

Submission by Consumer Policy Research Centre to Inquiry into Treasury Laws Amendment (Consumer Data Right) Bill 2019

28 February 2019

Submitted via online portal

Dear Senate Economics Legislation Committee,

The Consumer Policy Research Centre (CPRC) would like to thank you for the opportunity to respond to the Inquiry into Treasury Laws Amendment (Consumer Data Right) Bill 2019 (Inquiry). CPRC notes the short timeframes allowed for responses to this Inquiry.

CPRC is an independent, not-for-profit consumer research organisation. CPRC undertakes interdisciplinary and cross-sectoral research to inform policy reform and practice change. Our goal is to achieve a fair outcome for all consumers. Consumer data is a central research priority for the organisation due to the rapidly growing online marketplace, early adoption of digital technology by Australians, and the emerging benefits and risks for consumers arising from Big Data amalgamation.

CPRC notes that responses to this Inquiry are due by 28 February 2019, two weeks after the referral of the Treasury Laws Amendment (Consumer Data Right) Bill 2019 (Bill) to the Senate Standing Committee on Economics. As a result of this extremely short timeframe, we will restrict our comments to those contained in our submissions throughout the consultation process for the Consumer Data Right and the ACCC Digital Platform Inquiry. CPRC raises the ACCC Digital Platform Inquiry within this context due to the two processes recommending differing changes to the transparency, disclosure and consent requirements under the Privacy Act.

Submissions can be found below and attached to this document:

- Submission (23 March 2018) to [Review into Open Banking](#)
- Submission (5 April 2018) to [ACCC Digital Platforms Inquiry – Issues Paper](#)
- Submission (7 September 2018) to [Treasury Laws Amendment \(Consumer Data Right\) Bill 2018](#)
- Submission (12 October 2018) to [Treasury Laws Amendment \(Consumer Data Right\) Bill 2018](#)
- Submission (12 October 2018) to [ACCC Consumer Data Rights Rules Framework](#)
- Submission (15 February 2019) to ACCC Digital Platforms Inquiry – Preliminary Recommendations

Multiple policy processes

CPRC strongly supports reform of the data protection, management and portability framework in Australia to provide consumers greater control of their own data and personal information.

In the emerging digital economy, we believe it is critical that consumers:

- Are able to transparently assess and comprehend what data companies are collecting, who it is being shared with, and what it is being used for;
- Have explicit options about what data is collected, shared and used aside from being faced with a ‘take it or leave it’ service proposition;
- Are afforded ongoing control over the use of their data and personal information – which means the ability to withdraw consent and the explicit ability to request that companies delete their data and personal information (or the right to be forgotten);
- Are able to directly extract value from the use, sharing and processing of their personal information;
- Have their privacy sufficiently protected.

This Bill represents the first reform in Australia intended to empower consumers by providing greater access to their data and allowing easier portability of that information. CPRC is fully supportive of well-designed and implemented reforms that enhance consumer choice and agency through the portability and use of consumer data.

We continue to highlight the benefit and need for the implementation of an economy-wide data protection and management framework in Australia alongside the introduction of the CDR. This economy-wide data protection reform is an approach that many jurisdictions internationally have taken to ensure that consumers are sufficiently protected and provided with agency in the new digital age. We agree with the ACCC Digital Platforms Inquiry that significant market and regulatory failure has prevented Australian consumers from having the ability to make informed choices between providers when it comes to their personal information.

Such changes would ensure that reforms to open up data (such as the Consumer Data Right) occur within a protected environment. Just as the UK Open Banking system operates within a trusted data environment provided by the General Data Protection Regulation, the Australian Consumer Data Right (Open Banking Regime) could operate within a trusted data protection environment through reform of the Privacy Act. We would like to caution policymakers that leakage of Open Banking data to entities not covered by the CDR will not be covered by the CDR Privacy Safeguards and in some cases, will offer no protection under the Privacy Act (e.g. for businesses with a turnover of under \$3 million). Consumers need to be provided with the confidence that their data will be adequately protected for the CDR regime to achieve high take-up.

CPRC has participated in the multiple policy processes that impact the treatment of consumer data: the development of a CDR, the Data Sharing and Release Bill, and the ACCC Digital Platforms Inquiry. At present, there does not appear to be co-ordination between the three processes, despite the similarity in subject matter. The benefit of the three processes operating independently is deeply unclear. The privacy protections recommended by each process, including this Bill, result in varying levels of data protection. This fragmented policy approach will complicate organisations’ understanding of their

responsibilities, the ability of regulators to effectively enforce and will challenge consumers' comprehension of their rights.

Comments on the Bill

We would like to note and acknowledge that some of our earlier concerns have been responded to in the latest version of the Bill. For example, CPRC supports excluding Australians under the age of 18 from the CDR framework and the staged introduction of the CDR. CPRC also strongly supports the exclusion of non-accredited third parties from the CDR framework.

However, CPRC still has significant concerns with the scheme and the considerable work that needs to be undertaken to ensure that the reforms will provide consumers with an adequate level of comprehension and agency. The reforms would also benefit from more time to adequately assess the framework end-to-end including the integration of the standards, the Rules and the legislation. Without this end-to-end view of the reforms it is very difficult to provide advice on the consumer impact and privacy risk. These concerns have been outlined in previous submissions to the Consultations on the Bill, and include:

- The Bill allows a CDR entity to either destroy or de-identify the redundant data. CPRC continues to recommend that redundant data should be deleted by default, and this should be embedded in legislation based on Privacy by Design principles. Retaining de-identified data contains presents significant risk of re-identification. This risk may increase as the CDR framework enables more data sharing and amalgamation across sectors.
- CPRC notes that the Bill allows for some consumer data to be available on a chargeable basis. Consumers should be provided with their CDR information for free without restrictions. The CDR is designed to give consumers the ability to access more information about themselves and their service usage. Fees are likely to act as a barrier to that access, reducing the utility of the CDR framework.
- Legislating CDR participants to participate in a centralised dashboard would greatly assist consumers in managing their consent and data portability over time and especially as new sectors are brought into the CDR system.¹

Thank you again for the opportunity to respond to the Inquiry. We would welcome any opportunities for further consultations and discussions throughout the coming months.

If you have any questions or would like further information regarding this submission, please don't hesitate to contact Senior Research & Policy Officer, Brigid Richmond on

Yours sincerely,

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Consumer Policy Research Centre

¹ CPRC. (12 October 2018). Submission by Consumer Policy Research Centre to Treasury Laws Amendment (Consumer Data Right) Bill 2018: Provisions for further consultation and Designation Instrument for Open Banking. Retrived from <https://static.treasury.gov.au/uploads/sites/1/2018/11/t342859-Consumer-Policy-Research-Centre.pdf>