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CDR Rules Team
Australian Competition & Consumer Commission

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

Classification: Public

Cuscal Limited (Cuscal) appreciates the opportunity to provide this submission regarding the ACCC CDR Rules Consultation for the "Draft rules that allow for accredited collecting third parties ('intermediaries')" (Draft Rules).

Background to Cuscal

For over 40 years, Cuscal has leveraged its assets, licensing and connectivity to provide intermediary and principal outsourcing activities on behalf of its clients. We are 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 enable our clients' market connectivity so that they may provide innovative products, business models, and drive improved customer outcomes.

We are an Authorised Deposit-taking Institution (ADI) and the holder of an Australian Financial Services Licence and an Australian Credit Licence for Securitisation purposes. Cuscal has a seat on the Board of eftpos, New Payments Platform Australia, the Australian Payments Network and numerous industry committees. We are also the founder and majority shareholder of 86 400 (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, 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).

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 about Cuscal and our services please refer to cuscalpayments.com.au.

Our comments regarding the Draft Rules

Our response in this submission has been structured in line with the ACCC CDR - Explanatory Note provided on 22 June 2020 and also supports our previous submission dated 3 February 2020 in response to the "Consumer Data Right Consultation on how best to facilitate participation of third party Service Providers".

As previously outlined in our 3 February 2020 response, 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.

Cuscal's 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).

Our core value proposition will be 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. Introducing 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).

Therefore, we are interested in ensuring that the draft rules operate optimally and as intended and enable the use of a provider especially for the smaller banks, fintechs and other businesses that seek affordable options for access.

The combined accredited person (CAP) arrangement

Cuscal supports the allowance in the draft rules of a customer-facing accredited data recipient (the **principal**) to engage the services of another accredited person (the **provider**) under a "combined accredited person" (CAP) arrangement.

This is the model that Cuscal supports today in payment systems, leveraging its assets, licensing and connectivity to provide intermediary and principal outsourcing activities on behalf of its clients. This is a scalable model that is well established in the competitive payment service market – hence a good model for CDR.

One area which the additional Rules do not address is what the accreditation process for a provider will entail. Consideration should be given to a model where a principal may leverage a provider's accreditation to assist its own accreditation process. For example, if a provider is accredited to collect, use and/or disclose CDR data and the principal is contracting these services from the provider, then the principal should be able to include this in its accreditation process to fast track its own accreditation.

What can a provider do with CDR data?

The concept that a provider is only permitted to collect, use and/or disclose CDR data where a principal would otherwise be authorised to perform supports Cuscal's views. The provider should be held to account in the same manner as the principal in terms of protecting the consumer data and in accordance with the CDR rules and privacy standards.

What transparency mechanisms are in place about the use of providers for consumers?

We believe that the concept of the consumer being informed during the consent process if a provider may collect or disclosed their CDR data is an area that requires further consideration.

The disclosure of the provider's name and accreditation number may create confusion with the consumer, especially in the event that the principal is using a combination of providers to provide the service to the consumer. This confusion may also be exacerbated because the principal would have a direct relationship with the consumer and if such consumers have any issues with the collection or use of their data they should deal directly with the principal who has the contractual arrangement for the services with the consumer.

It may be more beneficial to present a statement that the principal may use third parties to collect their CDR data and their names are disclosed in their Privacy Statements or Policies.

In our response to the consultation on intermediaries on 3 February, we stated the following:

"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."

Where will consumers be able to find additional detail about providers?

Cuscal is supportive of providers, as accredited persons, being required to have their own policy addressing the management of CDR data.

What new records will need to be kept?

Cuscal supports the record keeping requirements as outlined.

What liability structure applies?

The liability structure proposed means that, unlike an outsourced arrangement, a provider could be liable for an act or omission of a principal (and a principal liable for an act or omission of a provider), even if an obligation is owed by the principal (or a provider, as the case may be). For example:

- A principal might engage a provider to provide CDR Services as a CAP.
- The principal and a provider may have agreed that certain obligations remain with the principal – particularly because the principal will have a contractual and/ or other relationship with the consumer, which the provider is not privy to and has no rights under.
- The principal fails to complete the relevant obligation.
- As a result of that failure, the provider is also in breach of the rules, despite this contractual obligation being with the principal.

This leads to a scenario where two parties could be liable for one party's breach of the CDR Rules.

An option that may be considered is for the principal to be held primarily accountable (similar to outsourcing arrangements), however, offering a provider an 'opt in' mechanism to tailor

the obligations of either party depending on the agreement reached between the principal and the provider. This gives both parties the opportunity to clearly outline their respective obligations in a manner that more appropriately fits the relationship and also keeps at least one party appropriately liable for breaches under the CDR Rules.

Does a provider have to collect CDR data?

No comment on this section.

Minimum information security controls

Cuscal supports the minimum information security controls and practices, as set out in the table "PART 2, 2.2 Information security controls".

In line with our preceding commentary, we believe close consideration should be given (as part of the tables contents) to the arrangements where responsibility is shared, in an outsourced provider model.

In closing, we look forward to discussing our submission and assisting the consultation with any further material or insights during its review.

Yours sincerely



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Chief Risk Officer

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