



Shaping the Future

Consumer Data Right

Deloitte Submission to the ACCC Consultation Paper: CDR rules expansion amendments

29 October 2020

Introduction

On 30 September 2020 the Australian Competition and Consumer Commission (ACCC) released a consultation paper on proposed changes to the rules for the Consumer Data Right (CDR).

Deloitte is pleased to provide some observations on certain matters included in the consultation paper. Given the breadth of issues raised by the consultation paper we have commented on only select matters and have not sought to provide a response to each question.

The original Productivity Commission Inquiry Report into Data Availability and Use noted how the exponential growth in data generation and usability 'has enabled a kaleidoscope of new business models, products and insights'.¹ In addition to the exponential growth in the number and size of data sets themselves, data sharing has the potential to see exponential growth in the linkages of data sets.

Deloitte continues to believe that open data has significant potential to enhance the Australian economy by bringing opportunities for the creation of value for consumers, businesses, citizens and society in general.

Deloitte has previously noted in its submissions to the Inquiry into Future Directions for the CDR² as well as on the draft CDR legislation³ that finding the balance between achieving a sound, stable system and encouraging competition and innovation is a continuing challenge and an evolving challenge in sectors being disrupted by technological change. This trade-off between stability and competition is only amplified in the current circumstances.

At the heart of delivering the benefits from successful economy-wide data sharing is trust – trust in the data sharing framework, trust in the actions of data holders and data recipients, and trust in the government and regulators.

Trust is enhanced where people have a consistent experience with accessing and sharing data. It is important, as noted in the original report on Open Banking (the Farrell Review), that CDR 'should be for the customer, be about the customer, and be seen from the customer's perspective'.⁴

In our submission we comment on the importance of considering how the proposed rule changes could impact on consumer understanding and consumer experience of data sharing and consent.

Deloitte also does not believe it is necessary to establish new rules for the transfer of data held by an accredited data recipient when there are existing rules for the transfer of data which apply to data holders. We believe a better approach would be for ADRs seeking to transfer data to a consumer or another ADR to be treated as, and subject to the rules applying to, data holders.

Deloitte also notes that these proposed changes to the CDR Rules have been released before the report of the Inquiry into Future Directions for the Consumer Data Right (the Inquiry). The Issues Paper for the Inquiry⁵ was released by the Treasury in March 2020 and includes matters such as consent management and tiered accreditation that are also subject to the proposed changes to the rules outlined in the ACCC's consultation paper.

In our submission we recommend that the findings in the Inquiry report be considered as part of any proposed changes to the rules.

The Issues Paper also includes consideration of the international context in which Australia's CDR operates, which should be a factor that the ACCC consider when proposing new or amended rules.

¹ Productivity Commission, *Data Availability and Use, Inquiry Report*, Report No. 82, Canberra, 2017, page 2

² Deloitte, *Shaping the Future: Deloitte Submission to the Inquiry into Future Directions for the Consumer Data Right Bill*, 21 May 2020

³ Deloitte, *Shaping the Future: Deloitte Submission on the Draft Consumer Data Right Bill*, 7 September 2018

⁴ The Australian Government, The Treasury, *Review into Open Banking: giving customers choice, convenience and confidence*, December 2017

⁵ The Australian Government, *Inquiry into Future Directions for the Consumer Data Right, Issues Paper*, March 2020

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

Consultation questions

1. We welcome comments on the proposed timeline for the proposals referred to in the CDR Roadmap.

Deloitte Comments and Observations

The ACCC's consultation paper acknowledges the importance of having appropriate implementation timeframes.

Several issues which are outlined in the consultation paper, including the extension of CDR to businesses, tiered accreditation and variable consent, were deliberately not included in the first phase of CDR in recognition of the complexities and implementation challenges associated with them.

On the other hand, the inclusion of businesses in CDR is already implicit in the current timeline for Open Banking. Data holders will need to provide account and transaction data on business finance, business lines of credit, business overdrafts and asset finance (which are part of the Phase 3 products). This requirement applies to major banks from 1 February 2021 and to non-major ADIs from 1 February 2022.

Notwithstanding this, several organisations are currently experiencing the challenge of both meeting the existing regulatory requirements of CDR and managing and adapting their business to meet the challenges posed for them and their customers by COVID-19. This has included a review and prioritisation of costs and resource levels.

At the same time, submissions have only recently been sought by the Senate Select Committee on Financial Technology and Regulatory Technology and the Inquiry.

