

28 July 2020

Attention: CDR Rules Team

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

Dear CDR Rules Team

SUBMISSION: CDR RULES CONSULTATION

The Tax Practitioners Board ('TPB') is pleased to provide you with a submission in relation to the proposed draft rules for the *Competition and Consumer (Consumer Data Right) Rules 2020* ('Rules'), which introduce a concept of combined accredited person arrangements ('CAP Arrangements').

While the TPB is not directly impacted by the Rules, the TPB considers that some aspects of the consultation are particularly relevant to the TPB and the *Tax Agent Services Act 2009* ('TASA'), noting that the TPB's regulated population of registered tax practitioners hold information (or data) relating to their clients' affairs.

Background

Role of the TPB

The TPB is an independent statutory body created under the TASA to register and regulate entities providing tax agent services, tax (financial) advice services and BAS agent services in Australia. The object of the TASA is to ensure that the services provided by registered tax practitioners (i.e. registered tax agents, tax (financial) advisers and BAS agents) for a fee or other reward are provided to the public in accordance with appropriate standards of professional and ethical conduct.

As at 30 June 2019, there were 78,270 tax practitioners registered with the TPB, which consists of 42,850 tax agents, 19,619 tax (financial) advisers and 15,801 BAS agents.

Disclosure of information relating to a client's affairs

All registered tax practitioners are required to comply with the confidentiality obligation under the Code of Professional Conduct in the TASA. In particular, the confidentiality obligation in subsection 30-10(6) of the TASA states that registered tax practitioners must not disclose any information relating to a client's affairs to a third party without the client's permission, unless they have a legal duty to do so.

A 'third party' is any entity other than the client to whom the information relates and the registered tax practitioner. This includes entities that maintain offsite data storage systems, however, the TPB recognises that there is a distinction between data storage that a third party cannot effectively access (for instance, through the use of encryption) and disclosure to a third party.

Therefore, any disclosure made by a registered tax practitioner to a third party of information relating to a client's affairs, in the absence of the client's permission or a legal duty to disclose the information, may be a breach of subsection 30-10(6) of the TASA, and may result in the imposition of one or more administrative sanctions under the TASA for that breach.

Further information on the confidentiality obligation under subsection 30-10(6) of the TASA is contained in [TPB Information Sheet 21/2014 Code of Professional Conduct – Confidentiality of client information](#) and [TPB Information Sheet 32/2017 Code of Professional Conduct – Confidentiality of client information for tax \(financial\) advisers](#).

The TPB has also provided guidance on the confidentiality obligation in relation to the use of cloud computing in [TPB Practice Note TPB\(PN\) 1/2017 Cloud computing and the Code of Professional Conduct](#).

TPB's general comments on the consultation


The TPB notes that the proposed draft rules introduce a CAP arrangement in relation to Consumer Data Right ('CDR') data, where one Accredited Data Recipient ('the Principal ADR') is permitted to enter into a CAP Arrangement with another Accredited Data Recipient ('the Provider ADR') to collect, use and/or disclose CDR data. Depending on the agreements contained in the CAP Arrangement, either the Principal ADR or the Provider ADR (on behalf of the Principal ADR) may decide which party will discharge the obligations in the Rules, including which party collects the consumer's consent in relation to their CDR Data.

Regardless of whether a CAP arrangement is in place, the TPB notes that all registered tax practitioners are still required to comply with the confidentiality obligation under subsection 30-10(6) of the TASA. Namely, a registered tax practitioner may only disclose information relating to a client's affairs (or a former client's affairs) to a third party if:

- the registered tax practitioner has the client's (or former client's) permission; or
- there is a legal duty to disclose the information.

Registered tax practitioners may obtain the client's permission by way of a signed letter of engagement, signed consent or other communication with the client. The TPB recommends that the relevant communication to the client should outline the disclosures to be provided, as well as information about the entity (or entities) that will have access to the client information, where the disclosures will be made, and where the data will be stored.

In relation to recurring or ongoing engagements between a registered tax practitioner and a client, the TPB recommends that arrangements are reconfirmed or reviewed with clients regularly (preferably annually). The TPB would generally expect that a new letter of engagement or similar agreement is provided to clients in certain circumstances, including but not limited to where there has been a change to the third party recipients of client information.

If you have any queries in relation to the TPB's submission, please contact 

Yours sincerely



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Tax Practitioners Board