CONSUMER DATA RIGHT

RULES FRAMEWORK

SUBMISSION TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

12 October 2018

Public

EXECUTIVE SUMMARY

1. ANZ thanks the Australian Competition and Consumer Commission (**Commission**) for the opportunity to comment on its Consumer Data Right Rule Framework (**Framework**). Terms used but not defined in this submission have the meaning given to them in the Framework.

Key points

2. In general, we believe the Framework takes the right direction towards establishing an effective rule-set for the implementation of the consumer data right (**CDR**) in Australia. Many of the comments we set out below concern the feasibility and detail of the Commission's proposal. In offering these comments, we recognise that the Framework is intended to be conceptual and not definitive. As such, we look forward to the release of the draft CDR rules to understand the Commission's detailed position on many topics.

3. The release of the CDR rules as soon as possible will allow us to accelerate our implementation efforts and provide sufficient time to test systems. Much of our system design work is contingent on the CDR rules. The sooner those CDR rules are finalised, the quicker we can move towards making data available under the CDR.

4. As the Commission finalises its approach to the CDR rules, we would ask it to consider developing and releasing for comment a clear road map for the implementation of the CDR (industry testing). This roadmap could define a clear endpoint for the CDR and articulate stages that allow the Commission to approach and resolve complex issues in a considered manner. The roadmap would also signal to industry participants when specific elements of the CDR framework will commence operation.

5. We would also ask the Commission to consider how it will accommodate implementation issues that have not been addressed in the rules. Thus, if an operational or legal issue arises as market participants are implementing and participating within the CDR framework which has not been covered by a rule, it may be useful if the Commission were able to release a position on the issue.

6. With these overview points in mind, we would ask the Commission to consider the following specific points as it starts to translate the Framework into CDR rules:

    a) **Precision** – The rules will need to be precise on the data sets that are to be made available under the CDR framework. Thus, to the extent not set out in

any Ministerial designation instrument, the rules should definitively prescribe the products that will be caught and the data fields that are required. As an example, the Commission has specified that account contact details will be caught. This is appropriate but to work in a CDR environment, this rule needs to specify exactly which contact details are captured and how those details are to be presented.

b) **Feasibility** – We have identified a number of data fields that cannot feasibly be included in the initial version of the CDR rules. For example, some data fields that are proposed to be specified appear to be taken from the UK version of open banking. We would ask the Commission to reconsider this approach as UK concepts do not always translate to an Australian context. An instance of this is direct debits authorisations. Specifying these makes sense in a UK context where a centralised register of authorisation is operated. In Australia, banks have less visibility over these (although this may improve). Another example is the standardisation of all terms and conditions for products. It is not clear to us how this can occur by 1 July, if at all. While features could be standardised, the contractual terms of a particular type of financial product vary across banks and may not be capable of reduction to defined fields (at least completely).

c) **Complex accounts** – Where accounts involve multiple account holders or multiple people with authorisations to view and transact on the account, issues arise concerning who should have entitlements to access and share data under the CDR. For corporate accounts, the simplest and most customer focused approach would be to allow the account holder to determine who has these entitlements. This would match the ability account holders have to determine who can view and transact on the account. For consumer joint accounts, there are privacy and technical issues that would merit being resolved before the CDR is applied. We would ask that the Commission consider including joint accounts in a subsequent phase of the rules once these issues have been resolved.

d) **Reciprocity** – We note that the Commission is deferring the implementation of reciprocity until further work is done due to the perceived complexity of this issue. We would note, however, that the Commission's proposal that accredited data recipients be obliged to share received CDR data with non-accredited data recipients (at the customer's direction) is a form of reciprocity. We have difficulty understanding how this is feasible for the initial

phase of the rules but a form of reciprocity that involves accredited data recipients making 'equivalent' data available for transfer at the customer's request is not. We would strongly urge the Commission to provide for reciprocity from day one to ensure that the CDR does not introduce competitive distortions into the market.