As a result, some organisations may find it challenging to also consider and comment on the potential consequences of the rule changes outlined in the ACCC's consultation paper while they are still implementing changes to meet the current rules and regulations.

The ACCC has acknowledged that 'there is a need to understand from stakeholders the complexity involved in the implementation' of the proposals set out in the consultation paper.

Given that:

1. The Inquiry is due to report at the end of October 2020 and its recommendations may impact some of the matters noted in this consultation paper;
2. The Interim Report of the Senate Select Committee has made specific recommendations in relation to the governance arrangements for the CDR; and
3. Open Banking will not be fully implemented until February 2022,

Deloitte recommends that:

1. The implementation timeline for the proposed rule changes be considered after the publication of the findings of the current Inquiry;
2. The commencement date for any changes to the rules made as a result of this consultation paper not occur before February 2022; and
3. Organisations be given six to twelve months' notice of changes to the rules to allow an appropriate period of time for IT build and testing.

When changes are made to the rules Deloitte supports the continuation of a phased approach which provides non-major ADIs an additional period to bring in new functionality.

3. Increasing the number and types of businesses that can participate in the CDR

Consultation questions

2. *The proposed rules include three discrete kinds of restricted accreditation (i.e. separate affiliate, data enclave or limited data restrictions). We welcome views on this approach and whether it would provide sufficient flexibility for participants. In responding to this question you may wish to consider whether, for example, restricted accreditation should instead be based on a level of accreditation that permits people to do a range of authorised activities.*
3. *We also welcome views on alternative risk-based restrictions that could apply to a lower level/s of accreditation, as envisaged by the Open Banking Report, including views on whether, and in what way, an approach based on volume (for example, volume of customers or customer records), could provide an appropriate basis for developing levels of accreditation.*

Deloitte Comments and Observations

Deloitte supports the inclusion of tiered accreditation as part of Australia's CDR.

The Issues Paper for the Inquiry also invited comments on 'the scope for use of tiered accreditation to promote broader access without increasing risk.'⁶

In Deloitte's submissions to the Inquiry⁷ this year and to the ACCC in 2018 on the CDR Rules Framework⁸ we proposed several options to support a system of tiered accreditation:

- Tiering based on the attributes of the CDR data being shared, e.g. basic customer information could be an example of a limited data set available to a lower tier accredited CDR participant. This could be supported by the definition of standard subsets of data attributes to be made available to lower tier participants. A subset of data may exclude higher risk data attributes, resulting in a lower risk profile for the provision of the limited data set.
- Tiering based on the sensitivity of the CDR data being shared. This would allow for higher accreditation requirements for data recipients receiving data sets that have data that are more sensitive or that include sensitive data attributes such as data from minors or, at a future point, health data.
- Tiering based on standardised and/or approved uses of CDR data e.g. lower tier participants may be eligible to receive CDR data for purposes such as proof of income / expenditure or to summarise monthly expenditure by merchant type. The tiered accreditation could be restricted to a set of use cases that might be considered lower risk for consumers, e.g. aggregation of data.

These options remain viable for an expansion of the CDR.

Given that the use of tiered accreditation is specifically being considered by the Inquiry, Deloitte recommends that the ACCC consider the findings of the Inquiry and the comments made about tiered accreditation in submissions to the Inquiry, in its design of tiered accreditation.

A key issue in moving to tiered accreditation that is not noted in the consultation paper will be consumer understanding and experience. It will be important that a tiered accreditation model is comprehensible and does not confuse consumers.

Another issue will be trust. In our submission to the Inquiry, Deloitte noted that at the heart of delivering the benefits from successful economy-wide data sharing is trust – trust in the data sharing framework, trust in the actions of data holders and data recipients, and trust in the government and regulators.⁹

⁶ The Inquiry: Issues Paper, (2020), page 5

⁷ Deloitte (May 2020), page 24

⁸ Deloitte, *Deloitte Submission on the Consumer Data Right Rules Framework*, 12 October 2018, page 9

⁹ Deloitte (May 2020), page 4

Trust is enhanced where consumers understand with whom they are sharing data and have confidence that the data they share will be protected.

It will be important that the additional complexity necessarily introduced with the adoption of tiered accreditation does not significantly compromise consumers understanding of and experience with data sharing or reduce consumer confidence in the data sharing framework.

External accreditation of compliance with information security and privacy controls can contribute to confidence and trust in the parties participating in CDR.

