

12 October 2018

Via email: ACCC-CDR@acc.gov.au

1.0 Introduction

Common Ledger welcomes the opportunity to contribute to the ACCC's consultation on its approach and positions in establishing rules for the Consumer Data Right (**CDR**).

We are strongly supportive of the Consumer Data Right (**CDR**) and applaud the Australian Government's decision to act on the various reports and the ACCC's efforts to implement this decision in a workable manner. We see this as an ethical correction to the history book of the 21st century and a critical way to reduce consumer harm, achieve fairness in the system and allow consumers to benefit from a property asset that is owned by them and must be able to be used by them for their benefit and survival and prosperity. The Framework will also benefit Australia and its economy as a whole, including rectifying the \$60 billion lending shortfall¹ for the underserved SMEs in Australia who employ 44% of the workforce in this country².

2.0 Summary

Throughout the submission we use Consumer Accounting Data as an example to help educate the ACCC on this core dataset and area and because it provides a useful practical example to give colour to the submission.

Our key points of emphasis are:

- **Rule of reciprocity should be explicitly provided for.** Common Ledger sees this principle as critical to the CDR's success and swinging the pendulum of power away from large organisations and back to the consumer. We recommend the principle which underpins it be explicitly included within the CDR designation instrument and the ACCC be required to examine this in designating reciprocal datasets. Consumer Accounting Data is used as an example based on it being reciprocal data.
- **Consumer Accounting Data should be explicitly included under CDR to enable consumers to better understand their current and future financial health and to act on this.** The CDR rules should include 'financial services data' and include Consumer Accounting Data as reciprocal data. This will give consumers a more powerful method, than using bank transactions on their own. Bank transaction data and Consumer Accounting Data are being treated as one and the same by global industry players for the consumer's benefit, and the Consumer Data Right and ACCC rules should reflect the equivalency of these two forms of core business data.
- **The name description of a sector should not be relevant to the ACCC's designation of the CDR rules.** This is not relevant to the ACCC designating the sector or defining the scope of that sector - for example the "Banking Sector" could include other categories of financial services providers who may not fit the traditional definition of "Banking" but are included in the sector based on the ACCC's process.

¹ <https://www.rfigroup.com/rfi-group/news/key-battleground-banks>

² https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1516/Employ

3.0 Background to Common Ledger

The core beliefs that underpin our organisation and the reasons we exist are:

1. Open Data is coming - consumers and businesses own and control their data
2. Accounting Data is an untapped predictive way of understanding consumer and business health
3. An infrastructure provider will be required to move this data to unlock mission critical use-cases
4. Consumers and businesses will be served by a core trusted advisor to ensure their success

Our customers are banks, large accounting and consulting groups and small and mid-sized accounting firms in Australia. These customers use our product to access financial data from thousands of Australian small businesses (**consumers**). They depend on us to provide secure, efficient and effective infrastructure to enable their customers - ie consumers - to permission them to access their financial data, which the consumer's accountant, advisor and banker then uses to help that consumer fulfill mission-critical use-cases. These include: staying compliant with the ATO by completing financial statements and lodging tax returns; securing access to capital to create and build their business; and accessing much-needed core-business advice from their banker or accountant.

Common Ledger has actively participated in the policy and consultation processes to-date by:

- Engaging in the Review into Open Banking in Australia (**Farrell Review**)
- Submitting on the Treasury's consultation on The Farrell Review³
- Hosting industry events focussed on increasing awareness and promoting discussion of the proposed CDR and Open Banking regime in Australia - including assisting the Australian Treasury to ask questions and obtain views from industry on the policy and proposed legislation⁴
- Participating in Treasury Roundtables on the CDR Amendment Consultation in Sydney
- Submitting to the Treasury's consultation on the CDR Amendment⁵
- Participating in ACCC Roundtables on the CDR Rules Framework Consultation in Sydney
- Making this submission to the ACCC

Common Ledger is one of the smallest, and most resource-constrained, organisations participating to this level in the consultation processes. We have prioritised doing so because we believe the legislation is critically important to Australian consumers and the economy.

³ Common Ledger Submission, Review Into Open Banking in Australia, 9 April 2018, <https://treasury.gov.au/consultation/c2018-t247313/>

⁴ Open Financial Data event, hosted by Common Ledger, 11 July 2018. The panelists were: Scott Farrell from KWM, Wayne Lipschitz from Macquarie Bank, Julie McKay from Equifax and Thomas Paule from Findex. Attendees included representatives from all the major banks and Kathryn Wardell from Treasury.

