

Consumer Data Right

Rules Expansion Amendments Consultation Paper

Experian Australia response
29 October 2020



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About Experian

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We have 17,800 people operating across 45 countries and every day we're investing in new technologies, talented people and innovation to help all our clients maximise every opportunity. We are listed on the London Stock Exchange (EXPN) and are a constituent of the FTSE 100 Index. Learn more at experianplc.com or visit our global content hub at our [global news blog](#) for the latest news and insights from the Group.

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1. Executive summary

The Australian Competition and Consumer Commission (ACCC) has continued to play a vital role in stewarding the development of the foundational rules for the Competition and Consumer (Consumer Data Right) Rules 2020 (Cth). The proposed rule amendments introduce expanding participation in Consumer Data Right (CDR) to include new restricted tiers of accreditation, rules to allow consumers to consent to the disclosure of CDR data to third parties as well as increased functionality to improve the consumer experience. Experian welcomes the opportunity to provide feedback to the ACCC regarding the proposed rule amendments.

Globally, Experian operates in many countries that are implementing 'Open Data' initiatives. In Australia, Experian supports the adoption of the CDR Rules and we further support the ACCC's approach to considering accreditation models and data sharing capabilities that would increase participation in the regime.

Separate to this consultation it is understood that Treasury has introduced further amendments to the Act, to clarify the use of Outsourced Service Providers (OSP), noted as 'agents'. It is anticipated that further rule amendments will be forthcoming and we believe that the potential changes in rules to allow an OSP to access CDR data directly will help facilitate the availability and uptake of CDR alongside these proposed rules for intermediaries.

To this end, our response to the consultation considers the proposed rules as well as where there may be opportunity for additional participant designations and accreditation requirements that support the OSP role. This will allow for the delivery of innovative products and services in a Business to Business (B2B) model which will create additional benefit to consumers.

As a Credit Reporting Body (CRB) regulated under the Privacy Act 1988 (Cth), Experian is a staunch advocate for consumer data security, privacy safeguards, and the benefits of consumer consent and awareness of how their data is used. As a participant within the CDR regime, we envisage that we will help Australian businesses leverage CDR data to deliver products and services that will be tailored to their consumers' needs.

Experian are a global, market-leading provider of consumer credit information and analytics, lending decisioning platforms, and data integrity solutions. As such, we assist our clients with their innovation and strategic programs to the benefit of consumers in the marketplace. There is an important role for OSPs to play in the ecosystem, and therefore, the need to be able to access unrestricted CDR data directly to provide value-add services to Accredited Data Recipients (ADRs). Consumer consent will still be a key component of the exchange, managed by the ADRs and Data Holders as currently defined in the Rules. Noting that this approach would not dilute the consumer consent requirements or the responsibilities on the OSP with regards to data management.

Experian welcomes the expansion of CDR data for providing 'Insights'. The use of this data for research will allow for the development of new products and services and will drive competitive innovation in the market. Experian encourages rules that increase the access to de-identified CDR data, to create more opportunities for consumers. CDR data has the potential to accelerate improvements in credit risk decisions and affordability models which will increase consumer access to appropriate credit products in the market. Machine Learning models can deliver enriched data, insights, and smart financial management solutions to help consumers make the most of their time and money. When drafting rules around the authorised use of CDR data for insights, the ACCC should consider how data driven models are developed and validated.

While the additional accreditation models proposed will likely allow further access and adoption of CDR data, it appears that the technical accreditation requirements are very similar to the existing accreditation at the unrestricted level. These pose additional technical and liability burdens on certain participants which may still limit uptake.

There is an acknowledgement that there will be increased transparency to the consumer in the scope of consent with new levels of flexibility in the implementation of consent for consumers in the CDR data value chain. These rules should strive to create a balance between providing consumers with control, but removing unnecessary complexity where this is to the detriment of the consumer trying to engage in a desired product and service.



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

Q2. 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.