Deloitte supports the inclusion of external accreditation of restricted accredited data recipients at the time of the initial accreditation application and periodically thereafter.

Where an organisation seeking to become an accredited data recipient is already required as part of its membership of a professional association or equivalent, to meet privacy and information security standards that meet or exceed those required for CDR accreditation, the ACCC accreditation process should recognise the professional association's standards and not require a duplicate assessment and accreditation.

4. Expanding how accredited persons can work together

4.1. Combined Accredited Person arrangements

Consultation questions

14. *We consider that in the case of a CAP arrangement, it is appropriate for the principal (having the relationship with the consumer) to be responsible for ensuring that customer-facing aspects of the CDR regime are delivered (for example, dashboards and any customer-facing communications, including in relation to dispute resolution). We welcome views on this position.*

Deloitte Comments and Observations

Deloitte supports the position proposed by the ACCC that the principal (the restricted accredited data recipient) in a combined accredited person (CAP) arrangement should retain responsibility for the delivery of the customer-facing aspects of the CDR regime given their relationship with the consumer.

However both the restricted accredited data recipient and the unrestricted accredited data recipient should retain accountability for meeting the CDR regulatory obligations.

4.2. Transfer of CDR data between accredited persons

Consultation questions

15. *Should consumers be able to consent to the disclosure of their CDR data at the same time they give a consent to collect and a consent to use their CDR data?*

- a. *Is the proposed threshold for being able to offer an alternative good or service in rule 7.5(3)(a)(iv) appropriate?*
- b. *The transfer of CDR data between accredited persons will be commonly facilitated through commercial arrangements. Should those commercial arrangements be made transparent to the consumer and, if so, to what extent?*

Deloitte Comments and Observations

The ACCC has proposed allowing the transfer of CDR data between accredited data recipients.

The CDR regulatory framework already has a category of CDR participant that holds data – that of a data holder. It is not clear why the ACCC would seek to have one set of rules for transferring a consumer's data from one class of CDR participant (a data holder) to an ADR and a different set of rules for transferring a consumer's data from another class of CDR participant (an ADR) to a second ADR. This adds unnecessary complexity to the CDR framework.

An ADR that receives consumer data and wishes to transfer it to another ADR or a consumer becomes, in substance, a data holder. A better alternative would be to apply the regulation for data holders to any ADR seeking to transfer data to another ADR or a consumer.¹⁰

As a result, Deloitte does not support this proposal and does not believe that new rules are required for data held by an ADR.

It would be important, however, that in treating an ADR seeking to share data with another ADR as a data holder, any data derived from CDR data, including insights, are not treated as CDR data themselves. These insights are likely to be the subject of an ADR's IP and may form the basis of its commercial proposition to customers.

The consultation paper also notes that an ADR would not be precluded from charging a fee for the transfer of CDR data to another ADR.

Deloitte does not support this proposition.

¹⁰ The ACCC noted on the CDR Implementation call on 29 October that extending data holder obligations to all ADRs would be complex. Deloitte is not proposing all ADRs be designated as data holders. Deloitte is proposing that only ADRs seeking to share data with another ADR or with the consumer should be treated as data holders.

A data holder is not permitted to charge a consumer a fee to transfer a consumer's data to an ADR. As a result it is not consistent to allow an ADR which is in substance a data holder to charge a fee for transferring a consumer's data to another ADR.

Deloitte recommends that ADRs seeking to share a consumer's data with another ADR should be treated as data holders and subject to the same requirements.

A data holder can charge a fee to a consumer if they share voluntary product data or voluntary consumer data. If an ADR which wishes to share data is not designated as a data holder, then equivalent rules should allow an ADR which shares voluntary data to charge a fee for that data to a consumer.

The consultation paper notes an example where a consumer seeks goods or services directly from ADR2, and wishes to transfer data to ADR2 from ADR1. This example reinforces that in substance ADR1 is acting as a data holder. As a result, it is more appropriate that the existing requirements in relation to data holders be extended to an ADR seeking to share consumer data that it holds with another ADR.

The consultation paper also notes an example where ADR1 recommends the goods or services of ADR 2 to a consumer. It will be important that any rules permitting third-party recommendations consider the adequacy and effectiveness of disclosure of commercial arrangements and consumer comprehension of them.

The consultation paper further notes a situation where an ADR recommends the goods or services of another ADR as its services and gives the example of a product comparison service.

