

Australian Competition and Consumer Commission
Via: ACCC Consultation Hub

12 October 2018

Consultation paper on Consumer Data Right Rules Framework

Indue is grateful for the opportunity to comment on the draft rules framework (“Framework”) related to the proposed new Consumer Data Right (“CDR”) regime.

Indue Limited ABN 97 087 822 464 (“Indue”) is a bank and Authorised Deposit-Taking Institution (“ADI”) that is regulated by the Australian Prudential Regulation Authority. Indue is owned by financial institutions, each of which is also an ADI. Indue provides transaction processing and settlement services to credit unions, building societies, church funds, mortgage originators, commercial clients and the Australian government. Many clients would be too small individually to be able to provide a competitive alternative financial services offering without Indue.

Indue has over 40 years’ experience in the payments industry and as a financial product issuer since 1992. Indue is a principal member of Visa, MasterCard and eftpos, and holds an Australian Financial Services Licence (AFSL). It is also a reporting entity pursuant to the Anti-Money Laundering (AML)/Counter-Terrorism Financing (CTF) legislation.

Relevant to the Consumer Data Right regime, Indue provides Australian ADIs with various back office processing services, including:

- transaction processing and settlement;
- the provision of a fully hosted credit card and debit card platform; and
- account management.

Indue also provides deposit products to our wholesale clients (including ADIs), and to retail clients in respect of a small number of programs (one for customers of a church fund, and one for government welfare recipients under the Cashless Debit Card program).

Indue has reviewed the Framework that has been released by the ACCC, and makes the following comments on items of particular concern to Indue.

Products caught by the legislation

Indue believes that it will be necessary to clearly set out the product sets that will be covered by the CDR regime, as financial services providers do provide some products that are not “banking” products. For example, Indue issues prepaid cards (which are not linked to an underlying deposit or loan account), which are not banking products, and can be issued without an Australian financial services licence in some cases. Indue does not believe these products should be covered by the CDR regime. In many cases the product issuer is not otherwise required to collect and maintain consumer details.

There may also be other products (which are banking products) that are not suitable for the CDR regime for policy reasons. Indue believes that the ACCC should ensure that it has a process to exempt specific products from the CDR regime.

Who is the Data Holder?

The Consumer Data Rules will need to clearly set out who is the “Data Holder” for the purposes of the CDR regime. We believe that the current proposal that the Data Holder is the entity that generates or

collects the initial transaction records or data is problematic where financial institutions outsource part of their functions to a third party (who may also be a financial institution).

In the case of Indue, transactional information will be generated or held by Indue as a result of Indue processing and settling transactions on behalf of our financial institution clients. In this case it should be clearly articulated that the Data Holder is not Indue but our financial institution client (noting that Indue is itself a bank regulated by APRA). Indue does not in all instances know who the ultimate consumer is.

Indue considers that the definition of Data Holder, at least in relation to the banking sector, should be the entity with the direct contractual relationship with the Consumer. In the example given above, Indue's client financial institution will be the Data Holder in respect of transactional information generated or held by Indue as part of the financial institution's outsourcing of settlement services. Where Indue is not the issuer of the financial product for Corporations Act purposes, it does not have any contractual relationship with the consumer.

Reporting requirements

Indue considers that the requirement for an online dashboard displaying all of the data disclosure permissions that a Consumer has granted is unduly onerous for organisations such as Indue (who do not provide internet banking access for the majority of clients). Indue's smaller clients may also find this unduly burdensome, given the size and complexity of their businesses.

We suggest that there be some consideration of the nature, size and complexity of financial institutions' businesses when determining the minimum reporting requirements that must be met.

Dispute resolution

The Framework notes that the use of independent commercial arbitrators may be more appropriate for disputes between Data Holders and Accredited Data Recipients.

Indue supports the suggestion that the Consumer Data Rules require that commercial arbitrators be used to consider these types of disputes, given that AFCA's rules, processes and expertise is in consumer dispute resolution.

Consumer testing of CDR policy

The ACCC proposed to mandate that each entity's CDR policy be consumer tested before use. Indue considers that this requirement is unduly onerous for small ADIs, who may have customer bases as low as 2,000 customers, and suggests that this requirement be scalable (ie not mandated for financial institutions with a small number of customers). We note that there are currently 100 ADIs noted on the APRA website, and it would seem unnecessary to consumer test 100 separate CDR policies.

Transition period

We note that it is proposed that the legislation apply retrospectively to banking data dating back to 1 January 2017.

This retrospective application will require Indue, and its clients, to retrieve data existing prior to the Open Banking regime commencing. Dependent on the format that the data will take (as mandated by the Data Standards), this may cause system issues for Indue and its clients, as well as costs that would not be incurred if the requirement was not retrospective. Until the Data Standards are released, financial institutions are not able to assess the impacts of this retrospectivity.

Indue strongly recommends that no retrospective application of the CDR regime be mandated prior to consultation with industry on the impacts of the Data Standards.

We thank you for the opportunity to contribute to the consultation on the Framework and we would welcome the opportunity to discuss our submission with you further. Should you have any questions or require further information please do not hesitate to contact us at legal@indue.com.au.

Yours sincerely

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