

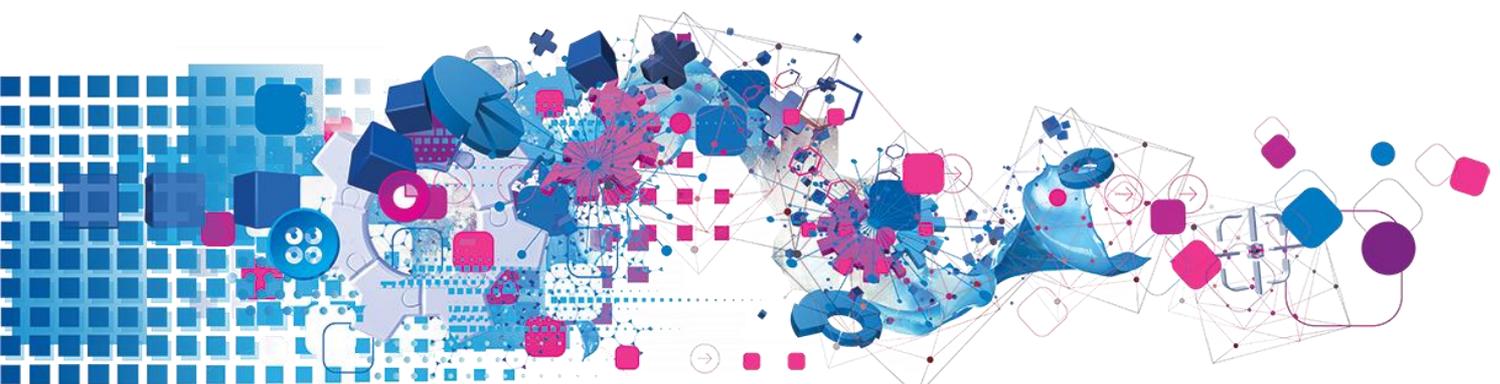


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Exposure Draft – ACCC Consumer Data Right Rules Framework

Experian Australia Response
12 October 2018



1. Introduction

Experian welcomes the opportunity to be able to share feedback with the Australian Competition and Consumer Commission (ACCC) in relation to the recent Draft of a Consumer Data Rights Rules Framework.

Many of the G8 countries where Experian operates are launching Open Data initiatives, including Australia, the UK, and the US. Experian supports the adoption of an Open Data regime in Australia and encourages the Australian banking and financial services industry to become an early adopter of a Consumer Data Right (CDR). These initiatives will develop over time, and consumers will be at the centre of deciding how their customer account information with any given financial entities can be accessed, transferred, used and shared to their benefit.

We support the ACCC's approach, both in taking a consumer centric approach, and in building on the Open Banking review in developing these core principles. To this end, the feedback provided below, is intended to consider how these principles can be best built on to ensure that the potential for unintended consequences to consumers, which impacts the value of this regime, is minimised.

2. Initial scope of Data Sharing Rules

Whilst Experian recognises, and advocates for, an iterative approach to the rules setting process, with the aim of balancing the lead time to implementation and the ease of implementation with the overall value to consumers, we would be keen to ensure that as much data as possible is available in the system as early as possible to enable consumers to make full use of the new regime. To this end, Experian would suggest that: -

- a) Instead of limiting in scope consumers by whether they have access to and use, online banking, that this be replaced with an expectation that all digitally held banking information be made available. In general terms, where Authorised Deposit Taking Institutions (ADIs) have online banking capability for consumers, this information is held, and is readily available, regardless of whether the consumer has activated their online banking credentials. As the CDR process is going to require a specific authorisation / authentication processes for this exchange, the fact that the consumer has not been through the online banking authentication process should be negated. This would leave a standard exclusion for banking services that are not enabled with online banking capability, covering legacy products etc.
- b) Follow the Comprehensive Credit Reporting (CCR) approach to implementation, with a focus on the major banks submitting data at a group level rather than at a brand level. Experience in this space has shown that for a data sharing ecosystem to be effective, approximately 40% of industry data must be available. There is a risk that by excluding all associated brands of the major banks, the benefit to consumers is significantly lessened.
- c) Enable an opt-in mechanism for other ADIs that may wish to adopt the regime ahead of mandated timelines. As previously mentioned, wherever it is possible to accelerate and

incentivise the amount of data in the system the greater the value of the system to the consumer. This also has the additional benefit of testing the accreditation process for other institutions ahead of the mandated timeline for their adoption.