In our submission to the Inquiry Deloitte noted that comparator websites (also referred to as product comparison websites, price comparison websites and PCWs) use product and pricing information to help reduce some of the behavioural barriers to searching and switching by making comparisons of often complex products easier, and helping consumers in their decision making process.¹¹

The potential value comparator websites can play increases as more sectors of the Australian economy are subject to data sharing under the CDR, and increases further if the inclusion of write access allows comparator websites to seamlessly change providers on behalf of customers by initiating and simplifying account opening and switching.

However, while the ACCC's report on the comparator website industry highlighted the benefits that PCWs provide it also highlighted a number of concerns about conduct in the industry¹²:

- the extent to which information provided by PCWs was unbiased, impartial or independent
- the ability to manipulate algorithms used to match providers with an individual consumer's stated preferences
- the preferential treatment of some products based on commercial relationships rather than an individual consumer's stated preferences
- the creation of artificial churn – particularly where driven by the remuneration structure under which the PCW is compensated.

Write access will amplify these concerns and the potential harm to consumers.

Some classes of entities which may be classified as intermediaries, or seek tiered accreditation, already have a duty to act in their customer's interests. These include for example, accountants and financial advisers. Following the Hayne Royal Commission, the 'best interests' duty has been extended to mortgage brokers. Some comparator websites operate under a mortgage broker's Australian Credit Licence (ACL) and therefore this 'best interest' duty will apply to them. However other classes of entities may continue to be remunerated on a commission basis.

Deloitte recommends that the development of rules for transferring data between ADRs be delayed until the release of the Inquiry's report and consideration of changes to the regulation and obligations of PCWs.

¹¹ These were noted in the ACCC's report on the comparator website industry. Australian Competition and Consumer Commission, *The comparator website industry in Australia*, November 2014. See also:

https://www.accc.gov.au/system/files/926_Comparator%20website%20industry%20in%20Australia%20report_FA.pdf

¹² ACCC (November 2014), pages 18-29

5. Greater flexibility for consumers to share their CDR data

Consultation questions

16. *To which professional classes do you consider consumers should be able to consent to ADRs disclosing their CDR Data? How should these classes be described in the rules? Please have regard to the likely benefits to consumers and the profession's regulatory regime in your response.*
17. *Should disclosures of CDR data to trusted advisors by ADRs be limited to situations where the ADR is providing a good or service directly to the consumer? If not, should measures be in place to prevent ADRs from operating as mere conduits for CDR data to other (non-accredited) data service providers?*
18. *Should disclosures of CDR data insights be limited to derived CDR data (i.e. excluding 'raw' CDR data as disclosed by the data holder)?*
19. *What transparency requirements should apply to disclosures of CDR data insights? For example, should ADRs be required to provide the option for consumers to view insights via their dashboard, or should consumers be able to elect to view an insight before they consent for it to be disclosed to a non-accredited person?*

Deloitte Comments and Observations

The consultation paper proposes rules to allow an ADR, with the consent of a consumer, to disclose CDR data that it holds with certain professional classes and trusted advisors.

There appear to be two issues that are being considered:

Firstly, should a consumer be able to direct **a CDR participant** to transfer data to **a non-accredited data recipient** that is in a certain professional class or a class of trusted advisors?

Secondly, should rules be made to allow a consumer to direct **an ADR** to transfer data?

Transfer of data to non-accredited data recipients

Under the current rules, a consumer is able to direct that a data holder transfer data directly to the consumer, who can then choose to share it with whoever they want, including a professional or a trusted advisor. However a consumer is not able to use CDR to direct a data holder to transfer data to a non-accredited party.

The Farrell Review noted that 'For consumers to have confidence in Open Banking they will need assurance that other participants – data holders and recipients – are accredited entities...'.¹³

The inclusion of non-accredited data recipients as CDR participants risks undermining this confidence and confusing consumers about the protections that are available to them. This is mitigated, but not offset, by the requirement for a consumer's informed consent.

The proposal to allow data to be transferred to certain professional classes and trusted advisors which are non-accredited data recipients would also require that that ACCC develop and maintain a description in the rules of a professional or trusted advisor.

An alternative approach would be to establish a tiered accreditation category for organisations, including professionals and trusted advisors, that meet certain minimum requirements in relation to compliance with privacy and information security standards and meet 'best interests' requirements.

The professional bodies for these organisations could ensure that their privacy and information security standards for their members met the ACCC's minimum standards for accreditation as a data recipient.

