



Senate Standing Committee on Economics
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6 March 2023

Dear Senate Economics Legislation Committee,

Subject: Inquiry into the Treasury Laws Amendment (Consumer Data Right) Bill 2022 (the Bill) – Senate Economics Legislation Committee

The Commonwealth Bank of Australia ('CBA') welcomes the opportunity to make a submission to the Senate Economics Legislation Committee's Inquiry on the Treasury Laws Amendment (Consumer Data Right) Bill 2022. CBA supports the intent of the Bill, and the model of action initiation proposed thereunder.

Prior to the introduction of the Bill in the Lower House on 30 November 2022, CBA provided submissions to Treasury dated 24 October 2022. CBA recommends that the Senate Committee refer to those submissions should it require a broader understanding of CBA's view on the action initiation proposal. CBA believes the introduction of action initiation will further position Australia at the forefront of advanced digital economies, and we support the Government's commitment to the economy wide rollout of the Consumer Data Right ('CDR').

This submission specifically addresses provisions of the Bill for which the Senate Committee has requested further advice from the Treasurer.

1. Immunity from civil and criminal liability Section 56GC(1)

The Senate committee is asking for the Treasurer's advice as to why it is necessary and appropriate to confer a broad immunity, particularly where it may limit individual consumer's right to bring an action.

CBA considers it important that the immunity granted in section 56GC(1) is maintained and continues to operate by reference to 'good faith'. The immunity in section 56GC(1) remains necessary as a liability shield to protect Data Holders (or Action Service Providers) where there is an inconsistency between the CDR requirements and other legislative, common law or contractual obligations that Data Holder (or Action Service Provider) owes or must comply with.

If a Data Holder or Action Service Provider were to rely on the immunity, the Data Holder or Action Service Provider bears the evidential burden to demonstrate the action that gives rise to the liability for which immunity is sought was fully compliant with the CDR regime and that the Data Holder or Action Service Provider acted in 'good faith' in taking the particular action. The ability of a CDR entity to rely on this provision, limited to circumstances where the CDR entity has complied with the CDR provisions and acted in good faith, supports the implementation of the CDR regime and its consequential consumer benefits.

Recommendation

CBA supports the Committee's recommendations to maintain both the immunity granted in section 56GC(1) and the evidential burden.

2. Broad discretionary power given to the ACCC

Presently, the ACCC may exempt a person from some or all of the provisions of Part IVD of the Consumer and Competition Act (the Act), the consumer data rules or regulations in respect to particular Consumer Data Right (CDR) data, or one or more classes of CDR data. This principle is extended to the Bill to allow such an exemption from a particular CDR action, or one or more types of CDR action.

CBA submits that the discretion afforded to the ACCC is justifiable on the grounds that it ensures the continued effectiveness and operation of CDR's regulatory framework as it expands at pace. It is generally accepted that the CDR regulatory framework is complex and prescriptive, consisting of the Act, as proposed to be amended by the Bill, the CDR rules and data and CX standards, as well as the CDR Privacy Safeguards.

The CDR regulatory framework is also broad in application as it moves sector-by-sector on its journey to becoming an economy-wide regime. This complexity, prescriptiveness and breadth of application was noted in finding 3.5 of the Independent Statutory Review of the CDR which states that *“the regulatory environment that the CDR operates within is complex. Where possible, the CDR should seek opportunities for alignment with other regulatory schemes, limiting duplication and overlapping regulatory obligations to make the CDR easier to navigate, reducing additional compliance burdens and confusion for participants”*.

In the context of this complexity and the associated challenges for ecosystem participants, the CBA supports the retention of discretionary powers by the ACCC. This will allow for flexibility within the framework to support future stability and growth, as well as manage ongoing compliance.

Recommendation

CBA recommends that the ACCC retain its discretionary powers in the Bill, and that exemptions granted by the ACCC be subject to periodic review.

We thank the Senate Committee for the opportunity to make a submission.