



EXECUTIVE OFFICE

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Senator Andrew Bragg
Department of the Senate
PO Box 6100
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CANBERRA ACT 2600

By email: FinTech.sen@aph.gov.au

Dear Senator Bragg

Senate Select Committee on Financial Technology and Regulatory Technology – issues paper

The ACCC welcomes the opportunity to make a submission to the Senate Select Committee on Financial Technology and Regulatory Technology's inquiry into the current state of Australia's FinTech and RegTech industries. This submission will focus on the government's Consumer Data Right (CDR) initiative, in relation to which the ACCC is the lead implementation agency. The success of the CDR depends on both FinTechs and consumers participating in the ecosystem, and on ensuring that the CDR framework is flexible, interoperable and adaptive.

Preparations for the consumer data right in banking

The ACCC continues to prepare for the commencement of the CDR in banking. Our testing and assurance work is now progressing for the initial phase of the banking CDR, which is scheduled to commence from 1 July 2020 for consumer data about credit and debit cards, deposit accounts and transaction accounts, and after 1 November 2020 for mortgage and personal loan data. We have undertaken significant consultation with FinTechs that will be seeking accreditation as data recipients, and expect to receive formal applications in early 2020, with priority given to those FinTechs that chose to participate in the testing program.

We have also engaged extensively with stakeholders via policy consultations to develop the CDR rules, and taken into account the Consumer Experience testing conducted by the Data Standards Body. This has informed our design of the banking CDR, which aims to build in the right levels of information security, privacy and useability. We believe consumer trust and engagement will be decisive in encouraging sign-up by customers, contributing significantly to the long-term sustainability of the banking CDR.

ACCC work program over 2020

During 2020, in addition to overseeing the initial phases of the banking CDR, we will continue to prepare for the CDR to be rolled out to the energy sector. This rollout is currently at the stage of framework development, with a designation instrument for the energy sector expected to be finalised by June 2020. The Data Standards Chair has convened an advisory committee for the development of energy data standards, and the ACCC is developing a rules framework for the energy sector.

Approach to developing rules

The approach that we have taken for banking, and which we will take for new sectors as the CDR is rolled out, is to develop a core set of rules that are common across sectors, with sector-specific issues addressed in schedules to the rules. Bringing on new sectors may also necessitate changes to the rules that are common across sectors. For example, the adoption of a different data access model for the energy sector will likely necessitate changes to both the common rules, as well as the development of sector-specific rules.

We have chosen a 'gateway' data access model for the energy sector, which reflects the role that the Australian Energy Market Operator plays in the energy market, and the particular features of the energy sector. For other sectors, where market bodies do not hold industry-wide data or facilitate business-to-business and business-to-market data transfers, the arrangements for data access are likely to more closely resemble those put in place for the banking sector.

The ACCC's development of the initial rules framework involved extensive stakeholder consultation, with the publication of a Rules Framework, and subsequently a Rules Outline, and then draft rules. This allowed us to canvass issues with stakeholders and take a broad range of perspectives into account when finalising the draft of the CDR rules that was published in September 2019. These perspectives also inform the ACCC's consideration, and balancing, of the matters that must be taken into account in making the CDR rules, such as the interests of consumers, the privacy of consumers' information and promoting competition and data-driven innovation.¹

Significant future changes to the rules will be accompanied by further privacy and regulatory impact assessment. Relevant factors that will be considered as part of these processes for the energy sector include the different risk profile of energy data sets relative to financial data, the shared nature of energy data, and the regulatory burden of providing energy data in machine readable format.

An evolving approach to accreditation of data recipients

Accreditation of data recipients helps foster trust in the CDR regime, by ensuring that recipients of consumer data are subject to appropriate privacy, Information Technology security, insurance and other obligations. The accreditation regime needs to strike the right balance between encouraging FinTechs to participate in the CDR ecosystem, while also ensuring sufficient consumer and information security protections are in place.

¹ Section 56BP of the *Competition and Consumer Act 2010* (Cth).

The CDR rules currently provide for a single 'unrestricted' level of accreditation for Accredited Data Recipients (ADRs). The ACCC noted in the Rules Outline² that the first general level of accreditation is intended to enable an accredited data recipient to receive all CDR data in scope for banking and is therefore subject to stringent accreditation obligations. It is intended that the unrestricted level of accreditation will become the level that entitles access to all CDR data across sectors.

The ACCC recognises the importance of intermediaries in the financial sector, and the roles that they play including in assisting or facilitating the collection of data, as well as providing 'end to end' services through the collection and use of data. The ACCC will shortly commence consultation on a consultation paper on how to accommodate third party service providers which collect or facilitate the collection of CDR data on behalf of accredited persons (intermediaries) within the CDR regime. The ACCC is seeking views on whether intermediaries should be accredited and whether accreditation of intermediaries may support development of lower tiers of accreditation that would reduce barriers to entry, by allowing ADRs to become accredited at a lower cost, but with restricted data access rights. The ACCC also intends to engage with ASIC to explore the potential development of a tier of accreditation that would complement ASIC's regulatory sandbox licensing exemptions.

We also intend to use future policy consultations and the privacy impact assessment process to consider the relative sensitivity of energy data, which may allow for the introduction of accreditation tiers specific to energy. We will ensure any policy development in this area is aligned between energy and banking, given accreditation tiers are intended to eventually be a feature of the CDR across different sectors. This work should assist in reducing compliance costs for entities seeking accreditation.

Future sectors

While the ACCC has the function of recommending to the Minister that a sector should be designated after considering a range of factors, the first three sectors (banking, energy and telecommunications) have been nominated by the Government. The ordering of the CDR rollout to other sectors is a decision for Government.

Our experience is that interest groups have suggested specific sectors be brought within the CDR, and we envisage this will remain the case. Specific sectors raised as possibilities in the economy-wide rollout of CDR include:

- Superannuation
- General insurance
- Private health insurance
- Digital platforms
- Hotels
- Agricultural data
- Automobile telematics data
- Supermarket data

² Consumer Data Right Rules Outline, December 2018, <https://www.accc.gov.au/focus-areas/consumer-data-right-cdr-0/rules-outline>.

We have not yet considered which of the above sectors may be best suited for priority rollout of the CDR. For some sectors, substantial benefits may be captured through the release of product reference data to facilitate reliable and independent price comparisons, but there may be significant challenges and complexities in sharing consumer data, such as where contractual terms must be reduced to machine readable format. There will no doubt be lessons from implementation in banking that are relevant to other sectors, but each sector will raise novel issues that need to be closely worked through as part of the ACCC's sectoral assessment. The scope for facilitating innovation and new services, the privacy risks and the costs of implementation will differ across sectors.

The CDR has not yet been implemented in banking. Once implemented, the system will mature and adapt over time to accommodate developments in technology, the emergence of new use cases and new CDR functionality. This will require the ACCC to review the benefits of extending the CDR to relevant sectors from time to time as part of our CDR role.

Should you have any queries about this submission, please contact Bruce Cooper, General Manager Consumer Data Right Branch

Yours sincerely

Sarah Court
Commissioner