

3 February 2020

Mr Paul Franklin
Executive General Manager, Consumer Data Right
Australian Competition & Consumer Commission
By email: ACCC-CDR@acc.gov.au

Classification: Public

Dear Mr Franklin,

Re: Cuscal response to the Consumer Data Right Consultation on how best to facilitate participation of third party Service Providers

Background

Cuscal Limited (Cuscal) appreciates the opportunity to respond to the above consultation paper issued by the Australian Competition & Consumer Commission (ACCC).

Cuscal is an end-to-end payments specialist that services more than 100 established and challenger brand clients within Australia's financial system, including the majority of the mutual banking sector, and a growing number of FinTech and "PayTech" enterprises. We are an Authorised Deposit-taking Institution (ADI) and also hold an Australian Financial Services Licence, and an Australian Credit Licence for Securitisation purposes. Cuscal serves on the board of eftpos, NPPA, the APN, and on numerous industry committees. We are also the founder and owner of 86400 (www.86400.com.au), a new fully licenced digital bank.

The services that we provide to our client institutions include: card scheme sponsorship for issuing and acquiring, payment card issuing, card production services, digital banking applications, and access to domestic payment services using direct entry, BPAY and the New Payments Platform (NPP). We also act as settlement agent for many of our clients through our Exchange Settlement Account with the Reserve Bank of Australia (RBA).

Cuscal works closely with small and large FinTech enterprises seeking access to the Australian payments ecosystem. We enable their market connectivity so they may provide innovative products, business models, and drive improved customer outcomes.

Cuscal believes that an Open Data ecosystem provides banks, FinTechs, other financial institutions, and corporates an unprecedented opportunity to leverage unique customer data in order to create new customer-centric experiences and streamline operations.

In addition to the opportunities in banking, the ability to strengthen trust between banks and customers will offer innovative banks the opportunity to play a greater role in customer's digital lives outside of banking.

Cuscal's approach for our clients is to create an Open Data ecosystem which empowers consumers and increases the potential for business innovation and competition.

For over 40 years, Cuscal has leveraged our assets, licensing and connectivity to provide intermediary and principal outsourcing activities on behalf of our clients.

Cuscal's PCI-DSS full accreditation sets us apart - even amongst ADIs. As a fully PCI-DSS accredited ADI, Cuscal is uniquely placed to provide secure and robust capabilities that facilitate access to markets that would otherwise be beyond the reach of some organisations.

For further information on services Cuscal provides, please refer to our website at www.cuscalpayments.com.au.

Our response below has been structured in line with the questions raised in the consultation paper.

Consultation questions: Intermediaries

1. If you intend to be an Intermediary in the CDR regime, or intend to use an Intermediary, please provide a description of the goods or services you intend to provide to accredited persons or to CDR consumers using an Intermediary. Do you intend (or intend to use an Intermediary) to collect CDR data, or collect and use CDR data? What value or economic efficiencies do you consider that Intermediaries can bring to the CDR regime for consumers?

Cuscal intends to offer a full-service CDR platform that collects, shares and, where desired, stores CDR data on behalf Data Holders, Data Recipients and/or Outsourced Service Providers. This includes providing the CDR-compliant API gateway along with the necessary security, consent management, reporting, data storage, data lifecycle capabilities, etc.

- a. Cuscal's initial intent is to collect data on our client's behalf as their Intermediary and/or Outsourced Service Provider, however future shared services may be built that would use CDR data (for instance Cuscal is considering offering account aggregation capability to its clients).
- b. Core value proposition derived from:
 - i. Reducing the cost of participation by providing smaller banks, FinTechs and other businesses with lower cost access to CDR data by leveraging the scale of our aggregator status and enabling clients to more effectively compete in an Open Data economy.
 - ii. Introduce supplementary services where Cuscal can leverage its scale to achieve greater efficiencies for clients, thereby offering them the opportunity to access leading services, that may otherwise have been price prohibitive, and leverage CDR to their advantage
 - iii. Supporting arms-length processing options by providing derived data insights instead of CDR data (e.g. criteria could be evaluated by the Intermediary and a simple true/false value could be returned to a recipient instead of the underlying data).

