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29 October 2020
Mr Paul Franklin
Executive General Manager
Consumer Data Right Division
Australian Competition and Consumer Commission
Level 2, 23 Marcus Clarke St
CANBERRA ACT 2601

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

Dear Mr Franklin,

Consumer Data Right rules expansion amendments consultation paper

CPA Australia represents the diverse interests of more than 166,000 members working in over a 100 countries and regions around the world. We make this submission on behalf of our members and in the broader public interest.

More time needed for consultation

We support, in principle, the policy intent of the Consumer Data Right (CDR) regime and providing easy pathways for non-accredited parties such as accountants to continue to receive bank data. However, all parties need more time to consider its implications.

We strongly recommend the ACCC pause the process of implementing these rules to allow for a more thorough consideration of its impacts by all parties. Rushing through the implementation of these rules according to the indicative timeline significantly increases the risks of unintended consequences and avoidable burdens, and of not achieving the policy intent.

We wish to work with the ACCC and the Government to co-design a regime that achieves the policy intent and with which it is easy to comply. However, the very short consultation period has not provided sufficient time to make an appropriate assessment of the impact of the regime on consumers and those it intends to regulate.

The indicative timeline to implement this regime needs to be extended. Further, we need additional time to consult with other parties, especially our members and digital service providers (DSPs) to develop use cases to fully appreciate the impact this regime will have on our members, consumers, business and DSPs.

A four-week consultation on such a significant change falls well short of what all parties need to understand the implications of the change.

The very short consultation period not only reduces the effectiveness of the consultation and increases the risks of serious unintended consequences and unnecessary burdens, it may also be interpreted by some, rightly or wrongly, as not being a truly meaningful consultation by the ACCC.

We submit:

The ACCC pause the implementation of these Rules and instead continue to consult with all relevant parties in a detailed and methodical manner before a decision is made on whether to proceed.

Increases the red tape burden

From our current understanding of CDR, these proposed amendments increase the red tape burden on Authorised Data Recipients (ADR) and we expect those burdens will flow through to our members, and hence to consumers and business. The burden could create a situation where some ADRs may choose not to participate in the regime and withdraw from providing software to our members. This heightens the risk of further market concentration in the supply of software used by accounting

firms. In 2018, the [ACCC expressed concerns over market concentration](#) in this area and the barriers to expansion of smaller software providers. The proposed rules can potentially only add to those barriers.

Further, if the requirements that ADRs impose on unaccredited third parties, such as accountants, prove too burdensome and/or costly for those third parties, such service providers may choose not to receive CDR data, impacting their ability to continue to service their clients. This may particularly be the case for smaller accounting practices. Many such practices already operate on very tight margins, due in large part, to the cumulative significant costs of regulatory compliance.

Is the system voluntary?

While it is stated that participation in CDR is voluntary, this relies on banks maintaining systems that allow for data feeds that are CDR-compliant and non-CDR-compliant. Given the cost of maintaining parallel systems, we are of the view that it is likely that banks will quickly move to close their non-CDR data feeds, forcing ADRs and other parties to comply with the CDR regime if they want to continue to receive feeds of bank data. We understand this is what occurred in the UK. In other words, the voluntary nature of the regime seems to be dependent on the willingness of banks maintaining duplicating systems.

For CDR access to be voluntary, non-accredited third parties also rely on the ADR consuming only non-CDR data (on the chance banks maintain dual feeds). As soon as the ADR consumes both feeds, in reality outward data will have to be considered CDR data due to the extreme complexity of mapping CDR and non-CDR data flows. In short, CDR appears unavoidable.

Definition of trusted adviser

Proposed rule 1.10C describes the definition of trusted adviser. Rather than have a prescriptive list of professionals that are trusted advisers, a simpler way would be to give the power to the consumer to choose the third party that can access their data.

If the ACCC wishes to have a list of trusted advisers, the current list needs to be expanded and be more specific. For example, anyone can call themselves an 'accountant'. A better description could be the 'qualified accountant' definition in section 88B of the *Corporations Act 2001*. The definition of a tax agent and BAS agent should be written as 'a registered tax agent or BAS agent means an entity that is registered under the *Tax Agent Services Act 2009* as a registered tax agent or BAS agent'. The same can be said for legal practitioners. Given the very short consultation period, there are likely to be other service providers that are inadvertently omitted.