⁵ Common Ledger Submission, CDR Amendment, 12 September 2018, <https://static.treasury.gov.au/uploads/sites/1/2018/09/t329531-Common-Ledger.pdf>

4.0 Submission

4.1 Recommended changes

Common Ledger suggests the following changes to the CDR Rules Framework:

- (a) **Rule of Reciprocity should be explicitly provided for.** Common Ledger sees this rule as critical to a functioning CDR regime. Section 5.4 of the Rules Framework states:

“In the ACCC’s view the concept of reciprocity raises complex issues requiring further consideration. The ACCC therefore does not propose to make any rules regarding reciprocity in the first version of the rules.”⁶

An explicit rule of reciprocity would act as a behaviour modifier to prevent data (read: asset) stripping from the economy and stop data recipients pouring data into their systems. If the ACCC does not prevent this, the CDR will have failed in its purpose of “giving customers more control over their information leading, for example to more choice in where they take their business, or more convenience in managing their money and services”, but instead simply swing the pendulum of power back to large organisations. The Farrell review states:

“it would seem unfair if banks were required to provide their customers’ data to data recipients [...] but those data recipients were not required to reciprocate in any way, merely because they were not banks and therefore did not hold ‘banking’ data. An Open Banking system in which all eligible entities participate fully — both as data holders and data recipients — is likely to be more vibrant and dynamic than one in which non-ADI participants are solely recipients of data, and ADIs are exclusively transmitters of data.”⁷

Common Ledger is particularly concerned by this issue in relation to Small Businesses who are consumers under the CDR. The Farrell Review drew specific attention to the acute existing information asymmetries which prevents them accessing information on data-related services, or services that require bank data or Consumer Accounting Data:

Others argued that banks already make data available to small business customers through accounting software providers. In consultation, the Review was advised that large accounting software providers are placing restrictions on the ability of small businesses to access their own data as a way to derive commercial benefit from the data they hold on them.⁸

This example illustrates a ‘Mexican standoff’ between banks and accounting software providers on sharing their mutual customers’ data, even when directed by the customer to do so. The consumer stands by, powerless and prevented from harnessing the value of their data. They are forced to watch and starved of value from their data while the bank and accounting software provider hold guns to one another’s heads, with no willingness or strategy to allow either party, or most importantly the **consumer to achieve victory**.

We provide a relevant and important example of how we anticipate the ACCC would interpret and implement the Rule of Reciprocity in this scenario:

⁶ Consumer Data Right Rules Framework - ACCC, September 2018

⁷ Review into Open Banking in Australia: Customers Choice, Convenience, Confidence, Australian Government - Treasury, December 2017

⁸ Review into Open Banking in Australia: Customers Choice, Convenience, Confidence, Australian Government - Treasury, December 2017, Page 41.

Example: Coded bank transactions, or ‘Consumer Accounting Data’. Bank transactions coded by a consumer is data relating to its core business - for a consumer, trust, small business or a larger business this makes up their ‘persona’. Bank transactions as well as debits, credits, profits, tax, assets and liabilities - all represented in the ledger where the consumer codes this information into accounts - make up Consumer ‘Accounting Data’ and is the consumer’s core intellectual property.

We note that Consumer Accounting Data is not the same as financial reports - for example Annual Financial Statements - prepared by a Consumer’s accountant. While the core underlying data is bank transactions and Consumer Accounting Data the accountant may rightfully claim ownership or a lien over the valuable reports they have created until the consumer pays for their services.

Imagine, this common use-case - a consumer directs their bank (Data Holder) to share their bank transactions with an accounting software provider who’s ledger they are using (Data Recipient). If that same consumer then directed their ledger or accounting software provider, to share their Consumer Accounting Data with an alternate lender (Data Recipient) to assess a loan would this be reciprocal data under CDR rules?

The ledger and method of updating it has taken different forms over time but has always been controlled and completed by the consumer. Historically, consumers have used a paper ledger and pencil, later using a spreadsheet and keyboard, desktop accounting system and better keyboard and today a cloud accounting system and mobile phone to do this work. While the ledger or record is displayed on a different surface and the coding happens using a different device - the process, while more automated and quicker and easier, is exactly the same. The consumer is the person completing this activity with their unique domain knowledge about their affairs or their business, not the person who happens to provide the ledger. To illustrate this, it would be ridiculous if the paper provider or Microsoft as the Excel provider claimed this data was ‘enriched’ data and they should be paid for providing it to another provider at the consumers direction.

The ledger and the data represented in it is core to the consumer’s business and it seems almost certain to be reciprocal data under the CDR Rules for Open Banking.

While this example is a more obvious case of what the ACCC’s rules should define as ‘Reciprocal Data’ and other obvious ones exist - a consumer’s credit score derived directly from bank transaction data by a credit scoring agency is another - others will be less clear. A large technology company like Facebook’s data on user behaviour may not as obviously be Reciprocal Data despite this being used for the same purpose - assessing a consumer’s credit score to evaluate whether and how much finance to lend to them.