The additional levels of proposed accreditation demonstrate a consideration for the variety of businesses that would want to offer products and services, directly or indirectly to consumers. Accreditation is a suitable method of validating that participants are upholding the regulatory requirements and are prepared to deliver consumers the intended benefits under the CDR Act.

The rules continue to require that a participant, whose business model would be a Provider in a Combined Accredited Persons (CAP) arrangement, be accredited at an unrestricted level to offer a technical service that collects (transmits / aggregates) CDR data within the framework. The new accreditation models appear to be geared towards participants who want to receive CDR data to offer products direct to consumers but are still limited in data accessibility by requiring partnership with an unrestricted access accredited person.

While the new accreditation models provide for self-attestation and reduces the requirements for an external audit, it appears that there could still be significant time and cost to obtain restricted or limited accreditation and this may not present an advantage to potential participants over pursuing unrestricted access accreditation.

The current rules may still limit participation by entities who are specifically focused on delivering technical solutions. These technical solutions can provide capabilities to produce products and services leveraging CDR data for an accredited data recipient but would otherwise not be consumer facing. In particular where the rules still specify that an accredited person provide a consumer consent journey and dashboards (Division 1.4, subdivision 1.4.3 (1.14)).

We request that the ACCC take into consideration rules for a B2B model, otherwise known as an outsourced service provider and expand the capabilities to act between data holders and accredited persons. As we look at the UK Open Data model, the role of Technical Service Provider exists within a register and provides services to the regulated providers.

What we see as a differentiator in this proposed model, is that there would be an unrestricted OSP access designation, that would be focused on the Schedule 2 requirements, but would not specifically be required to provide a consumer consent journey or dashboards. The consumer dashboards would be better served and managed by the Accredited Principal, as proposed in the rules for CAP arrangements. The model would consider the current rules and a commercial arrangement as already outlined for OSPs (1.10, .Division 1.4, subdivision 1.4.4, 1.16).

Experian does acknowledge that the current rules have an unintended consequence where OSPs are unable to collect CDR data within the framework. In review of the latest Treasury proposed amendments to the Consumer

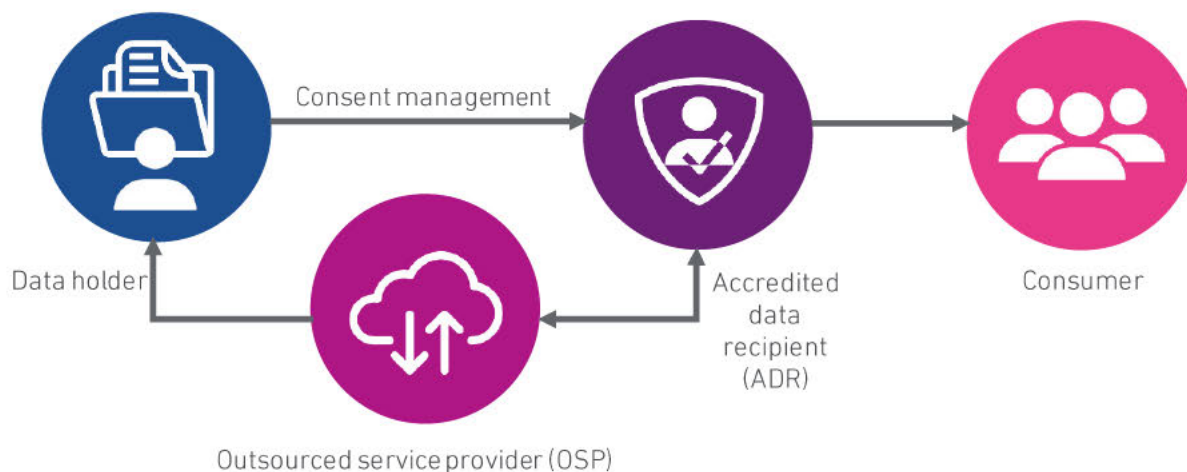
Data Rights Act, we see there is a concept of Agent (acting as an outsourced service provider). We look forward to how this role is defined within the CDR Rules.