¹³ Farrell Review (2017), page 44

This would:

- mean that data was not being shared by a data holder or an accredited data recipient with a non-accredited data recipient
- mean that the ACCC did not need to try and determine and maintain a regulatory description of a professional or trusted advisor
- allow any party to apply to become an accredited data recipient for this tier.

This alternate approach would still allow consumers to realise the benefits of sharing their data with professionals and trusted advisors.

In adopting this approach consideration should be given when accrediting organisations which are professionals and trusted advisors to leveraging existing professional requirements for privacy and information security that professionals and trusted advisors are already required to meet.

As noted in one of the submissions to the Inquiry, 'Leveraging existing accreditation frameworks will minimise disruption to existing data transfer mechanisms while the economy transitions to CDR implementation.'¹⁴

Transfer of data by an ADR

The ACCC has proposed that rules allow *an ADR* to transfer data to other third parties, including both other accredited data recipients and non-accredited data recipients.

Implicit in this proposition is that the ADR holds data that a consumer wishes to transfer to another party.

However, as noted in our response on section 4.2, the CDR regulatory framework already has a category of CDR participant that holds data – that of a data holder.

As a result, Deloitte does not support the proposal outlined in the consultation paper to establish a new set of rules for sharing data held by an ADR.

It is not clear why the ACCC would seek to have one set of rules for transferring a consumer's data from one class of CDR participant (a data holder) and introduce a different set of rules for transferring a consumer's data from another class of CDR participant (an ADR). This seems to add unnecessary complexity to the CDR framework.

An alternate and preferred approach is to make it clear in the rules that an ADR that holds consumer data and wishes to share that data is designated as a data holder. This would mean that a consumer can direct an ADR that holds consumer data to share that data with another ADR.

It is also important to bear in mind that some ADRs are currently designated as data holders where they hold reciprocal data and are required, at the request of a consumer, to share that data with a third party.

This reinforces the rationale that any ADR seeking to share data should be treated as a data holder and subject to the same rules as other data holders.

Disclosure of derived data and CDR insights

The consultation paper asks whether an ADR should be permitted to disclose an 'insight' derived from CDR to any person with a consumer's consent.

Deloitte believes that certain matters need to be clarified when posing this question.

Firstly, any rules developed for the disclosure of an 'insight' derived from CDR data should apply to all CDR participants and not just ADRs.

Secondly, while these rules may permit a CDR participant to share 'insights' derived from CDR data with another party with a consumer's consent, the rules should clearly state that a CDR participant is not **required** to share 'insights' derived from CDR data with another party, even at the request of and with the consent of a consumer.

¹⁴ Xero, [Xero Submission to the Inquiry into Future Directions for the Consumer Right](https://treasury.gov.au/sites/default/files/2020-07/xero.pdf) May 2020, page 2. Refer also <https://treasury.gov.au/sites/default/files/2020-07/xero.pdf>

The development of 'insights' from CDR data is likely to arise from the application of intellectual property or commercial processes. As noted in the Farrell Review, 'imposing an obligation to share that data may amount to a breach of intellectual property rights, or interfere with existing commercial arrangements.'¹⁵

Thirdly, the treatment of derived data¹⁶ has been repeatedly discussed during the consultation process for the CDR regulatory framework.

The Farrell Report noted that for 'data that has been created by the data holder through the application of insight, analysis or transformation of a customer's transaction data ... its value has largely been generated by the actions of the data holder, or has been externally augmented by authorised data recipients...'.¹⁷

The CDR legislation includes in its definition of CDR data and directly or indirectly derived CDR data, information that is wholly or partly derived from CDR data (Sections 56AI(1)(b)(i) and 56AI(2)).

Concerns have been expressed that this section is potentially being interpreted too broadly.

An example is provided where general ledgers and financial statements are prepared using a customer's banking transaction data (shared by the bank using CDR), which is classified using accounting standards, and to which is added non-cash accounting transactions. This is undertaken by applying algorithms and coding, and professional judgement.

A question has been raised as to whether the general ledgers and financial statements prepared using these inputs would be classified as 'derived CDR data'.

It seems clear that these general ledgers and financial statements ought not to be treated as 'derived data' for the purposes of the CDR legislation.

The ACCC and Treasury should seek to clarify the interpretation of 'derived data' in the rules and/or the designation instrument for a sector.

