



CHARTERED ACCOUNTANTS™  
AUSTRALIA + NEW ZEALAND

29 October 2020

Australian Competition & Consumer Commission (ACCC)  
By email: ACCC-CDR@acc.gov.au

Dear Sir and Madam,

## Proposed changes to the consumer data right (CDR) rules

Chartered Accountants Australia and New Zealand (CA ANZ) welcomes the opportunity to provide feedback to the ACCC on the proposed changes to the CDR rules (the rules). Our members are trusted advisors including accountants, auditors, tax agents, BAS agents, financial advisors and insolvency practitioners.

The feedback provided below considers the issues which are likely to affect our members. As such this submission focuses upon the proposed permitted disclosure of CDR data by an Authorised Data Recipient (ADR), such as an accounting software provider to a trusted adviser. There may be other aspects of the CDR regime that have adverse impacts on our members, but due to timing of the consultation process CA ANZ, along with other accounting industry bodies, has not had the opportunity to review the entirety of the CDR regime and consider the full impacts.

### Impact on accounting industry an intended consequence

On 1 July 2020, the Prime Minister announced:

*“Following the successful implementation by the four major banks of the IT infrastructure needed to enable the Consumer Data Right in banking, “Open Banking” will now commence in relation to deposits, transaction accounts, credit and debit cards.*

*Open Banking is a game changing reform for Australians and will revolutionise the way that consumers and small businesses use their data to compare prices and switch between products and providers in the banking sector.*

*The Government has been working closely with the four major banks, the FinTech industry, the ACCC and Data61 to design, build and test the rules and infrastructure that will allow consumers to securely direct their banking data to another major bank or accredited FinTech provider.”*

The CDR reforms are clearly focused on allowing consumers and small business to have better access to their banking data to obtain better banking packages. We support this intent of the reforms and giving consumers and small businesses greater control over their data.

CA ANZ, and other professional accounting bodies, have only recently become aware that as the boundaries to banking data are unclear, accounting data which is derived from banking data appears to be captured by the regime. The ‘derived data’ requirements of the CDR regime currently operate in such a manner that accounting software providers and accountants who access their client’s accounting software packages would need to become registered as ADR. For example, a financial advisor that uses client banking information to prepare a cashflow forecast for a business would be captured under CDR.

It was not envisaged that the CDR reforms would impact the ability of the accounting profession to access their client’s data in accounting packages which happen to contain banking data. Indeed, the accounting sector is separate to the banking sector designated for this first CDR rollout ‘Open Banking’.

Given the CDR’s reach extends beyond the banking sector, we are concerned that the relevant stakeholders may not be aware of the need to engage in these consultations. Therefore, key perspectives may not be contributed to the ACCC and unintended consequences could be missed.

### **Inadequate consultation process**

The ACCC have consulted with the banking sector for over two years in relation to implementation of CDR. However, the accounting profession has been given just 20 business days to consider the proposed “concession” for trusted advisers. This consultation period also coincided with the 2020 October Federal Budget and changes to COVID stimulus packages that are being run through the tax system.

Our members and staff have been fully occupied ensuring that business, especially small business, are able to understand and cope with stimulus and budget changes. Further, our Victorian members have not yet returned to their offices. All of which means that there has been virtually no time to read, understand and consider the consequences of the extremely complicated and long provisions regarding CDR. It is extremely likely that there are a number of issues, that are of concern to our members, which have not been uncovered as yet.

CA ANZ had requested an extension of time to consider this consultation, but this was refused. We had also reached out to engage directly with the ACCC prior to the release of the consultation but aside from an initial meeting where we expressed our concerns, there has been no further engagement.

### **Concession is a start but is not enough**

Representations by CA ANZ, other professional accounting bodies and accounting software providers to Treasury and the ACCC has resulted in the ACCC proposing a “concession” in the CDR rules for trusted advisers.

This “concession” whilst welcome, still results in the deterioration of consumer rights regarding their data. Consumers can currently decide, at no cost, with whom they will share their accounting data and how much data is shared. Under the proposed “concession”, consumers will not be able to share their accounting data with a trusted adviser (such as an accountant) without going through a consent process with their accounting software provider. Further, the consumer’s accounting software provider can refuse to share the data with an accountant (without the need to justify why) or demand payment before allowing the consumer’s data to be provided to a trusted adviser such as an accountant. We also understand that this consent process would need to be renewed on a regular basis. This could become a significant regulatory burden in itself for a small business managing the consents for their various advisers, especially as CDR expands to encompass more sectors.

This reduction in the consumer’s ability to deal with their own data in accounting software packages is highly concerning.

Our understanding of the policy intent is that CDR was never intended to interfere with trusted adviser’s ability to assist their clients. In our opinion, the inability of trusted advisers to continue with business as usual, due to the need to deal with authorisations and potential costs under CDR undermines the intent of the CDR legislation. To alleviate some of these concerns, the CDR rules should apply to software and accounting packages accessing CDR data rather than individuals or people.