2. How should Intermediaries be considered in the rules? In your response please provide your views on whether the rules should adopt either an outsourcing model or an accreditation model, or both and, if so, in what circumstances each model should apply.

While the rules already incorporate Outsourced Service Providers, the responsibilities that are to be taken on by Intermediaries require that they be subject to their own rules aimed at supporting the integrity of the broader CDR ecosystem. For example:

- a. Intermediaries should be defined as Outsourced Service Providers that assume any of a participant's responsibilities in being an accredited person and receiving CDR data in accordance to the CDR rules.
- b. Outsourced Service Providers, as defined in CDR rules, should also ensure the integrity and security of the CDR network through the supply of their services. There should be minimum standards which they must meet and they should be registered on the CDR website as a registered Outsourced Service Provider (a

good reference are the Payment Card Schemes that require PCI DSS certification for Third Party Providers used by issuers, acquirers and merchants).

- c. We believe that accreditation and testing of Intermediaries is necessary to protect the integrity of the CDR regime. Cuscal believes a model similar to the Payment Card Schemes may be relevant point of reference:

Description	Card Scheme model	Open Data model
Sets rules and holds parties to account.	Card Scheme	ACCC
Assesses data security practices against a standard	Independent Assessors accredited by PCI Security Standards Council	Independent Assessors accredited by ACCC
Directly accountable to the Scheme Operator	Principal Member	Data Recipient or Intermediary
Sponsors others into the Scheme by taking on some of their responsibilities	Principal Member	Intermediary
Accountable to both Scheme Operator and Sponsor	Sponsored Member	Sponsored Data Recipient
Provides services to the above	Service Provider	Outsourced Service Provider

All these roles have a form of accreditation to participate and must maintain this status and abide by rules and regulations in this regard to operate. Cuscal believes the role of Intermediary should be similar to the role of a Principal Member of a Payment Card Scheme and we therefore believe that an accreditation model should be adopted.

3. What obligations should apply to Intermediaries? For example, you may wish to provide comment on:

- a) **If Intermediaries are regulated under an accreditation model, the criteria for accreditation and whether they should be the same or different to the criteria that apply to the current 'unrestricted' level, and the extent to which Intermediaries should be responsible for complying with the existing rules or data standards;**

As Intermediaries will provide services to multiple CDR entities, they will become a key pillar in the ongoing operation of the CDR ecosystem and also a potential system risk. Because of this, these entities should undergo the highest level of assessment for accreditation and greater performance, technical scrutiny, and level of attestation than what is currently required by a single 'unrestricted' accreditation. Intermediaries should also be subject to appropriate levels of ongoing attestations, testing and assurance

- b) **If Intermediaries are regulated under an outsourcing model, the extent to which contractual obligations should be regulated between accredited persons and Intermediaries;**

If Intermediaries are regulated by an outsourcing model, there should be key contractual obligations that must be included in any outsourcing agreements with CDR participants using the Intermediary services – that is they should be back to back obligations. These requirements should consider performance, security, technical maturity, liability, consumer privacy, etc. These should be monitored and attested to by the Intermediary to CDR participants on an annual basis. We also believe there must be minimum standards that the Intermediary must meet which may be similar to the PCI DSS international standard to ensure the integrity and security of the CDR network.

c) If the obligations should differ depending on the nature of the service being provided by the Intermediary

The obligations should differ depending on the nature of the service being provided. However, this may mean that the classification of the party may be an Outsourced Service Provider rather than an Intermediary.

4. How should the use of Intermediaries be made transparent to consumers?

Cuscal will play a 'background' role supporting our clients in their CDR operation and will not normally interact with end consumers. However, as with Outsourced Service Providers, we believe it is important consumers are made aware of any entity that interacts with their CDR data and therefore similar requirements should be imposed on Intermediaries as Outsourced Service Providers. All Intermediaries should be registered and the list available on the ACCC website and the website of the institution that uses the Intermediary. To simplify the consumer experience, the party acting as the Data Recipient (whether Intermediary or Sponsored Data Recipient) should include all relevant product disclosure information available to the consumer as part of their own product disclosure.