COMMENTS ON SPECIFIC PROPOSALS

3 – CDR CONSUMER

1. As a minor matter, we would note that a 'trust' is not a legal person and thus unlikely to be a CDR consumer (contrary to the statement in the third paragraph of this section). It may be possible, however, that a 'trustee' of a trust will be recognised as a CDR consumer.

2. If the Commission decides to promulgate a CDR rule concerning trustees sharing data from a trust account, we would ask it to be mindful that the power of a trustee over a trust account (eg to make a payment) is determined by the trust instrument. The Commission may like to consider its rules carefully here so that it does not grant trustees a power that the trust settlors never intended them to have. This could occur if a CDR rule gave a transfer right to trustees. This rule may operate, by force of law, to override the trust instrument.

3.1 – FORMER CUSTOMERS

3. Providing access to former customers raises some complex issues that will need to be resolved. At this stage, we believe that the key issues for resolution are:

    a) Authentication – As the bank would no longer recognise the individual as a customer of the bank, the appropriate steps to authenticate the customer will need to be worked through. For example, will the customer need to attend a bank branch to allow an identity verification to occur? We note that manual processes exist today to allow former customers to attend bank branches and obtain their historical data.

    Some banks may also have processes that reserve a customer reference number after an account is closed and these processes may be leveraged to allow former customers to access their data. However, this reservation may be time limited, raising the issue of what should occur after the reservation has lapsed.

    b) Consents/authorisation – It seems reasonable that the consents that are required for sharing for customer data should match those that applied at the time when the account was active. This raises the issue of joint accounts and the need to re-identify other account holders so that, at least, they are given notice of the sharing and the opportunity to cancel it (consistent with their rights when the account was active). We note that if

a customer were to consent to data sharing before the account is closed, then it may be easier to re-enliven that consent.

c) Other non-active accounts – the Commission may like to consider closed accounts for active customers and accounts associated with deceased estates.

d) Duration of data holding – There should be a limitation on how long after a customer ceases their relationship with a data holder that they can access the data. Thus, any such right should not create obligations to retain data longer than financial service providers are required to retain data under other statutes (such as the *Corporations Act 2001* (Cth)).

3.2 – OFFLINE CUSTOMERS

4. We appreciate the rationale behind the Commission's proposed staged approach to offline customers. Before the Commission brings offline customers into the scope of the CDR framework, we would suggest that it quantify:

a) The actual level of demand among offline customers for CDR data;

b) Of those customers who want CDR data, their willingness to become online customers in order to access it (thus allowing them to access CDR data through the main digital channel); and

c) In light of the above, the costs and benefits of implementing CDR access for offline customers other than through those offered for online/mobile banking customers.

5. Our preference would be that customers are encouraged to become online customers in order to access digital CDR data. This may be a relatively easy path of sharing digitised CDR data (noting, of course, that it is the customer's discretion whether they start banking digitally).

6. If a separate form of digital access were to be mandated for offline customers, we would anticipate that this would require significant implementation effort. As such, it would be useful if the Commission were to indicate an anticipated start date for such access if it believed there was a net benefit in pursuing it. Of course, the Commission may see it as appropriate to provide access to the data through paper statements that are requested through branches or call centres.

4.2 – PHASE IMPLEMENTATION

7. We would ask that the Commission be clearer on what exact products will be in scope for July 2019 and then July 2020. There is still no clarity on which exact products are in scope for each of the phases. While the Open Banking Review provided a list of products within scope, it predicated this list on those 'products that are widely available to the general public'. While this provides a good policy direction, it is not sufficiently precise to allow ADIs to build their CDR delivery systems. We would ask the Commission to look at precise product taxonomy as a matter of priority. The delineation between products that are 'widely available' and those that are not would benefit from anchoring in existing statutory concepts.