3. The treatment of derived data and ‘Metadata’ under CDR

Experian agrees with the Open Banking Report’s assessment of derived data, in that, *“such mandated on-sharing of these services and associated data undermines competition, removes incentive to invest in building world class solutions to meet the needs of Open Data exchange, and ultimately delivers worse outcomes for consumers”*.

To this end, we would recommend that the rules move away from using the term derived data, and instead position standard transformation / aggregation of consumers disclosed data as being acceptable for exchange (i.e. adding up debits and credits, calculating balances etc), but that anything else is a more complex derivation of data and should be excluded.

In response to the ACCC’s requests for input regarding the treatment of ‘Metadata’, Experian believe that this should be excluded from scope, at least in the first instance. Just like derived data, the ability for organisations to develop capabilities to link and find value using additional customer specific data sources will be a unique value proposition that will enable organisations to maximise the value of the CDR regime. By effectively mandating ‘Metadata’ information to be exchanged under CDR, this will likely dis-incentivise the development of capabilities, which will ultimately impact the ability for competition in this space to create additional value add opportunities for the consumer.

4. Reciprocity and CDR

Experian agrees with the ACCC’s view that *“Reciprocity is not a ‘quid pro quo’ arrangement between data holders and accredited data recipients. The CDR regime is consumer focused, and any approach to reciprocity would need to be based on a consumer directing and consenting to an accredited data recipient sharing their data.”*

Experian fully supports the need for the legislative framework to provide a mechanism for ensuring that organisations are compelled to provide information, however we would recommend that this is clearly decoupled from the standard ‘Reciprocity’ frameworks adopted for other data exchange models, such as CCR.

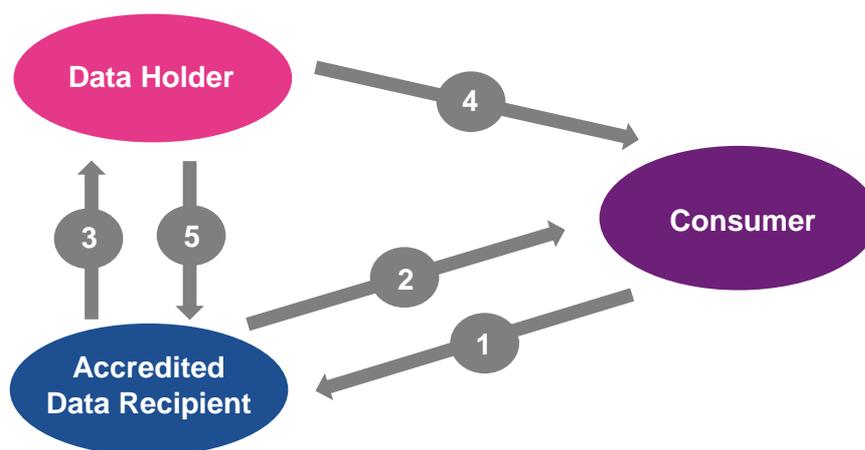
Experian would therefore recommend that the legislation should focus on driving an organisation’s adoption and compliance to the CDR, and that this should remain decoupled from the individual’s consent to ensure that the value to the consumer is optimised.

5. Accreditation opportunities for CDR

Experian agrees with the ACCC that it is imperative the bar is set high for all organisations when looking to seek accreditation, particularly in relation to an organisation's ability to manage data and information security risk, as this will be critical to building trust in the system. Therefore, a single baseline for this capability seems prudent. Beyond this, Experian would recommend that an approach to tiering of accreditation, based on likely use case and an organisation's ability to manage authentication and consent complexities, may be an alternative model. With a focus on ensuring robust but effective consumer outcomes, this may well provide a solution to several other areas of complexity that the ACCC have identified through this initial framework development process.

