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Australian Competition & Consumer Commission (ACCC)
GPO Box 3131
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Reference: CDR rules expansion amendments Consultation Paper September 2020

Submission

Moneytree submits the following recommendations to the ACCC in response to the Consumer Data Right (CDR) rules expansion amendments Consultation Paper, released in September 2020.

Recommendations relating to accreditation levels

Moneytree is preparing to be accredited as an unrestricted CDR participant. From this experience, we have learned that the current requirements for the sole accreditation level of 'unrestricted' demand significant financial and human resource investments. These costs are proving to be an enormous, if not an impossible, barrier to entry for many small to medium-sized potential CDR participants.

We note that the ACCC has advised at the time of submission, only [four entities have been accredited as CDR data recipients](#) since the commencement of open banking.

Furthermore, the EY FinTech Australia Census 2020¹ published last week shows fewer than half of Census respondents currently anticipate becoming CDR accredited data recipients.

To address this, the ACCC should introduce a tiered accreditation system.

Unrestricted accreditation

We recommend that the current unrestricted level of accreditation only applies to participants that access and distribute all clusters or types of consumer CDR data.

¹ EY FinTech Australia Census 2020 October 2020 <https://www.fintechaustralia.org.au/ey-census/>

Tiered accreditation

For all other participants, we recommend different tiers of accreditation based on the confidentiality/personal identifiability of disclosed CDR data that the participant has access to, rather than the participant's role in the CDR regime. For example, consumers' transaction details data alone is less confidential than a combination of transaction details data and contact details. Therefore, participants should be required to have a higher level of accreditation to access the latter.

It is appropriate for a data intermediary or a recipient that does not collect CDR data from the data holder directly (often referred to as downstream providers) to have lower and possibly no accreditation. Some downstream providers, for example mortgage brokers, already have requirements for data collection, use, disclosure, retention, and destruction².

We also encourage the ACCC to facilitate a level of accreditation for participants who consume derived CDR data which are not easily classifiable under the current data standards. For example, a participant may only be interested in identifying a consumer's income bracket and past two years of monthly expense statistics, which an intermediary can provide.

Accreditation at each tier should satisfy all lower tiers; accreditation should ladder down so that higher levels encompass all levels below to increase CDR participation.

Accreditation relating to data recipients using data intermediaries accredited at the unrestricted level

Data recipients using the services of a data intermediary with unrestricted accreditation should only be subject to a lesser set of criteria. To truly drive adoption of the CDR by a diverse range of recipients, Moneytree believes the best approach is to adopt a UK-style "agency" model (referred as "affiliate restriction" model in the Consultation Paper). Therefore, we support the addition of this approach outlined in the Consultation Paper.

While data recipients will still be holding CDR data, this is not unique. Many Australian consumers already have the ability to obtain their bank data (for example, in the form of downloaded statements) and share that data with various third parties. Where they do so, the third party recipient must hold that information in accordance with general privacy laws and any arrangements agreed between the third party and the consumer. Whether financial data comes from an API provided by an intermediary (i.e. CDR data) or a physical or digital copy of a financial statement, the risks surrounding that data are similar.

² Australian Privacy Principles <https://www.oaic.gov.au/privacy/australian-privacy-principles/>



Therefore, all accreditation criteria need not apply to a data recipient that receives information via a fully accredited data intermediary.

Tiered accreditation for data recipients using an intermediary accredited at the unrestricted level could be achieved by the ACCC adopting a subset of requirements. For example, depending on the use cases (i.e. which data scope is requested and/or whether the data recipient holds/stores data), data recipients who use an intermediary could be exempted from some accreditation requirements, such as the need to maintain the specified level and type of professional indemnity insurance and dispute resolution membership. This will reduce compliance costs and, therefore, a barrier to entry, encouraging greater participation in the CDR regime.

Instead of requiring accreditation from the ACCC, tiered accreditation for these data recipients could rather mean satisfying the relevant unrestricted data intermediary that they are a fit and proper person to receive CDR data. Intermediaries would need to make this assessment with regard to criteria determined by the ACCC. In some ways, this exercise could be seen as an extension of the due diligence exercises conducted by the intermediaries on technology vendors.

An alternative would be to place rules on recipients obtaining data from intermediaries in line with those expected of general accounting firms, notably adherence to the Privacy Act and its associated provisions for mandatory data breach notifications.

We anticipate all data recipients, regardless of their level of accreditation, would need to comply with all of the remaining aspects of CDR rules, especially as they relate to consumer consent and other interactions with consumers.

Recommendation relating to the proposed recognition of ISO 27001

We recommend that ISO 27001 certifications be accepted as equivalent to the proposed standards for unrestricted CDR accreditation.

We encourage the ACCC to continue to expand the number of acceptable equivalent certifications, which will reduce overall costs of compliance and therefore improve adoption.

We also encourage the identification of equivalent standards that may exist in non-banking industries such as telecom and energy.