5.3 – DATA SETS

Data type	Comment
Customer data	
Customer name	• The rules should specify precisely the name which is required. This will be particularly important for corporate entities • Also, the Commission should consider if this will be an open text field or a prescribed number of characters
Customer's contact details	• The rules should specify the actual contact detail fields (eg email, mobile number, home address)
Customer's account number(s)	• When this obligation is applied to credit card numbers, please note that it needs to be PCI-DSS compliant • We would query whether this is actually information *provided* by the customer; it is generated and provided by the bank • As customer account numbers are not portable between banks, it would be interesting to understand what use case rests on the transferability of these numbers • The Commission should also consider whether exposing this field through the CDR framework increases fraud risks relative to the current state

Payee lists	• The Commission may like to consider:
	  ○ If these lists are those payees saved by the customer or are lists of all payees identified in a statement
	  ○ How much detail will be included for each payee (ie name, their bank account details, and/or PayIDs (ie email addresses and phone numbers)); and
	  ○ Regardless of the type of information to be included, whether disclosing payee lists through the CDR framework raises any privacy issues. Consideration will need to be given to current consents and whether they will be adequate consent for disclosure (ie on what grounds did the payee disclose their information to the CDR consumer?).
	• As discussed elsewhere in the submission, payee lists can vary with joint account holders so the Commission

Data type	Comment
	may like to specify that it is the payee list associated with an account holder rather than with an account • The Commission may also like to consider whether international payees are within scope
Direct debit authorisations	• Direct debit authorisations are given to the merchant who receives the payment (not the bank). The obligation to deliver this data should match clause 134 of the new Code of Banking Practice which states: *If you ask us to, we will give you a list of direct debits and recurring payments on your accounts for up to the previous 13 months. The list will include only those direct debits and recurring payments that are known to us from the information we receive about your transactions.* ○ We would recommend that the consumer data rule for this data field should reference clause 134 of the Code of Banking Practice (subject to the commencement date of the CDR). • The Commission may also like to mindful of the distinction between: ○ Direct debit authorisations (which are drawn from a transaction account); ○ Recurring payments that are authorised by the consumer to be drawn from a credit card; and ○ 'Card-on-file' payments under which a merchant retains a customer's credit card details and deducts payments for services/products as they are purchased by the customer Banks cannot always see that these payments have been set up for the customer and their inclusion in the required data fields should be approached cautiously.
Account authorisations	• We assume this refers to who has authority to act on the account
Account-level contact details	• The Commission may like to consider that it is possible that, in the case of joint accounts, account level contact details are different to the account holder's contact details (for example they could be the details of a trustee or accountant/book-keeper). The privacy policy implications of sharing the contact information of non-account holders should be considered.
Product type	○ We assume that this data will be covered by a taxonomy
Product name	N/A

Data type	Comment
Fees and charges	• Specifically listing the fees and charges that are unique to the customer as discrete data fields will require significant work and we would recommend moving this field to latter phases of the implementation. • We would note, however, that fees and interest charges will be visible to the customer, and thus any third party that the customer shares the data with, through the customer's transaction data • We note that fees and charges may disclose information about a customer's financial position that could be particularly sensitive (eg overdrawn fees) • We note the feedback provided by the Australian Bankers Association concerning the complexities associated with interest rates and products that are bundled or subject to discounts
Features and benefits	• We would question what features and benefits would be unique to a customer. They will typically have the features and benefits that apply to the product that they hold. • We would propose that the Commission require the sharing of product features and benefits through the public product data API only • We would suggest that the Commission consider removing this field
Terms and conditions	• As above
Customer eligibility criteria	• As above – by definition, this category of information applies to a product, not the individual customer • We also note that customer eligibility criteria could be a trade secret (eg if it embodied the strategic focus of the data holder)
Transaction data	
Opening/closing balance for account	• These concepts are appropriate for a statement concerning a period of transactions. It may be more appropriate if the current balance were displayed.
Date on which transaction is made	• We would note that this data technically fits the Commission's definition of 'meta-data' (the Commission has identified the time of a transaction as being 'meta-data'). • We also note that there may be differences between when a transaction is made with the merchant and when