¹⁵ Farrell Review (2017), page 37

¹⁶ 'Derived data' was referred to as 'value-added customer data' in the Farrell Review. Farrell Review (2017), pp37-39

¹⁷ Farrell Review (2017), page 37

6. Extending the CDR to more consumers

6.2. Specific rules for business partnerships

Consultation questions

20. *We are seeking feedback on the proposal for enabling business consumers (both non-individuals and business partnerships) to share CDR data.*
21. *In particular, we welcome comment on the proposal to require a data holder to provide a single dashboard to business consumers which can be accessed by any nominated representative to manage CDR data sharing arrangements.*
22. *Are there other implementation issues the ACCC should be aware of in relation to the proposed rules for CDR data sharing by non-individuals?*
23. *We welcome comment on the proposed approach to require data holders to treat business partnerships in line with the approach for dealing with business consumers? Do you foresee any technical or other implementation challenges with taking this approach for business partnerships that the ACCC should take into account?*
24. *Should additional protections be introduced for personal information relating to business partners who are individuals?*
25. *Are there other aspects of the rules that may require consequential changes as a result of the enablement of business consumers? For example, are the internal dispute resolution requirements appropriate for business consumers?*

Deloitte Comments and Observations

The ACCC has proposed extending those eligible to request that CDR be shared to non-individuals including corporate entities and business partnerships.

Deloitte supports the inclusion of corporate entities and business partnerships as CDR consumers.

The timeline set out by the ACCC in December 2018, clearly outlined that Phase 3 products included business finance, business lines of credit, business overdrafts and asset finance.¹⁸ The requirement to provide transaction data on Phase 3 products commences for the major banks in July 2021, and for non-major ADIs from July 2022. As a result, organisations will have had over two years to ensure that their product systems were equipped to provide this information to non-individual customers.

The proposal to provide a single dashboard would enable multiple persons authorised to transact on a business account to see and review the data sharing authorisations made by others authorised to transact on that account.

6.3. Secondary users

Consultation questions

26. *We welcome feedback on the proposals for enabling authorised users to share CDR data.*
27. *Should persons beyond those with the ability to make transactions on an account be considered a person with 'account privileges' in the banking sector?*
28. *How should secondary users rules operate in a joint account context?*
29. *As well as having the ability to withdraw a 'secondary user instruction', should account holders be able to have granular control and withdraw sharing with specific accredited persons that have been initiated by a secondary user?*

¹⁸ ACCC, *Consumer data right: Rules outline*, December 2018

Deloitte Comments and Observations

The consultation paper outlines a range of proposed rules in relation to secondary users. These include rules which allow secondary users with 'account privileges' to share CDR data.

The consultation paper notes that the ACCC is not proposing that every individual who is authorised to transact on behalf of a non-individual consumer should automatically be authorised to share CDR data.

Deloitte agrees with the position adopted by the ACCC that businesses grant different levels of authority to transact to a wide range of individuals and as a result it may not be appropriate to grant blanket authority to these individuals to share CDR data.

The ACCC has proposed developing rules to oblige data holders to provide non-individual customers with a service to make and revoke nominations for data sharing. The ACCC has also proposed developing rules to define 'account privileges' and the characteristics of someone who can exercise 'account privileges' including the minimum age for a person to have account privileges.

Deloitte does not believe it is appropriate for the CDR legislative framework to define specific rules for secondary users.

The rules for account holders, including secondary users, can be established for a specific sector through sector legislation or codes of conduct, or in the absence of a consistent sectoral approach, by individual organisations.

While the ACCC has noted the importance of developing flexible rules there is also a risk that any rules on secondary users developed by the ACCC under the CDR legislative framework could conflict with rules or practices adopted within a sector.

One of the principles of data sharing, and open banking specifically, is that people's ability to access information about their money should be as easy as their ability to access their money.

Banks, and other organisations, will have existing processes under which people are able to access their funds, access their accounts, and make changes to information about them held by organisations. The authority to make payments as well as to share information about money can both be established and changed as part of existing ADI account authorisation processes.

There is a risk that rules established under the CDR legislation for consumers to consent to accessing their data, may differ from the requirements organisations have for people to access their accounts.

While supporting the inclusion of joint accounts as part of the CDR framework, Deloitte recommends that rather than seeking to create new prescriptive rules, the ACCC should require that the requirements organisations have for consumers to access accounts determine the requirements organisations have for consumers to access information from those accounts.

This same principle would apply to whether a joint account holder needs to be informed about an authorisation to share information by one of the other joint account holders.

The requirement for joint or several authorisation of payments from bank accounts will have been determined for each bank account. These requirements should be used to determine whether joint or several authorisation or notification is required for disclosure of information about account transactions.