5. How should the rules permit the disclosure of CDR data between accredited persons?

Cuscal believes its Intermediary service should support Data Recipients, but should not create additional requirements on the consumer or the Data Recipient. As with Outsourced Service Providers, it is important that consumers are made aware that a third party is assisting in their CDR interaction and that it will follow all directions (e.g. consent revocation, data deletion, etc.) that the consumer makes to the Data Recipient. However, leveraging an Intermediary should not result in additional notifications, consent requirements, etc. that may disadvantage entities who choose to do so.

6. Should the creation of rules for Intermediaries also facilitate lower tiers of accreditation? If so, how should the criteria and obligations of new tiers of accreditation differ from the current 'unrestricted' accreditation level, and what is the appropriate liability framework where an accredited Intermediary is used?

Cuscal believes one of the great benefits that Intermediaries can provide to CDR is to provide greater secure access for potential participants by enabling lower accreditation tiers. These tiers should take into account how much of the entity's responsibilities are being assumed by an accredited Intermediary to ensure the ecosystem remains secure.

Intermediary liability should be limited to the services they control and this should be clearly determined in the agreement between the Intermediary and their client as this will differ depending on which services are being provided (e.g. CDR data storage).

Cuscal proposes an accreditation/sponsorship structure similar to that adopted by the payment card schemes. At a minimum this would include the following accreditation tiers:

- **Accredited Data Recipient - Unrestricted level:** as per current rules
- **Accredited Intermediary:** Intermediaries offer considerable benefits to the CDR regime, however they also create a greater point of failure and therefore require a higher level of performance and technical scrutiny.
- **Sponsored Data Recipient:** the increased scrutiny placed on Intermediaries will allow FinTechs, smaller banks, etc., to safely and securely participate in the CDR ecosystem without the full burden of the accreditation requirements. In essence Cuscal believes it should, as an accredited Intermediary, be able to 'sponsor' participants into the CDR regime by providing data collection and storage services that comply with the strictest standards. A sponsored recipient should still apply to the ACCC to join the registry, state the good or service it intends to provide, and to attest its compliance to the CDR rules. The restriction placed on the sponsored

recipient should reflect the extent to which their responsibilities/liabilities are absorbed by the Intermediary.

- **Restricted (Non-Accredited) Recipient:** while Cuscal does not support the sharing of CDR data with unaccredited participants we believe strict requirements should be in place if the ACCC includes this in the rules. This should include reliance on an Intermediary (to ensure consent, security, insurance and dispute obligations are met) or Outsourced Service Providers, relevant industry licences (e.g. Registered Tax Agent), restricted use cases and restricted data (i.e. no/limited access to raw data).

Consultation questions: permitting CDR data to be disclosed to non-accredited third parties

7. If the ACCC amends the rules to allow disclosure from accredited persons to non-accredited third parties do you intend to:

- a. **Receive CDR data as a non-accredited third party, please explain the goods or services you intend to provide, the purposes for which you propose to receive CDR data, and how this may benefit consumers**

N/A for Cuscal and we believe this option is not something the industry should be considering

- b. **Be an accredited person who discloses CDR data to non-accredited third parties, please explain the intended goods or services you intend to provide and how they may benefit consumers**

As stated Cuscal does not believe that non-accredited parties should have access to CDR data as this creates a security risk within the regime. If the ACCC was to include data sharing with these entities Cuscal would consider providing additional services that would provide non-accredited third parties with access to derived insights or services that would support the safest sharing of data with non-accredited third parties.

8. What types of non-accredited third parties should be permitted to receive CDR data? Why is it appropriate for those types of third parties to be able to receive CDR data without being accredited?

If non-accredited parties are permitted to receive CDR data it should be strictly limited to licensed entities (e.g. accountants, lawyers, financial advisors) that are providing related services to the consumer, and would be provided with similar information today in the execution of their services on the consumer's behalf and where the client's privacy is already protected by law (e.g. attorney-client privilege).

9. What privacy and consumer protections should apply where CDR data will be disclosed by an accredited person to a non-accredited third party?

Consumer and privacy protections should not be dependent on who receives CDR data, but instead the sensitivity of the data shared. The same restrictions – consent, security, privacy, notification, etc. – should apply whenever a consumer's CDR data is collected, held or used by another entity. Therefore non-accredited persons who receive CDR data should have the same obligations as all other Data Recipients to protect the consumer's data.

10. What degree of transparency for CDR consumers should be required where an accredited person discloses CDR data to a non-accredited third party?