An additional level of accreditation could include: -

- Data Recipient accreditation to perform data holder authentication.



- 1) The Consumer consents to the accredited data recipient obtaining their data;
- 2) The Accredited Data Recipient authenticates the identity of the consumer;
- 3) The Accredited Data Recipient seeks to access the consumer's data and their identity and accreditation status is authenticated by the data holder;
- 4) The consumer is informed by the data holder of the request from the Accredited Data Recipient (this could be optional);
- 5) The consumer's data is shared between the data holder and the Accredited Data Recipient.

Examples of where this model would increase the effectiveness of the CDR are in the application for new credit, where the data exchange is between two ADIs. In this scenario, you have two organisations with significant capability (and regulatory requirements) to perform robust identification authentication. Significant reliance can therefore be placed on the Accredited Data Recipient to perform this activity (if they have requested the accreditation to do this). The primary benefit to consumer here is in the customer experience. In this instance, if they had multiple bank accounts and financial products, under the base model, they would be required to provide authentication to multiple data holders (jumping in and out of multiple API journeys) which would potentially add time and complexity to the process, having already authenticated with the Bank taking the credit application.

6. Consent rules for CDR

Experian agrees with the importance of ensuring *“that consumers are properly aware of and understand what they are consenting to, but are not intended to discourage participation in the CDR regime”*. With this in mind however, we would like to make the following observations.

Whilst understanding the need to ensure there is transparency in the process, completely unbundling consent for the CDR from all other forms of consent, has the potential of adding complexity and causing confusion for consumers. Experian would advocate for the ability to align consents surrounding data exchange together where the purposes align. The best example of this would be in the case of a request for bureau information alongside CDR data requests such as for the credit application process. This would have the benefit of simplifying the process, and ensuring the consumer is clear on all forms of information being sourced and the reason for the request.

When addressing what the consumer is consenting to, whilst Experian recognises the importance of ensuring this is simple for a consumer to understand, we also believe that this needs to be broad enough to enable not only the primary purpose (i.e. the ability for the consumer to gain the benefit from the initial request), but that it also enables for a secondary purpose. In general terms, the secondary purpose for most requests will be one that enables a consumer’s data to be utilised to improve internal data models and customer experience processes that will add value to the whole system, and therefore provide a broader value to all consumers.

Whilst historically this has been achieved using de-identified data, as the depth and detail in the information being exchanged increases, the ability for information to be completely de-identified is significantly reducing. Examples of where this information can add significant value for analytical purposes includes, the development of more robust categorisation capabilities (enabling a better understanding of consumer spending patterns and an increased ability to speed up processes and improve customer experience), better understanding of a consumer’s risk profile, improving an organisation’s ability to assess a consumer’s likelihood and ability to repay etc.

This secondary purpose is often complex to explain, and challenging for consumers to understand, and therefore Experian believes that a standard approach to this secondary purpose, supported by strong consumer education will be required to ensure that the system is able to operate optimally.

On the topic of consent for joint account holders, Experian agrees with the underlying principle that authorisations for the transfer of data should mirror that of the authorisation of transfer of money from the account. This will provide a simple concept for consumers to understand, and simplify the adoption of the new regime. In addition to this, Experian would also advocate for a baseline model that would not require a Data Owner to seek / provide another party with knowledge of said data exchange if they are not the party to the purpose of the request. By tying the nature (or use case) for the data to the requirement to seek additional consent, this should assist in ensuring the consent model remains fit for purpose.

Further to this, Experian also recognises that there are additional levels of complexity above this basic principle, particularly in relation to potential ‘at risk’ consumers and complex accounts, however we believe that this should be in the remit of the Data Owner to put in place the appropriate checks and balances to ensure that these issues are being appropriately addressed. The Data Owner will be the only organisation with a full understanding of the terms and conditions associated with the allowed operation of the accounts in

question so should ultimately be able to validate that the appropriate consent has been requested from the consumer, and where this has not been done, either provide a nil return, or actively contact the required consumers to request consent to proceed.