Data type	Comment
	it is processed (ie banking working day or effective day). It will be important to precisely define what is meant by 'date' in this context.
Relevant identifier for the counter-party to a transaction	• There may be variations in how parties are identified through statement data across banks
Amount debited or credited	N/A
Balance on the account prior to and after transaction	• We assume this refers to running balances, which are available for posted transactions
Any description connected with transaction (either bank or customer generated)	• This data should be defined as the transaction description that is available through the customer's statement. This data will be increasingly available with NPP but is not consistently available at present.
Any identifier or categorisation of the transaction by the data holder	• This level of data is currently not available to the customer (transactions are currently organised by 'credit' or 'debit'). We would need to derive this data from the transaction description which may not be consistent for all transactions or across all banks
Principle that data available in statement is available through CDR	• The Commission may like to consider whether by 'statement' it is referring to what is visible through a digital channel as opposed to formal statements made available to customers on a periodic basis • For ANZ, there are differences between the two presentations of data. Obviously, if the reference is to data available through a digital channel, then this is more feasibly implemented

Data type	Comment

Metadata	• The Commission should approach the designation of metadata carefully.
	• Metadata could include data that is:
	  ○ Not currently available to customers through regular channels
	  ○ The intellectual property of the data holder or a third party (such as a service provider)
	  ○ Significantly more difficult to deliver than product, customer and transaction data

Product data	
Product type	• We look forward to seeing a precise list of products that are within scope of the CDR • This list will need to be unambiguously defined as there is clarity across the industry as to which products are in scope and which products are out of scope • In crafting this list, it will be important to distinguish between generally available products (which the Farrell Report endorsed for availability) and those which are not generally available
Product name	• As above
Product prices	• We would suggest that the fields for 'prices' (and fees and charges, to the extent different), need to be precisely defined so that there is consistent across industry for the purposes of testing of the CDR framework itself and then the ongoing ability of providers to provide meaningful comparison services to customers
Fees and charges associated with product	• We note the feedback provided by the Australian Bankers Association concerning the complexities associated with interest rates and products that are bundled or subject to discounts.
Features and benefits	• This will need to be constrained to those features and benefits which are capable of standardisation • The Commission should be aware of the potential for a rule requiring that all features and benefits be disclosed to close off innovation. The risk is that if all features and benefits must disclosed, how can firms introduce new

Data type	Comment
	features and benefits that are better than their competitors without first having rules and standards that facilitate their disclosure?
Terms and conditions	• It is not yet clear to us how terms and conditions (ie the contract) can be reduced to a format that is capable of delivery through an API in a standardised format • This could require the standardisation of contracts across the industry which would be a significant undertaking
Customer eligibility criteria	• As above

5.4 – RECIPROCITY

8. We agree with the Commission that the concept of reciprocity raises complex issues requiring consideration. However, we would urge the Commission to work cooperatively with all stakeholders to ensure these issues, like others involved with the CDR, are resolved before July 2019. Like the Commission, we do not understand that reciprocity would involve a 'quid-pro-quo' arrangement where the sharing data holder was automatically entitled to equivalent data held by the data recipient. It would merely mean that the accredited data recipient came under an obligation similar to that of the data holder to provide CDR data at the consumer's direction.

9. We note that Treasury has proposed new provisions for the *Treasury Laws Amendment (Consumer Data Right) Bill 2018* (**Bill**) that deal with reciprocity.

6 – ACCREDITATION

10. The Commission should approach the treatment of foreign entities carefully. Requiring the appointment of a local agent, for example, does not ensure that the customer or the Commission will have any meaningful recourse to the resources of the foreign parent company.

11. We would also encourage the Commission to set security standards that are as objective as possible. Subjective standards will result in cost and uncertainty for participants and variance in levels of data protection.

6.2.1 – CRITERIA FOR GENERAL LEVEL OF ACCREDITATION

12. The criteria concerning the applicant's history of compliance with relevant laws appears appropriate but should be carefully defined so that it can be objectively assessed.

6.7 – REVOCATION OR SUSPENSION OF ACCREDITATION

13. The Commission may like to consider whether it is appropriate that the power to revoke or suspend accreditation is based on the *commencement* of civil or criminal proceedings. Alternatively, it may be more appropriate that the power is predicated upon a conclusive civil or criminal finding against the accredited data recipient (this would be similar to the standard that the Commission is proposing

for the granting of accreditation). It may be that the commencement of proceedings is not probative of whether the accredited data recipient is willing and able of adhering to the consumer data rules.