It is important consumers are notified whenever their data is shared in order to protect the CDR's intent to provide control and choice. Above the usual transparency requirements, the consumer should also be made aware that their CDR data is being shared with an entity that is not accredited by the ACCC and why that entity is permitted to receive CDR data under the rules. In addition they should also be made aware when

their data is shared, the purpose for which it was shared, and provide an option for the Consumer to request that this data be deleted/de-identified.

Yours sincerely,



Kieran McKenna
Chief Risk Officer

Disclaimer

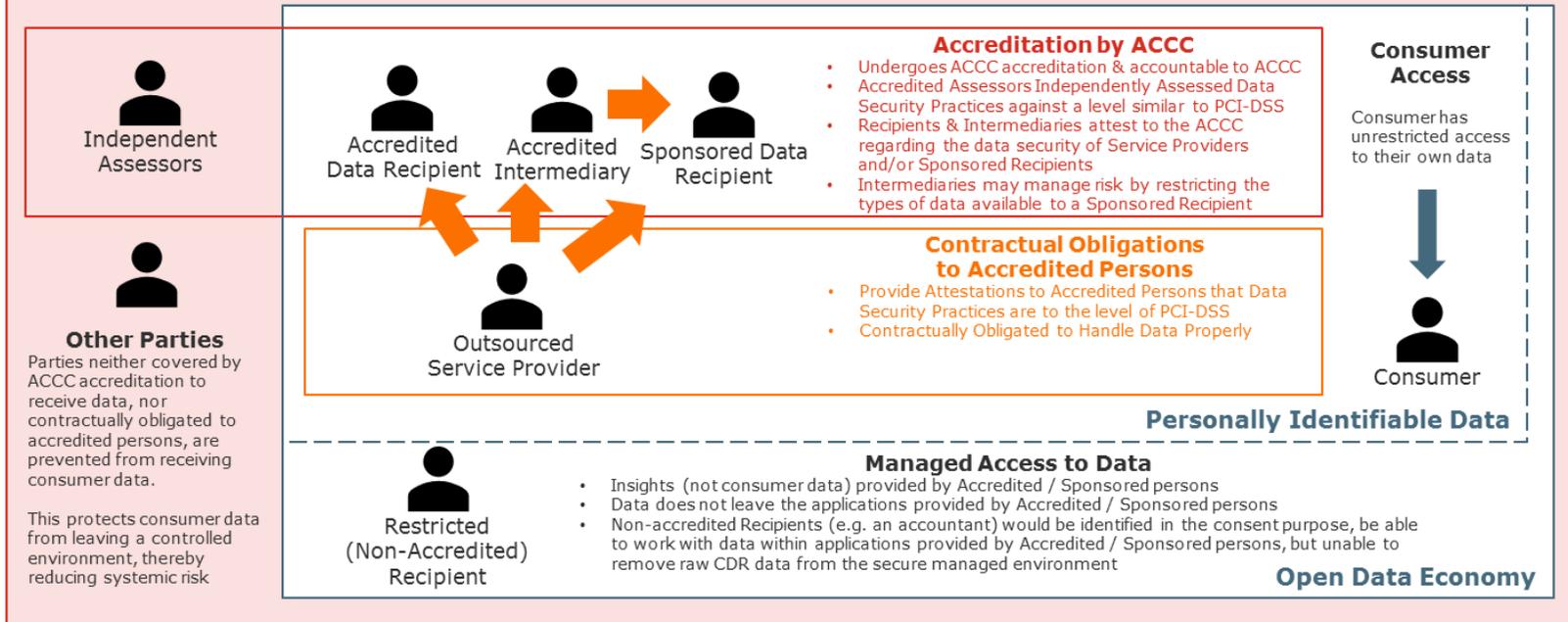
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Obligations Under Australian Law

All participants have obligations under Australian Law



	Accredited Recipient	Accredited Intermediary	Sponsored Recipient	Service Provider	Restricted Recipient
Large Bank	Likely	Possible			
Small/Medium Bank	Likely		Possible		
Aggregator		Likely		Possible	
Comparison Service	Possible		Likely		
Accounting Software	Possible		Likely		
Accountant					Likely
Fintech	Possible		Likely		

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