### **Effect of pandemic on implementation timing**

There is no denying that the Australian economy is currently in a fragile state with many businesses struggling as a result of COVID-19. The priority and focus for many businesses, and their trusted advisers, will be to keep operations viable and maintaining cashflow for survival as government incentives are wound back. Rules that are complex, prescriptive and are seen to add additional regulatory burden will not be top priority to many businesses already struggling with resources.

Given the vital role that trusted advisers play in the economy, especially during COVID, more time needs to be given to ensure that the CDR rules do not interfere with business as usual for trusted advisers.

Details of particular comments are contained in Appendix A. Appendix B provides more information about Chartered Accountants Australia and New Zealand (CA ANZ).

Should you have any questions about the matters discussed above or wish to discuss them further, please contact Karen McWilliams via email at [REDACTED] or phone [REDACTED].

Yours sincerely

**Simon Grant FCA**  
**Group Executive**  
**Advocacy & Professional Standing**

**Karen McWilliams FCA**  
**Business Reform Leader**  
**Advocacy & Professional Standing**

# Appendix A

## Feedback on the CDR rules expansion amendments – consultation paper

Please note these specific comments should be considered in light of our overarching remarks in the cover letter addressing our fundamental concerns with the extension of the CDR regime to accounting data.

### 2. Timeline for proposed rules to take effect and overview of key proposed rules

#### CDR Roadmap

We note that the CDR roadmap shows the rules regarding disclosure to trusted advisors scheduled to be implemented in December 2020, and further note that practical implementation may be subject to updated consumer experience standards and guidelines. Given the start date of the consumer data reporting regime (November 2020) practical implementation is needed as a high priority. We are concerned at these extremely tight timeframes for small business and their trusted advisor at such a challenging time. We also note that the timeframes are not aligned.

### 5. Greater flexibility for consumers to share their CDR data

Notwithstanding our earlier comments around the extension of the CDR regime to accounting data, we support “expanding the CDR regime to allow for the disclosure of CDR data to non-accredited persons is consistent with the principles of consumer choice and control which underpin the CDR regime.” However, we note that page 29 of the consultation document states that “The ADR would not be precluded from charging a fee for this service”. In practice, our members, will often be sent pieces of information, or even give access to a client’s software system to provide particular services. For example, an auditor may be provided with a bank reconciliation with supporting bank statements (to prove a balance) by their client or potentially be physically shown banking information to verify a transaction or a balance. Under CDR, an ADR may now charge a fee to the client/auditor, which will increase the costs of this function and in turn increase the overall operating costs for trusted advisors which may not be recoverable.

#### 5.1 Disclosure to trusted advisors

We note that “the classes currently proposed to be included as trusted advisors include accountants, lawyers, tax agents, BAS agents, financial advisers, financial counsellors and mortgage brokers.” (Page 30 of consultation document). We note that ‘accountants’ is not a defined term and there are no restrictions as to who can refer to themselves as an accountant. Further, we suggest that those that hold either an Australian financial services licence or an Australian Credit licence are also classed as trusted advisors.

### 6. Extending the CDR to more consumers

We note on page 33 under the proposed rules, that a “non-individual consumer would need to nominate at least one individual as a nominated representative in order for a business consumer to share CDR data.” And “it is envisaged that the nominated individual will need to be authenticated”. We suggest that existing verification systems such as My Gov ID and Relationship Authorisation Manager (RAM) are considered as a part of this authentication process to minimise red tape and allow for a whole government approach to CDR.

## Feedback on draft privacy impact assessment (impact statement)

### General risks

We note under point 5.6 (page 22 of the impact statement) that the CDR will not regulate how CDR data must be transferred or how it is handled by a trusted advisor. We support this assessment and the retention of the status quo with respect to the privacy aspects related to this data.

# Appendix B

## About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand (CA ANZ) represents more than 128,000 financial professionals, supporting them to build value and make a difference to the businesses, organisations and communities in which they work and live.

Around the world, Chartered Accountants are known for their integrity, financial skills, adaptability and the rigour of their professional education and training.

CA ANZ promotes the Chartered Accountant (CA) designation and high ethical standards, delivers world-class services and life-long education to members and advocates for the public good. We protect the reputation of the designation by ensuring members continue to comply with a code of ethics, backed by a robust discipline process. We also monitor Chartered Accountants who offer services directly to the public.

Our flagship CA Program, the pathway to becoming a Chartered Accountant, combines rigorous education with practical experience. Ongoing professional development helps members shape business decisions and remain relevant in a changing world.

We actively engage with governments, regulators and standard-setters on behalf of members and the profession to advocate in the public interest. Our thought leadership promotes prosperity in Australia and New Zealand.

Our support of the profession extends to affiliations with international accounting organisations.

We are a member of the International Federation of Accountants and are connected globally through Chartered Accountants Worldwide and the Global Accounting Alliance. Chartered Accountants Worldwide brings together members of 13 chartered accounting institutes to create a community of more than 1.8 million Chartered Accountants and students in more than 190 countries. CA ANZ is a founding member of the Global Accounting Alliance which is made up of 10 leading accounting bodies that together promote quality services, share information and collaborate on important international issues.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents more than 870,000 current and next generation accounting professionals across 179 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications.