



09 May 2019

The Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

By online lodgement: <https://consultation.accc.gov.au/communications-1/consumer-data-right-draft-rules-consultation/>

Dear Commissioners,

Consultation Draft Rules for the Consumer Data Right

Quantium welcomes this opportunity to comment upon the consultation draft rules (**Draft Rules**) for the Consumer Data Right (**CDR**) in the banking sector as published.

We first provide background about Quantum's interest in the CDR system and then provide our comments on the Draft Rules.

Background as to The Quantum Group

The Quantum Group (**Quantium**) is an Australian owned group of companies, with our head office in Australia and operations in India, New Zealand, South Africa and USA. Quantum is 16 years old. We currently employ around 800 people, making us the largest specialised data science business in Australia. We work with iconic brands in over 20 countries across government, insurance, retail, banking, FMCG, health, property and consumer services. Our data science work involves use of business data of data partners and business data of our respective clients.

Quantium's core business is to assist our clients to better understand their customers, through provision of advanced data analytics services utilising data science and artificial intelligence capabilities. That core business is conducted using customer data that is managed through implementation processes, controls and safeguards that have been designed by us to meet requirements of the Australian and other relevant national privacy laws. As such, our core activity requires privacy by design, information security by design, and the minimisation of the handling of personal information about individuals (regardless of where those individuals are located). We segregate data sets entrusted to us by our business partners and clients. We manage those segregated data sets in accordance with exacting requirements as to confidentiality as agreed with our respective business partners and clients.

We also undertake deidentification based data linkage for some data sets of multiple data partners and clients, to the extent specifically authorised by those parties. Data linkage is conducted in a segregated data management environment that is subject to technical, operational and contractual controls and safeguards. These controls and safeguards address deidentification protocols and other requirements as to data that is permitted to be brought into that managed data environment, as to processes governing data linkage and use, and limitations as to outputs and insights derived through that data linkage.

Data linkage and data analytics enable Quantum to develop predictive models and algorithms for artificial intelligence and machine learning services that we provide to Quantum's clients to enhance their operating efficiency, reduce their costs and improve the customer experience.

As custodian of valuable, commercially sensitive and customer data sets for leading and often competing Australian businesses, Quantum's business depends upon consistently reliable legal and regulatory compliance. Maintenance by Quantum of the highest levels of business confidentiality is also critical to maintain digital trust of our data partners and our clients and their customers. Quantum delivers on this requirement

through deployment of best practice frameworks, processes and technical, operational and legal controls and safeguards.

Quantium's interest in the CDR system

We believe that the CDR system, properly designed and implemented, should deliver substantial benefits for consumer welfare and the Australian economy. We are excited by the prospective impact of this important regulatory initiative. In the 16 years since Quantium was founded (by actuaries initially working in the financial services sector), this is the most profound change we have seen in how regulation as to handling of data may be utilised to increase consumer welfare. We are all aware of the beneficial impact that increased liquidity in financial markets may have on society. Increased liquidity of consumer and business data may likewise deliver substantial benefits. It is important that we collectively get the CDR system right.

As a business that exists to driver better data driven possibilities for customers and society, we particularly believe in the customer-centric foundations of the Consumer Data Right.

We also see significant opportunities through open banking and the broader application of the Consumer Data Right for Quantium to act as a reliable and trusted intermediary within the CDR system leveraging our best practise experience across both privacy and security with respect to customer data; acting in this capacity will allow us to even further improve the customer experience of our clients by deploying our data science and AI capabilities in an open data environment.

We expect that Quantium's role may vary by industry sector and product set. Quantium may act as an accredited person, act as an outsourced service provider to data holders in relation to their fulfillment of data holder's CDR rights and obligations, or act as an outsourced service provider to particular accredited data recipients.

We also expect that regardless of the role or roles that we perform in the CDR system, the respective entities for whom we may act as a CDR intermediary will require us to meet the high standards envisaged by the ACCC as required for unrestricted level accreditation as an accredited person.

Quantium's comments on the Draft Rules

- Stability of the CDR Rules

We note the ACCC's intention that the Draft Rules when implemented will be a minimum viable product for initial implementation of the CDR system and will be refined and expanded over time as experience is gained in the operation of the framework.

We commend this approach, although we also observe that substantial investments will be made by CDR participants in development of data handling processes, systems, interfaces and consumer dashboards on the basis of the CDR Rules as promulgated.

Accordingly, we suggest that the ACCC should seek to settle the CDR Rules at least to the extent that the Rules will affect detailed specification of core CDR architecture, thereby to minimise subsequent changes that would materially affect core CDR architecture. Greater clarity would provide greater confidence for potential CDR participants to make these investments and thereby better assure the success of the CDR system. Greater standardisation should also facilitate increased participation in the CDR system and inter-working of participants, lowering the costs of each participant's participation.