However, while this is well established in the banking industry, this is not as well established in other sectors. Often, despite accounts effectively operating as joint accounts, e.g. electricity, gas, many providers anachronistically require that an individual account holder be nominated for an account.

Deloitte also notes that the inclusion of secondary users will result in additional considerations for consumer dashboards. As noted in our response to Section 7.2 Amending Consents, given that consent management is specifically being considered by the Inquiry, Deloitte recommends that the ACCC consider the findings of the Inquiry and the comments made about consent in submissions to the Inquiry before proposing changes to the rules for consent.

7. Facilitating improved consumer experiences

7.1. Sharing CDR data on joint accounts

Consultation questions

30. We are seeking feedback on our proposals relating to sharing CDR data on joint accounts, including:
- the proposed approach to require data holders to allow consumers to set their preferences (a disclosure option) as part of the authorisation process*
 - the proposed approach of allowing 'joint account holder B' to withdraw an approval at any time*
 - the expansion of the rules to include joint accounts held by more than two individuals*
 - the proposal that joint account holder B does not have to 'approve' amendments to authorisations*
 - the proposed approach that the rules do not require (but do not prohibit) the history of disclosure option selections being displayed to consumers as part of the joint account management service or data holder consumer dashboard.*
31. Do the benefits of requiring data holders to display on-disclosures to 'joint account holder B' outweigh the costs?

Deloitte Comments and Observations

The consultation paper outlines a range of proposed rules in relation to consents for joint accounts. These are prescriptive rules.

As noted in our response to the questions raised in section 6.3 Secondary Users, Deloitte recommends that the process for joint account holders to access information on their accounts, be based on an organisation's existing requirements to authorise transactions on an account and not be the subject of CDR rules.

7.2. Amending consents

Consultation questions

32. Should accredited persons be required to offer consumers the ability to amend consents in the consumer dashboard, or should this be optional?
33. We are seeking feedback on the proposed rules about the way accredited persons are able to invite consumers to amend their consents. Should a consumer be able to amend consent for direct marketing or research in the same way as amending consent for use of data in the provision of goods and services?
34. Should the authorisation process for amending authorisations also be simplified?

Deloitte Comments and Observations

Consumer experience with consents and dashboards are a critical part of consumer acceptance of and confidence in data sharing.

Deloitte's [Privacy Index 2020](#)¹⁹ looked at community attitudes to consent. It highlighted that Australian consumers expect transparency and control over their data, but not at the expense of customer experience and without compromising ease of services.

However, many Australian consumers are unfamiliar with consent preference centres and dashboards. Currently only 21% of the 100 Australian brands Deloitte assessed provide privacy preference centres or dashboards to consumers.²⁰

¹⁹ Deloitte, [Deloitte Australian Privacy Index 2020: Opting-in to meaningful consent](#), July 2020. Refer also <https://www2.deloitte.com/content/dam/Deloitte/au/Documents/risk/deloitte-au-risk-australian-privacy-index-2020.pdf>

²⁰ Deloitte (July 2020), page 7

As a result, a concise and consistent consent management approach helps limit the burden on consumers and is likely to reduce consent fatigue.

The consultation paper proposed a range of changes to the rules relating to consents including changes to allow:

- an accredited person to invite consumers to amend a consent
- an accredited person to offer multiple consent management options.

There is merit in each of the objectives of the proposed changes. It will be important however, that the intended benefit arising from the proposed changes is not offset by a decrease in the consistency of consumers' consent experience which compromises consumer confidence and understanding.

With many Australian consumers unfamiliar with consent preference centres and dashboards, a concise and consistent consent management approach will limit the burden on consumers and is likely to reduce consent fatigue.

The consultation paper correctly highlights the risk that where actions taken by a consumer to withdraw an authorisation to share data result in different outcomes, this may create confusion for consumers.

In addition, Deloitte notes that the Issues Paper for the Inquiry has invited comments on 'how best to enable consumers to keep track of, and manage, their various consents.'²¹

A range of observations about the consent process have been made in submissions to the Inquiry. For example, one of the submissions noted that where a customer has provided authorisations on their account to share their data with accredited third parties, they may find the prospect of re-establishing these consents and authorisations on a new account to be sufficiently arduous that they may elect not to switch.²² This will be an important issue for consideration when amending the CDR rules.

Given that consent management is specifically being considered by the Inquiry, Deloitte recommends that the ACCC consider the findings of the Inquiry and the comments made about consent in submissions to the Inquiry before proposing changes to the rules for consent.