The following models allow for both direct access to CDR data and the use of that data for a range of authorised activities.

As an example, a data access model that is B2B based would allow for an outsourced service provider (Agent) to be forwarded the consumer consent that was captured and managed upstream by the ADR, or Principal or other Provider. Under this model the outsourced service provider would access data directly on behalf of an ADR, manage any data collected appropriately (Schedule 2 requirements, reacting to notifications of consent change, managing consent expiry in its own right etc); but would not be responsible for consumer facing dashboards. All direct consumer interaction would be performed by the ADR and the Data Holder.

Coupled to this data access model, a data usage model aligned to a range of authorised activities would provide for additional flexibility. For example, the same OSP would be able to use the collected CDR data, in line with the upstream consent to provide components of the good or service to the consumer via the upstream accredited entity (ADR / Principal / Provider). A range of activities could apply here such as execution of various algorithms to support consumer value (e.g. responsible and streamlined lending, appropriate product offers, derived and summary data or other insights).

Figure 1.0 – Example of OSP and Principal (ADR)



Australia People's Bank wants to use CDR data as part of their credit lending process. Australia People's Bank has a direct relationship with the consumer and are acting as an ADR. The focus of Australia People's Bank is in developing new products and services, leveraging CDR data to provide consumers with more choice in the market. They would like to engage with a provider who specialises in enriching the CDR data to produce an efficient summary of the CDR information and add additional insights to deliver faster, more efficient and appropriate lending products to consumers. Australia People's Bank will present the consumer with the consent journey and dashboards.

Squizzle is a "Provider" (Agent / OSP) who has extensive experience in providing credit risk management platforms, data enrichment and insights and has added capabilities to collect the data on behalf of the Principal. In addition, Squizzle has the capabilities of storing all related consent authorisations needed to deliver the service in alignment with the CDR rules. Squizzle demonstrates to Australia People's Bank their ability to adhere to data

security requirements, risk and liability controls and the capability to deliver the desired product and services as a part of their commercial agreement.

Australia People's Bank would demonstrate that they have all the capabilities in the process of using the CDR data (Provider capabilities included) to meet Accreditation to participate in the CDR framework.

The registry would document that Australia People's Bank will be using Squizzle as an OSP for CDR transactions.

This model will provide benefits to the regime by allowing the participation of organisations that have the technical capabilities to facilitate innovation in the market based on CDR data. The ADRs will be able to focus on the use cases that will best help them serve the consumer market. The consumer will gain the benefit of faster and more efficient access to products and services, while still maintaining control of their data and visibility to how that data is used.

Q3. 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.

With consideration to risk-based accreditation scenarios, Experian believes that there is room for risk-based accreditation, licensing / certification, or contractual agreement models considering what services are being provided by an entity within the CDR framework. Requirements for Accreditation would be relevant and tailored to the services provided and inherent risk of the data in question.

A potential scenario for risk-based accreditation would be a provider that would collect and use de-identified CDR data as a part of a product or service. The Schedule 2 requirements, requirements for dispute schemes and liability insurance, and provisions for the consumer consent journey and dashboards could be reduced in some part as the risk to individual consumers would effectively be eliminated. In turn, adherence to approved deidentification processes would be more heavily weighted.

The following is commentary on the three proposed new restricted accreditation models, Limited Access Restriction, Data Enclave Restriction, and Affiliate Restriction.

Restricted level: Limited data restriction

Q6. Do you consider the restricted level (limited data restriction) would encourage participation in the CDR? What are the potential use cases that this level of accreditation would support, including use cases that would rely on the scope of data available under this level increasing as the CDR expands to cover new sector beyond banking?

Experian sees Affordability and Credit Risk as well-developed use cases for CDR data in Open Banking. The limited data set however would not provide the necessary information and may be limiting to adoption for these use cases.