7 – THE REGISTER

14. We would ask the Register be available via an API and that it can be relied on conclusively. This will allow data holders to easily verify whether a requesting data recipient is accredited.

15. The Commission may like to consider whether a centralised register or a decentralised register will enable faster accessibility. If a decentralised register will be quicker, we would ask that data holders be adequately protected from liability when relying on decentralised lists of accredited data recipients. Such decentralised lists may update slower than a centralised register and thus there is the risk that data holder relies upon stale data.

8 – CONSENT

16. The Commission may like to note that in defining 'easy to understand' consents, these should be easily understood by data holders as well. The consent forms the basis of release and so should not require, or be open to, interpretation. Ideally they would be capable of machine interpretation and response.

8.1.1 – JOINT ACCOUNTS AND COMPLEX AUTHORISATIONS

17. We understand that the Commission is proposing the initial phase of the CDR rules to allow a single holder of a joint account that permits a single holder to authorise transactions ('one-to-sign') to authorise data sharing. Thus, if one joint account holder can authorise a transaction, they can authorise data sharing. We understand that other joint accounts are out of scope for the initial phase of the CDR rules.

18. This permission will be offset by the other joint account holders:

    a) Receiving notification of the data sharing; and

    b) Being able to terminate the data sharing.

19. At present, one-to-sign joint accounts typically do not involve the other signatories receiving notification of transactions (although this can be set up on accounts). Meeting the Commission's proposals concerning notification and termination will require significant implementation work:

a) We will need to build a new notification system that is tailored to the CDR regime; and

b) The consent system will need to allow for someone other than the original consenting account holder to cancel the consent.

20. We also note that different account holders may have different 'views' of data concerning the same account. Thus, if one of the joint account holders sets up a payee list, the other holder may not be able to see this. This suggests that:

a) The entitlement of the signatory to share data should be tied back to data that they can see/use, rather than all data that is associated with an account; and

b) The proposal for a joint account holder to be able to veto data sharing authorised by another joint account holder gives the vetoing holder a form of power over the authorising holder's unique information.

21. A further consideration for the Commission is that when joint account holders established their accounts permitting 'one to sign', they may not, at this stage, have consented to the other party being able to transfer data. Thus, the Commission should be careful assuming that account holders have consented to a 'one to share' model by virtue of consenting to a 'one to sign' account arrangement.

22. These issues suggest that there is more work to be done with joint accounts before the CDR could be applied to them easily and with no privacy issues. We would ask that the Commission delay joint accounts to a later phase of the implementation of the CDR when these issues have been resolved.

23. The Commission has asked for information on more complex accounts. At present, an account holder at their discretion provides individuals and third parties with an authorisation to perform certain activities on an account. For example, the account holder may authorise certain individuals or third parties to simply view the transaction data or make enquires on an account, some to make deposits and some to make all transactions. As a general principle, it would seem appropriate if account holders were given the option of selecting who would have the ability to authorise data sharing under the CDR. This would avoid needing to solve for various permutations and allow customers to have autonomy over their data.

8.1.2 – MINORS

24. We would note that the Commission's description of the banking permissions enjoyed by minors may not match the permissions that minors enjoy with respect to digital banking channels. For ANZ, our deposit account terms and conditions state:

> *Account holders aged 12 to 15 years, adults who have a joint account with account holders aged 12 to 15 years, and account signatories (no agents can be appointed) to accounts held by customers aged 12 to 15 years may only have restricted access levels for ANZ Phone Banking and ANZ Internet Banking. Only the account holder or account signatories can select an access level. The account holder or account signatories may authorise another person (an 'authorised user') to operate the account and that person may have a different access level to the account holder.*[1]

25. We would encourage the Commission to consider the appropriate calibration of protections with respect to minors.

8.3.1 – NATURE OF THE CONSENT TO BE PROVIDED – EASY TO UNDERSTAND

26. We note that the Commission proposes to make rules requiring consumer comprehension testing of consent mechanisms. This seems an appropriate protection for consumers.