Recommendations on greater choices for consumers for sharing data

The purpose of the CDR is to give Australian consumers greater control over their own data, including the ability to securely share data. In line with this, Moneytree fully supports enabling



accredited data recipients to share CDR data with non-accredited entities with explicit consumer consent.

For Australians to derive the greatest value from the CDR regime, consumers need to have the ability to use and share their CDR data at their discretion. As currently drafted, the CDR rules prevent the sharing of data with non-CDR accredited parties. This means Australians are unable to take common-sense and desirable actions, such as sharing their CDR data with accountants and financial planners who are very unlikely to seek full CDR accreditation due to the significant investment required.

Rather than restrict sharing of CDR data to CDR-accredited parties only, the rules should be amended to allow consumers to either provide or refuse consent to share his/her financial information with any party as long as the following information is provided at the time by the data recipient to the consumer:

- whether the data recipient is a CDR accredited data recipient;
- what being a CDR accredited data recipient (or not) means (i.e. the data recipient is known to have fulfilled requirements ensuring data safety, etc.), and;
- the (potential) impact of sharing this information, especially to a non-accredited party (i.e. the consumer is no longer protected by the CDR rules).

We recommend the ACCC establishes a framework to enable consumers to easily make informed decisions to share their CDR data widely, instead of restricting disclosure of CDR data to limited classes of non-accredited entities (such as trusted advisors who fall within a specified professional class) as the latter may impede market innovation.

The ACCC has amended the CDR rules to permit the use of accredited intermediaries to collect data through an expansion of the rules relating to outsourced service providers from 1 October. With the introduction of data intermediaries, smaller non-accredited participants should be able to offer their services while leveraging the intermediaries' abilities to manage the information security risks (i.e. by providing them with a secure platform to provide service to the consumers).

These smaller non-accredited participants should be able to rely on the data intermediaries' accreditation without the need of being accredited, in the same way a payment provider handles credit card numbers on behalf of a merchant that may not be PCI-DSS compliant.

Recommendations relating to data protection and privacy

We encourage the ACCC not to 're-implement' data protections that exist under the Privacy Act and other legislation / regulatory requirements. Bilateral data sharing agreements for precisely the same type of data already exist and serve as an alternative to the CDR. The CDR is an



opportunity to bring transparency and consumer control to the existing data economy; overly onerous rules around CDR data will discourage its use as companies choose existing tools instead.

The sharing of data obtained through the CDR regime with non-accredited third parties should be subject to the overall privacy and consumer protection arrangements. The CDR regime is designed to secure the transfer of data at the consumer's discretion between data holders and data recipients, not restrict the way consumers may use their data. If there is a view that financial data, or all personal information, requires additional protection, this should be dealt with through amendments to Australia's established privacy and consumer protection laws.

Currently, any two companies can create a bilateral data-sharing agreement outside the CDR. The CDR should serve as a superior option, which enhances transparency and consumer control, while still enabling the services that consumers use today and new, innovative services that arise.

Disclosure and consent

Disclosing CDR data from an accredited person to a non-accredited person should not occur without the explicit consent of the consumer as the data owner.

Data sharing must only occur where the consumer has given relevant, informed consent to the accredited or non-accredited data recipient and authorisation of the data holder.

Moneytree supports inserting in the rules the ability to disclose to non-accredited third parties. However, we recommend the disclosure to a non-accredited third party should meet the same transparency and consent standard as that to an accredited third party. A consumer should be presented with a similar disclosure screen naming the intermediary sharing the data as well as the third-party receiving that data.

All relevant information, including detailed information of the third party and the data intermediaries, level of accreditation of each party, and the purpose of information disclosure, should be explicitly disclosed to consumers during the consent process. This will allow the consumer to make better-informed decisions and increase consumer confidence in the CDR regime.

The consumer should have a bilateral agreement such as Terms of Services with both parties, and the accredited and non-accredited parties should have a bilateral sharing agreement similar to existing arrangements such as bank feeds to accounting services.

The CDR rules should include the requirement that any bilateral contract for sharing CDR gathered data with a third-party that is not CDR accredited must have the explicit consent of the consumer and the same transparency requirements before disclosure.



Separation of Collect/Share and Use Consent

We support the proposal on 'point in time' redundancy and separating consent to collect/share and consent to use CDR data as standalone consents. We believe this change would open up many possible scenarios and use-cases which would benefit CDR participants and ultimately, consumers.

We also recommend that the use consent be extendable so as to support historical data use cases. For example, a consumer that closes a credit card may no longer allow the collection of new data but would like to continue to see long term spending graphs about their credit card usage over multiple years. In such a case, the consumer would want the data previously collected to be usable long term, despite no longer collecting new data.

Further, we recommend extending the current maximum consent duration from 12 months to three years, with guidance given to accredited data recipients that the requested duration must be appropriate to the nature of the service offered, and proportionate to the benefits conferred on the consumer.

We thank the ACCC for the opportunity to comment on the draft rules. We will continue to publicly advocate for the full disclosure of CDR data to intermediaries and a tiered CDR accreditation system, as well as to engage on broader issues in relation to the CDR regime.

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