Restricted level: Data enclave restriction

Q7. Do you consider the data enclave restriction would increase participation in the CDR? Where possible, please have regard to potential use cases in the banking sector and future CDR sectors.

The opportunity to innovate and provide new or enhanced consumer products and services utilising CDR data is still evolving. There may be participants who will only want to develop products and services for consumers, while others may want to provide technical platforms to other participants as well as offering products directly to consumers.

This model seems to consider these relationships and offers a potential solution. Enclave providers can offer streamlined entry to the market for participants who may have limitations in launching new technology solutions. There may however still be limitations depending on the investment for accreditation to participants in a Data Enclave.

Both participants will need to take on the investment of accreditation, relevant to their participation level, while the restricted data participant will need to rely on the Enclave provider to provide access to data and technology to implement future products and services.

An Enclave provider will need to consider the technical requirements for appropriate quarantining (tenanting) of the various ADR software and data across the enclave.

As the data must remain in the enclave, the use of CDR data by the restricted data participant for additional product development, product performance analysis, and other regulatory reporting requirements may be limited unless the Enclave provider has the technical capabilities, such as data and analytical sandboxes to support these activities. The use of CDR data to enhance credit risk algorithms is still evolving, as such this model may limit credit lender participants who would want unrestricted access to this data for internal business purposes.

This model presents a further risk to the Principal business if the data enclave provider should have unrestricted access accreditation suspended or removed for a period of time, this would result in the services and data being unavailable to the principal. This will not only impact the viability of the ADR (Principal), but would also impact consumers requiring or relying on the product or service.

Restricted level: Affiliate restriction

Q10. Do you consider the affiliate restriction level would increase participation in the CDR? Where possible, please have regard to potential use cases in the banking section and future CDR sectors.

With consideration of the Affiliate model, we observe that there is still a requirement that both parties be accredited, the Sponsor is required to be accredited for unrestricted access in order to collect and provide CDR data to the Affiliate, who will also be undertaking a level of accreditation. The sponsor will also be required to undertake additional burdens in attesting that the affiliates are meeting the requirements outlined in the rules.

This model presents a further risk to the Affiliate business if the Sponsor provider should have unrestricted access accreditation suspended or removed for a period of time, this would result in the services and data being unavailable to the Affiliate. This will not only impact the viability of the Affiliate but would also impact consumers requiring or relying on the product or service. It is also not clear what the cost and impacts to the Affiliate are of the proposed targeted audit process. This model may still limit participation as participants need to consider their costs to achieve related accreditations and whether this approach will deliver a return on investment for current and future use case development.

As suggested in response to Q2, an OSP and Principal model should be considered and may allow participants to focus on investing in the capabilities to best serve the framework. We observe in this model, that there is no clarity for an Affiliate to act as a provider, providing value added services to another Affiliate Principal who would be engaged directly with the consumer.



3. Expanding how accredited persons can work together

Combined Accredited Person arrangements

Q14. 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.

In the proposed CAP arrangement, the role of Principal has been expressed as being consumer facing in the delivery of products or services. Having the Principal responsible for consumer-facing requirements would be beneficial as the Principal will be the main point of contact which will build trust in the product and service that the consumer is acquiring. This will also reduce the potential for confusion, frustration, and drop out if a consumer is having to engage with multiple participants that they are not familiar with. This approach could also minimise the operational requirements on Providers and reduce potential duplicate communications with consumers.

In this scenario, the Principal and Provider would have contractually agreed upon policies and procedures to manage consent and facilitate disputes resolution. The principal may also utilise technical services of a provider to facilitate the management of consumer facing aspects.

Transfer of CDR data between accredited persons

Q15a. 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?

Experian agrees with the concept of consumers consenting to the disclosure of their data to other participants that will deliver value added products and services. It is recognised that the rules attempt to consider various examples of where CDR data and the relevant participants would be included in the value chain. This is not unlike the consumer consent requirements to disclose consumer credit information between a Credit Provider and a Consumer CRB as outlined in the Privacy Act 1988 (Cth) Part III A .