Further, it is unclear what steps an ADR will have to take to determine whether a non-accredited third party meets the definition of a trusted adviser.

Also, it is unclear to us the policy reason behind not allowing an ADR to make the nomination of a trusted adviser a condition for the supply of their goods or services.

Forgotten history

The consultation paper emphasises that "*allowing the disclosure of CDR data to non-accredited persons is a significant shift in the CDR regime*". However, for many years banks have provided consumer data to DSPs, and therefore accountants. The flow of that data has been essential for the preparation of tax returns, business activity statements and other documentation such as financial information for applying for loans on behalf of consumers and business. These changes seek to continue this practice, rather than be a concession under CDR. It seems that this change has been brought about to address one of the unintended consequences of CDR.

Specific comments and questions on the consultation paper

As well as commenting on the consultation paper, we seek clarification from the ACCC on a range of issues in the consultation paper. As stated above, further consultation is required to work through these issues.

Our specific comments and questions on the draft rules and consultation paper include:

- to improve understanding of the regime, we suggest that *Figure 5: Disclosures to non-accredited persons* be followed with case studies that elaborate on the diagram.
- we note that ADRs are not precluded from charging a fee for providing CDR information. Has the ACCC consulted with the ADRs around how much this fee is likely to be? Will that fee be included in an assessment of the cost impact of these rules?
- the consultation paper states, '*We therefore consider that these kinds of disclosures [to non-accredited persons] should be limited.*' Examples of what kind of disclosures should be 'limited' are needed to better understand the potential impacts of this change so that we can provide considered feedback.

Our preference is for there to be no limits on what data could be shared in the rules. Instead, the power to decide what data can be shared and to whom, should be made by consumers.

- the rules and the consultation paper should acknowledge, to a greater extent, existing obligations and penalties that apply to trusted advisers such as tax agents and BAS agents. For example, under the *Tax Agent Services Act 2009*, registered tax agents and BAS agents can face significant penalties for breaching client confidentiality, including losing the right to offer services as a tax agent. It should also be noted that the release of the Government's response to the review of this Act, including penalties, is currently pending.
- the consultation paper states '*If an ADR offers this functionality, the proposed rules require the ADR to ask for the consumer's consent to disclose their CDR data to a non-accredited person separately from the initial consent to collect and use their CDR data.*' To make informed comment on this requirement, we need to see what form this consent will take and how often it should be updated.
- the consultation paper states, '*When asking for the consumer's consent to disclose to the non-accredited person, the ADR will need to comply with any standards made by the Data Standards Chair and have regard to CX guidelines made by the Data Standards Body.*' It is unclear what process the Data Standards Chair will go through in engaging with third parties in setting such standards, including the ATO and the Tax Practitioners Board. There is a very strong need to ensure that the standards the Data Standards Board imposes are consistent with the requirements the ATO imposes on DSPs, or that it accepts the standards the ATO imposes on DSPs.
- the consultation paper asks, '*We seek stakeholder feedback on how the rules could facilitate disclosures to trusted advisors in such circumstances without unintended consequences.*' The consultation paper does not elaborate on the potential concerns of the ACCC, hence, we cannot offer an informed comment. We recommend that this issue be added to the list of issues requiring additional, more considered consultation before these rules are progressed.
- the consultation paper states that it takes a "principled approach" to defining an 'insight' under the rules. We recommend that the ACCC provides examples of what an 'insight' might be to better understand this important issue.
- we are unclear as to what data may be out of scope under these rules, particularly as the definition of 'derived data' appears to be broad. It could add unnecessary complexity for DSPs and disrupt the flow of information to accountants.

Conclusion

CPA Australia needs additional time and engagement with the ACCC, DSPs and our members to fully understand the potentially significant impact of these rules. We are concerned that rushing this consultation creates a significant risk of unintended consequences, which a pause in the development of these rules would help avoid.

If you have any queries about this submission, contact Gavan Ord, Manager, Business and Investment Policy at CPA Australia, on [REDACTED] or [REDACTED].

Yours sincerely,

Dr Gary Pflugrath
Executive General Manager
Policy and Advocacy