In addition, Deloitte recommends that any changes made to the consent framework and dashboards be part of a broader process to ensure that consent framework and dashboards are able to support a multi-sector CDR and that the ACCC avoid small piecemeal changes which risk compromising consumer understanding and acceptance.

7.3. Separate consents approach

Consultation questions

35. *We are seeking feedback on the proposed approach of separating the consent to collect from the consent to use CDR data (rather than combining consent to collect and use).*

36. *Should accredited persons be able to offer disclosure consents only after an original consent to collect and use is in place (with the effect that combining a use and collection consent with a disclosure consent would be prohibited)? See also the consultation questions in section 7.2 above.*

Deloitte Comments and Observations

The consultation paper notes that the current approach of a combined consent for collection and use of data was based on the findings of consumer experience research. As part of the Consumer Data Standards CX Workstream, three firms were engaged to deliver three programs of work in relation to the consumer experience with consents and dashboards.

The reports provided for the CX workstream highlighted both the importance and the challenges of balancing trust, safety, transparency and clarity. One of the reports highlighted the challenge that consumers face managing 'consent-based data sharing interactions with tens, or potentially even

²¹ The Inquiry: Issues Paper (2020), page 5

²² Tyro, *Submission in Response to Inquiry into Future Directions for the Consumer Data Right: Issues Paper*, 21 May 2020, page 2

hundreds of organisations' as the CDR is expanded across the economy. It concluded that 'The burden being pushed to the consumer is significant.'²³

The consultation paper proposed that separate consents be obtained for collection of CDR data and for use of CDR data. The consultation paper provided an example in which a consumer could withdraw or amend each of four different consents.

The consultation paper notes that separate consents 'creates more flexibility for accredited persons.' While this is a consideration, it is important that additional flexibility for accredited persons does not come at the expense of a clear, concise and consistent approach for consumers.

One of the challenges is the extent to which the provision of multiple granular consents confuses consumers and compromises their ability to provide informed consent, particularly for those with lower financial or data literacy.

While separate consents could work for some consumers, further customer research should be undertaken before this approach is implemented.

Another question that should be tested is how scalable the proposed separate consents approach is where there are multiple consent relationships between data holders and data recipients, particularly where these consents are for cross-sector data transfer as the CDR expands beyond banking.

²³ Greater Than Experience, *Consumer Data Standards: Manage and revoke, Phase 2 CX Stream 2 Report*, June 2019, page 24

8. Clarifying rule amendments

8.1. Application of product reference data rules to ‘white labelled’ products

Consultation questions

42. Are there any technical or other implementation issues of which the ACCC should be aware?

Deloitte Comments and Observations

As the consultation paper notes, many of the issues it covers – including tiered accreditation and inclusion of businesses as CDR consumers – were noted in the Review into Open Banking (the Farrell Review).

However creating the regulatory framework for a data economy is complex both for companies adapting systems to meet the new requirements, and for the regulators in designing and implementing the rules and standards to establish a CDR and the accreditation, monitoring and enforcement governance and processes to implement it.

Many jurisdictions have underestimated the complexity and scale of Open Banking implementation.

In Australia, this complexity has resulted in the twelve-month delay in implementation and the limited number of accredited data recipients in the first four months of operation in banking. It also means that the first phase of CDR is still being implemented by non-major ADIs.

As a consequence, and as one submission to the Inquiry noted, the current ‘legal and regulatory framework has developed in a staged approach, as regulators and governments have sought to address the regulatory and legislative challenges as they arose.’ What has not been published is a roadmap which outlines the planned evolution of CDR by function or by sector.

It has also resulted in the regulatory framework being re-considered by the Inquiry into Future Directions for the Consumer Data Right (the Inquiry) and commented on in the Interim Report of the Senate Select Committee on Financial Technology and Regulatory Technology

In past submissions Deloitte has noted that Australia should seek to align its regulations with international standards unless there is a strong rationale to do otherwise.

Deloitte acknowledges that Australia’s CDR regulatory framework is now, in many respects, leading the world, with other countries, such as New Zealand, and to some extent, the UK, seeking to align with some of the principles of Australia’s CDR as they design or amend their data sharing frameworks.

Notwithstanding this, in considering the nature, scope and timing of these amendments, consideration should be given to the extent of alignment with other jurisdictions, and in particular, the data sharing framework included in the European Union’s (EUs) General Data Protection Regulation (GDPR).

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