Streamlined consumer consent for the disclosure, collection and use of the data, should be considered in future rules that include the role of the Agent as a participant.

Q15b. 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?

Extending the principal of consumer control around the use of their data could also include a certain level of transparency around the commercial arrangements that are in place amongst the participants. Today, a consumer may often see references to other organisations that are leveraged to provide products and services.

We see that the level of transparency around commercial arrangements should be appropriate with the use case of the data. Messaging can simply imply that there is a commercial arrangement in place without detailing the specific commercial value of the data. If it is intended that transparency could influence consent to disclose, the impact of not permitting consent should be made clear to the consumer.

We have detailed a few examples below;

 Marketing	Where a participant is selling CDR data to other parties and the use the data is for marketing purposes, the disclosure could specify that there is a commercial arrangement in place. The impact to the consumer of not consenting would be that they would not receive marketing offers from participants. Today, consumers are provided the opportunity to opt-out of marketing.
 Lead generation	Where a participant has an arrangement with another participant to generate leads at the consumer's request, a message may simply reference that there may be a commercial arrangement with a participant that the consumer chooses to do business with.
 Product or Service Provider	Where a participant is disclosing CDR data to another participant (ADR or OSP) to facilitate the delivery of a product or service for a fee, it would not be necessary to refer to the commercial arrangements, however the participants may be named as part of the value chain.

4. Greater flexibility for consumers to share their CDR data

Disclosure of CDR insights

Q18. Should disclosures of CDR data insights be limited to derived CDR data (i.e. excluding 'raw' CDR data as disclosed by the data holder)?

Insights that can be derived from CDR data will assist in driving innovation in consumer products and services and create operational efficiencies for participants. Consumers will benefit in a number of ways, from faster and more efficient approvals for credit, quicker onboarding processes as well as more tailored offerings. Flexibility in the inclusion of CDR data insights should be considered for current and future uses of CDR data.

Experian believes that insights derived from CDR data can deliver value as a standalone product or service in addition to products that require the explicit data so as to provide context to the derived insight.

Consider the example of consumer credit scores delivered in conjunction with the consumer credit report to a Credit Provider. A lending decision may be based on both the insights derived from the CRD data as well as the raw data. This will provide context to the terms and conditions that are offered to the consumer.

Where raw data is required, disclosure would only take place with participants that are recognised within the CDR framework with appropriate rights to the CDR data.

Where the rules permit disclosure of Insights to a third-party, potentially non-accredited participants, Experian agrees that this should be limited to the insights only and not be accompanied by the raw data, this approach could expand the use and take-up of CDR data.

Q19. 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?

We would not consider appropriate documentation of the disclosure of insights to be onerous. For example, today a consumer CRB records all disclosures of consumer credit information.

With regards to transparency, using the example of consumer credit reports and credit scores, the concept of consumer disclosure for specific purposes should be considered. The Privacy Act III A allows for a consumer to access their credit report on an annual basis. For lending decisions, the information that was used in the lending decision should be made available to a consumer.

However, disclosing insights to the consumer in order to gain consent, without sufficient context, may impact the value of the insight and the purpose for the insight as part of the desired product or service. Technically, this could also create inefficiencies for products and services that rely on the insights to be delivered in real-time.

5. Facilitating improved consumer experiences

Amending consent

Q32. Should accredited persons be required to offer consumers the ability to amend consents in the consumer dashboard, or should this be optional?

The ability for consumers to effectively manage and amend consent allows them an additional level of control and may encourage consumer engagement as they become familiar with the process. Where the consumer is engaging with an Accredited person, who is delivering the product or service, we agree that the Accredited person should be allowed to present amendments relevant to improving the delivery of a product or service.

Q34. Should the authorisations process for amending authorisations also be simplified?