27. Our only observation would be that this kind of rule raises issues of what is sufficient and appropriate testing. There is a difference between a rule that requires that the consent mechanism must achieve a particular level of consumer comprehension and a rule that requires consumer comprehension testing to occur. The former raises questions of 'which consumers' and 'under what conditions'. Without guidance, such a standard invokes the question of how much and what kind of testing is enough. The latter simply requires the testing to occur, and is easier to adjudicate.

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[1] *ANZ Saving & Transaction Products Terms and Conditions* (10.09.2018) 81; available at: https://www.anz.com.au/content/dam/anzcomau/documents/pdf/savings-transaction-products-tcs.pdf

28. The Commission may also like to consider what arrangements need to made for the overriding of consents, for example in respect of a deceased estate.

8.3.1 – NATURE OF THE CONSENT TO BE PROVIDED – CONSENT SHOULD BE ABLE TO BE EASILY WITHDRAWN WITH NEAR IMMEDIATE EFFECT

29. The last bullet point of this section suggests that if consent is withdrawn, the consumer's data becomes redundant. We would ask the Commission to please note that if the data has been relied upon to reach a legally required conclusion, such as responsible lending, the data may not be redundant as it could be required to evidence the basis of that conclusion.

9.3 – GENERAL OBLIGATIONS

30. The Commission has proposed that data holders will be obliged to ensure that authorisation matches consent. This obligation should be carefully designed as data holders may not have all details of the consent provided by the consumer (eg the use to which the data will be put).

9.6 – GRANULARITY OF AUTHORISATION

31. As the Commission considers specifying granularity of authorisations, it may like to consider the point at which data holders delivering specific sets of data are providing a service that goes beyond simply providing the consumer's data to them and which actually constitutes the result of an analytical process. It would be more reasonable if any accredited data recipient which believes that it can provide a valuable service based on granular presentations of data perform the analytical process on untransformed transaction data.

9.9 – REVOCATION OF AUTHORISATION

32. The framework suggests that "Consumers will be able to end a data sharing arrangement through either the data holder or accredited data recipient." We support the view that authorisations are managed centrally by account holders only and believe that this will ensure a consistent customer experience. Allowing revocation to be initiated by the data recipient raises technical complexity that may be unnecessary.

33. The roles of intermediaries in consent management is potentially complex and we would suggest that the roles of intermediaries in Open Banking warrants further discussion and clarification before inclusion in July 2019 scope.

10 – PROVIDING CONSUMER DATA TO CONSUMERS

34. We support the proposal that consumer should have access to their individual CDR data. This information is readily available for download from internet banking today. As such we would ask the Commission to consider whether any additional access mechanisms are necessary. In particular, using APIs to give consumers access to data would introduce additional technical complexity in areas such as authentication.

12.1.1 – TO A SPECIFIED ENTITY AS DIRECTED BY THE CONSUMER

35. The transfer of CDR data from an accredited data recipient to a non-accredited recipient obviously raises important privacy and data security concerns. We understand the Commission's position that consumers are already able to do this. We also note that a consumer could also have CDR data sent to him or her and then share that data with whoever they wish. However, facilitating the direct sharing of CDR data through the CDR rules framework may involve an acceleration of the rate at which data is shared.

36. We note that this proposal is functionally similar to the reciprocity concept that the Commission has indicated it will not pursue in the first phase of the rules. Thus, the Commission is proposing to mandate that any entity which receives CDR data needs to share that data with non-accredited recipients (at the customer's request). This is effectively the same as the reciprocity concept. The only nuance would be under reciprocity, the accredited data recipient would be obliged to share, at the consumer's direction, any other 'equivalent' data that they hold.

37. We also note that the Commission's proposal here raises the question of whether the accredited data recipient will be obliged to share the received CDR data with data holders or other accredited data recipients. Consumers may be confused if the rules gave them the right to on-share CDR data with non-accredited data recipients but not with other data holders or accredited data recipients.

ENDS