidelines - <https://www.oaic.gov.au/agencies-and-organisations/app-guidelines/chapter-6-app-6-use-or-disclosure-of-personal-information#holds-use-disclose-and-purpose>

² The OAIC states “The term ‘use’ is not defined in the Privacy Act. An APP entity ‘uses’ information where it handles or undertakes an activity with the information, within the entity’s effective control.”

³ The OAIC states “The term ‘disclose’ is not defined in the Privacy Act. An APP entity ‘discloses’ personal information where it makes it accessible to others outside the entity and releases the subsequent handling of the information from its effective control.”



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either handles or undertakes an activity with CDR data within its effective control (i.e. the extent to which an outsourced service provider uses CDR data that has been disclosed to it by the accredited data recipient). For example, draft Rule 4.8(3)(b) might be amended either as follows:

Example 1: “under the contract, the outsourced service provider is required to take the steps outlined in Schedule 1, to the extent ~~relevant having regard to the goods or services that the outsourced service provider either handles or undertakes an activity with CDR data within its effective control provides to the accredited data recipient, as if the outsourced service provider were an accredited data recipient.~~”

Example 2: “under the contract, the outsourced service provider is required to take the steps outlined in Schedule 1, to the extent ~~relevant having regard to the goods or services that the outsourced service provider uses CDR data that the accredited data recipient has disclosed to the outsourced service provider provides to the accredited data recipient, as if the outsourced service provider were an accredited data recipient.~~”

This clarification is important because it recognises the range of different outsourced service models that can exert various degrees of control over CDR data (e.g. AWS customers maintain effective control of their data and AWS does not know when a customer chooses to upload data that may contain CDR data). The clarification is also consistent with the concepts of “use” and “disclose” referenced elsewhere in draft Rule 4.8. Without the clarification, an accredited data recipient could incorrectly believe that it must ensure an outsourced service provider contractually agrees to obligations mirroring Schedule 1, even though the outsourced service provider does not have the necessary degree of control over CDR data.

Uniformity of Concepts and Terminology

AWS understands the CDR framework is intended to apply to various sectors, beginning with the banking sector. However, we note that different business sectors use different concepts and terminology. To ensure uniformity and clarity across all business sectors addressed by the Rules, we recommend that the ACCC define the core concepts and terms described in the Rules. For example, in Part 2 of Schedule 1 we note that “critical event” and “extreme risk” are undefined. This creates a risk that what constitutes a critical event or risk for an accredited data recipient in one business sector, may not for an accredited data recipient in another business sector.

An alternative approach could be to model those concepts around existing risk and management protocols on a sector by sector basis. Existing legislation, regulations, and standards for the banking sector already set out common definitions. These definitions are well



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known and already incorporated in business practices and governance arrangements. For example, the Australian Prudential Regulation Authority's ("APRA") Prudential Standard CPS 231 (Outsourcing)⁴, sets out a clear and well-known framework for outsourcing by APRA-regulated entities. We believe it would be beneficial to anchor the Rules for the banking sector around similar terminology.

We would welcome the opportunity to stay engaged with the ACCC and its various working groups as it progresses in the roll out of the CDR Rules.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Jessika Loefstedt".

Jessika Loefstedt
Senior Manager, Public Policy, Australia & New Zealand
Amazon Web Services

E: [REDACTED]

MB: [REDACTED]

⁴ <https://www.apra.gov.au/sites/default/files/Prudential-Standard-CPS-231-Outsourcing-%28July-2017%29.pdf>