The process to amend consents should be consistent and streamlined for all data sharing purposes. Consistency will help to reduce consumer fatigue with the consent process and encourage active participation.

Separate consents approach

Q35. We are seeking feedback on the proposed approach of separating the consent to collection from the consent to use CDR data (rather than combining consent to collect and user).

With regards to separating the consent to collect from consent to use, the rules should remain flexible in how consent is presented to the consumer, to provide clarity and control over how the CDR data is used to provide the desired products and services. Consent options should be streamlined, consistent, and relevant to maintain continuity, performance, and the quality of the consumer's experience.

Point in time redundancy approach

Q38. We are seeking feedback on the proposed approach where a consumer withdrawing their authorisation for a data holder to disclose their CDR data results in removal of the ADR's consent to collect only.

We agree that the approach to allow for point in time consent would permit the consumer to continue to engage with the Accredited Person who is providing the product and service. This would reduce complexity and confusion for the consumer in managing consents, where this is applicable. A potential example would be for the use of CDR data in credit risk assessments, where the collection of data may only be required once, but the decisioning process requires the use of the data for an extended period of time.

Where applicable, we agree to the concept that withdrawing authorisation results in the removal of collection consent only. Consent across participants should remain aligned, if there is an expectation that a consumer would be using more than one dashboard to manage consent. Where the product or service offered by the ADR

requires point in time consent, then the Data Holder should present the appropriate authorisation explanation and the consent amendment would result in ADR removal of consent to collect only.

Where consumer specific information is captured, the data that is identifiable should be subject to consumer control and the deletion of the data should apply with expressed consents. We recognise that within CDR data there will be identifiable data and data that would be unidentifiable, if not associated with a specific consumer. This data should be subject to the de-identification rules and considered for use within insights and research.



6. Permitting use of CDR data for research

Experian is encouraged by the inclusion of CDR data for research purposes. The availability of this data will be valuable in the future development of products and services as well as enable better performing products and services that deliver more tailored and appropriate experiences to consumers.

To expand the use of CDR data for insights and research in the development of new products and services, the rules should consider ways to streamline consent and authorised use of the de-identified data that is collected. This is especially important for data driven models that produce insights that can be leveraged across multiple distinct products and services in the marketplace. There is more value to the consumer than risk in using de-identified data as the use of de-identified data will allow for improved products, services and processes that may benefit the consumer at any point in time.

For example, a transaction categorisation model that leverages an evolving pool of transaction data to improve the accuracy of how transactions are classified to produce insights for credit risk assessments, personal finance management applications, savings and investment recommendation.

Consideration needs to be given to the way that current products and services are built, developed and supported to bring innovation to the marketplace.

7. Conclusion

Experian continues to be an advocate of CDR and the benefits it affords consumers as they direct the use of their data to gain access to more appropriate products and services. As an established consumer data business, we are committed to providing products and services that will assist individuals and businesses maximise the potential of the CDR regime.

Experian recognises the advancements in CDR participation that the proposed expansions will offer to accelerate the benefits of the Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2019 (Cth) (CDR Act). In our interpretation of this consultation, the specific amendments consider how best to interpret the CDR Act, introduce additional levels of participation, explore the use of CDR data for innovation, and provide more transparency around consent for consumers and participants.

Our observation in completing this submission is that there are several areas to consider when revising the rules, these revisions will impact the implementation of CDR and establish how best to encourage participation. We feel that there is still opportunity in the expanded role of OSPs to drive innovation by providing technical solutions to the benefit of all participants.

We see the OSP;

- Being able to collect and add value to CDR data as a part of delivering a product or service through an ADR.
- Demonstrating responsible use and handling of CDR data and associated consent authorisations.
- Providing reliable and transparent access to CDR data and Insights within the designated framework.

As a global organisation, we have actively participated in the establishment of Open Banking in other markets and we look forward to participating in further consultation opportunities in order to support the success of the regime.