The management of 'at risk' consumers appears to be more complicated, however by starting with a model of no disclosure to other parties to an account, there is the opportunity to tier the consent model to identify situations or use cases (associated with the purpose of the request) to determine where instances of further disclosure (by either the Accredited Data Recipient or the Data Owner) to other parties is required. This would likely require two additional tiers of the consent model: -

- Use cases requiring the Accredited Data Recipient to inform other parties of the data exchange. The most likely example of this would be a customer looking to take out an application for credit in joint names, but only providing singular consent for the CDR element of the request. To minimise fraud risk and to potentially support the identification of a customer in financial difficulty, an accredited Data Recipient should always be required to inform (at a minimum) the other party to the account of this activity, and provide them with an opportunity to withdraw consent;
- Use cases requiring the Data Owner to inform other parties of the data exchange. As mentioned above, this is more likely to be in situations where there is information that only a data owner may be aware of about an 'at risk' customer, that would require further consent to be requested, this could be in the form of power of attorneys being in place, or other flags enabling for a broader confirmation of authority to proceed;

Finally, on the topic of express consent, Experian wishes to raise concerns relating to how this can be appropriately operationalised. This is specifically in relation to any use cases related to an ADI's responsible lending obligations. In this area, there are several scenarios whereby a specific request for the information could result in an ADI identifying something that may be outside of the specifics of the reason for the request, but that should be acted upon to ensure the ADI continues to act in the best interests of the customer. Examples can range from an existing consumer returning for additional lending, and an ADI identifying from the data received, that not only can they not afford the new product being applied for (and are therefore declined for the credit they expressed consent for the data to be sourced for), but that they are now over indebted on existing credit, and should be managed as a customer in financial difficulties (which is not what consent was provided for) to identify potential 'at risk' customer characteristics (such as excessive gambling etc) that should require an Accredited Data Recipient to take action. Experian would therefore urge for a broader capability for organisations to act in the best interests of the consumer, even in instances where this results in the data being used for purposes outside of the express consent provided.

This operational risk is also carried over into the rules around requests for deletion of a consumer's data, as again there will be instances, where either other legislation requires for an organisation to hold this data (in the case of applications for credit), or where this data, having been seen by the Accredited Data Recipient, should be maintained to enable an Accredited Data Recipient to act in the best interests of the consumer.

7. Conclusion

As a firm believer in the power of customer data, and the benefit that this should bring to the consumers who are the rightful owners of this information, Experian is committed to providing products and services to assist individuals and corporations (as custodians of this information) to realise the opportunities that effective exchange of data holds. To this end, Experian is fully supportive of the move to an Open Data environment as set out in the Rules Framework, and is already actively supporting this transition in a number of other markets globally, including the UK.

What Experian has witnessed in other markets is the importance of consumer education, transparency, and control. The success of Open Banking is ultimately dependent on consumer adoption for the services to deliver value back to them. A solid understanding about who accesses the data, and how, is imperative to build and maintain trust in the system. In the UK, the focus on consumer education commenced just months before the go live date which resulted in low adoption and a portion of the population opposing to the new data sharing services available to them.

A clear consent regime for consumers is also important, as is an understanding how the environment will be managed, particularly what the legal framework is around misrepresentation and misuse of information. All this education is imperative to avoid an outcome where consumers are reluctant to participate or fearful of what more data sharing might mean for them.

Experian can offer, through global experience and local market expertise, a consultative approach with all stakeholders to help operationalise CDR in the Australian market. We look forward to supporting industry and the Government with this body of work, and would welcome the opportunity to further discuss this exciting new regime in more detail over the coming months. For further information on this submission, please contact

About Experian

Experian Australia Credit Services Pty Ltd is part of Experian, the world's leading global information services company. During life's big moments – from buying a home or a car, to sending a child to college, to growing a business by connecting with new customers – we empower consumers and our clients to manage their data with confidence. We help individuals to take financial control and access financial services, businesses to make smarter decisions and thrive, lenders to lend more responsibly, and organisations to prevent identity fraud and crime.

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