- Prospective role of outsourced service providers in the CDR system

We commend the ACCC's recognition (in Rule 4.8, page 30 of the Draft Rules) of the prospective role of outsourced service providers in the CDR system. Costs incurred by CDR participants in implementation of the CDR system may be substantially reduced through efficiencies and economies that specialised data intermediaries may provide by acting as outsourced service providers in the CDR system. Intermediaries may also facilitate demonstrably reliable and consistent authentication of requests for provision of CDR data and subsequent handling of CDR data, including forward handling as may be required if reciprocity is mandated in the relevant legislation.

These cost savings are likely to be particularly important for new entrants such as comparisons providers and other fintechs that may seek to minimise their own handling of sensitive data by outsourcing key functions to trusted data intermediaries.

As already noted, Quantum may seek to act as an outsourced service provider to data holders in relation to their fulfillment of data holder's CDR rights and obligations, as well as acting as an outsourced service provider to particular accredited data recipients.

We suggest that the explicit recognition of the role and responsibilities of outsourced service providers to ADRs should be reflected in explicit recognition of the role and responsibilities of outsourced service providers to data holders. Although the largest Australian banks might be expected to themselves design, implement and operate the complex technical and operational systems and processes required to participate as a data holder in the CDR system, smaller banks might elect to outsource some roles and responsibilities required of a data holder.

Reflecting the important role that outsourced service providers can be expected to play in enabling the CDR system, the ACCC may wish to consider requiring data holders and accredited persons to apply fit and proper person criteria (as referred to in Rule 1.9, page 15 of the draft Rules) in selection of outsourced service providers.

We also suggest that the requirement of authorisation to disclose CDR data (Division 5.5 on pages 37 and 38) is clarified such that use by an outsourced service provider under contract to an accredited person and within the scope of authorised use under Division 4.4 (on pages 35 and 36) is treated as a use within Division 4.4 and not a disclosure requiring separate consent under Division 4.5. Adoption of this approach would also ensure consistency with the existing guidance issued by the Australian Information Commissioner as to the distinction between "use" and "disclosure" under the Privacy Act 1988 and minimise unnecessary and potentially confusing complexity in seeking consents as to "disclosure".

- **Consumer requests and dashboards**

Requirements as to details available in consumer dashboards need to strike the right balance between transparency, intelligibility and comprehensiveness. Success of the CDR system critically depends upon uptake by consumers. This uptake will be undermined if there is excessive complexity.

As to dashboards (Rules 1.13 and 1.14, pages 19 and 20), we suggest that the requirements as to what the respective dashboards must "contain" be clarified to encourage provision of relevant information in layers, such that key information is immediately available and further information readily available through layered click-throughs. Of course, selection by designers of what appears in respective layers must not be misleading: the ACCC is well placed to apply existing rules (including as to asterisks and other qualifying text) to determine whether layered disclosures are appropriately fair and transparent.

We also suggest that the requirements as to provision of an online service for managing consumer data requests should include a requirement for a prominent link on the home page of the relevant entity (accredited person or data holder) to the online service.

Similarly, we suggest that the requirement as to provision of a product data request service (Part 2 – Product data requests) should include a requirement for a prominent link on the home page of the relevant data holder to the place at which a consumer data request may be initiated.

- **Division 8.4 - Data standards that must be made**

Draft Rule 8.11(c) (page 66) would empower the Data Standards Chair to make data standards as to "descriptions of the types of CDR data to be used by CDR participants in making and responding to requests".

The reference is ambiguous as to what may be included within a description of types of CDR data to be used in responding to a request. Given the iterative operation of the definition of derived data and proposed section 56AI(1)(b), the breadth of this provision could create uncertainty as to the risks of expansion of the types of inferred and other value added data that might be described through a data standard, beyond the primary CDR data as specified pursuant to section 56AI(1)(a) of the Act. We suggest that this ambiguity is addressed, given the critical importance of appropriate scoping of the data declaration in relation to its operation in respect of inferred and other value-added data. If there is 'scope creep' in respect of inferred and other value-added data, there is a significant risk that the incentives for participants in the CDR system to invest in innovation in data analysis and insights will be undermined through free-riding of some data recipients. Draft Rule 8.11(c) (page

66) should be expressly made subject to Schedule 2 Part 2 (pages 87 and 88) and in particular Draft Rule 2.2(1)(a).

We have limited our comments having regard to current uncertainty as to the final form and content of the Treasury Laws Amendment (Consumer Data Right) Bill or replacement as Bill as introduced into the next Parliament. We have separately made submissions in the appropriate consultations as to the content of the Bill, including expressing our view that there should be statutory limitation of prospective CDR data sets to exclude value-added inferred data and greater clarity and certainty as to the intended operation of reciprocity. Of course, we may have further comments as to the operation of the proposed CDR Rules if the provisions of the enabling legislation substantially change from what was proposed by the Government and thereby affects scope and operation of the CDR Rules.

We appreciate this opportunity to present this submission to the ACCC and are keen to constructively contribute to further determinations of the framework and rules for the CDR system. We would welcome the opportunity to participate in fora for industry consultations and to provide any detailed input or further clarifications as may assist the ACCC. Please do not hesitate to contact me at [REDACTED] should you wish to discuss this further.

Yours sincerely,



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