Recommendation: We encourage the ACCC to clearly identify the low-hanging fruit categories of reciprocal data and include these in the Rules Framework - coded bank transactions or ‘Accounting Data’ should fall in this category. The ACCC should then turn its focus to address less obvious categories which are more complex and require further consideration.

- (b) **Consumer Accounting Data should be explicitly included under CDR to enable consumers to better understand current and future financial health and to act on this.** Portable banking data alone will go some way to providing consumers better access to capital to ensure their survival, growth and prosperity. However, the ACCC CDR rules should be extended to explicitly include ‘financial services data’ to reflect current the industry convergence that proves the equivalency of bank transaction data and Consumer Accounting Data.
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Consumer Accounting Data is core business data derived from bank transactions, but dramatically more valuable than raw bank transactions in helping consumers and their advisors understand their current and future financial health and act on this. Applying for credit with Australian banks requires the assessment and transmission of Consumer Accounting Data. Today, this is a painful, laborious process involving manual data exports, paper forms and unreasonably long wait times - it can take up to 24 working days for a Consumer to receive a lending decision and 40 days to receive the loan amount, when applying for lending large Australian banks

If Consumer Accounting Data is not included as Reciprocal data under the regime, there is a risk of creating a power asymmetry towards accounting software providers, and away from consumers, that the Consumer Data Right is trying to correct, as well as undermining and running counter to the clear market-led convergence of bank transaction data and Consumer Accounting Data, that is well underway. Examples of this include:

- Commonwealth Bank's recent launch of accounting software package Wiise⁹;
- NAB providing a borrowing function button within a Consumer's ledger in Xero's accounting software¹⁰; and
- RBS's acquisition of cloud accounting software company Free Agent¹¹.

Put simply, bank transaction data and Consumer Accounting Data are being treated as one and the same by global industry players for the consumer's benefit, and the Consumer Data Right and ACCC rules should reflect the equivalency of these two forms of core business data.

Recommendation: As above, we encourage the ACCC to clearly identify the low-hanging fruit categories of reciprocal data and make these clear in the Rules Framework, including coded bank transactions or 'Accounting Data'. The ACCC should then turn its focus to address less obvious categories which are more complex and require further consideration.

- (c) **The name description of a sector should not be relevant to the ACCC's designation of the CDR rules.** There is a risk of confusion from this which is not helpful to the practical implementation of the regime.

For example the "Banking Sector" could include other categories of financial services providers who may not fit the traditional definition of "Banking" but are included in the sector. A relevant example of this is an accounting software provider who decides to begin to offer lending products to its customers who use accounting software¹². While not a traditional bank or participant in the banking sector they are performing one of the core functions of a bank and should clearly be included in the sector definition and subject to the relevant rules.

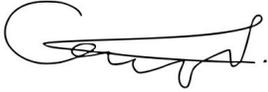
⁹ <https://www.afr.com/business/banking-and-finance/financial-services/cba-microsoft-kpmg-form-wiise-to-take-on-cloud-accounting-20180511-h0zxmz>

¹⁰ <https://www.smh.com.au/business/banking-and-finance/nab-joins-with-xero-to-speed-up-business-loan-approvals-20151018-gkbtjx.html>

¹¹ <https://www.ft.com/content/96c5bd4a-31b7-11e8-ac48-10c6fdc22f03>

¹² Intuit the leading global accounting software provider who has a significant Australian office and over 100,000 Australian businesses using its product Quickbooks Online has offered loans to its US accounting software users from 2017: <https://quickbooks.intuit.com/capital/>

Yours sincerely



Carlos Chambers | CEO | Director

Common Ledger is a fast growing fintech company providing Open Accounting Data Plumbing to Australian financial services firms. Common Ledger believes that data is most valuable when it can be used by multiple parties for a range of purposes. Assuming privacy, safety and security, data wants to be free!

Common Ledger will be successful as a company because we identified the 'open data' trend for business accounting data before anyone else, and have built the infrastructure first. We will be the global domain experts in both accounting data and its transmission between systems and parties across a range of mission-critical use cases. Common Ledger will win business because it is trusted by customers and the market alike - preserving neutrality in the ecosystem ("The Switzerland Model").

Common Ledger's head office is in Wellington, New Zealand, with an Australian office in Melbourne, and is powered by a team of 20 Open Accounting Data and financial services experts. It has raised early stage capital from some of Australasia's top fintech investors, proved out its core thesis that the world needs Open Accounting Data Plumbing, and is now growing strongly in New Zealand and Australia and looking to the UK, Canada and the USA.