

Senate Economics Legislation Committee
Parliament House
Canberra ACT 2600

6 March 2023

Treasury Laws Amendment (Consumer Data Right Bill) 2022

Thank you for the invitation to make a submission to the *Inquiry into the Treasury Laws Amendment (Consumer Data Right Bill) 2022* (as relevant, ‘the inquiry’ and ‘the Bill’).

ARCA is the peak industry association for businesses using consumer information for risk and credit management. Our Members include Australia’s leading banks, credit unions, finance companies, fintechs and credit reporting bodies and, through our Associate Members, many other types of related businesses providing services to the industry. Collectively, ARCA’s Members account for well over 95% of all consumer lending in Australia.

While our Members include both current and future data holders, ARCA’s focus in respect of the Consumer Data Right (CDR) is the potential for the system to improve the responsible and efficient provision and management of credit to Australian consumers (i.e. we focus on credit providers as *users* of the data, rather than as data holders). Those improvements will generally result from credit providers (either directly or indirectly) acting as data recipients to obtain and use CDR data (with the consent of the customer) to help assess and manage credit (‘credit use case’).

Nevertheless, beyond simply receiving and using data, the ability for a consumer to have an action initiated on their behalf will also have a significant impact on the provision of credit, which could bring increased competition and other consumer benefits.

An example in the credit sector is the use of action initiation in the provision of credit cards, including the use of ‘balance transfers’ to pay out an existing credit card debt (often at a much lower rate on the new card). Currently, a credit provider offering a balance transfer must assess the customer’s capacity based on both the existing and new credit lines being open (as the new credit provider has no capacity to ensure the existing line of credit is terminated despite paying out the existing debt). With the action initiation capacity, as part of establishing the new credit contract, the new provider will be able to get the customer’s consent to instruct the old provider to close the account. For customers with limited servicing capacity, this will allow them to take better advantage of those cost-saving offers. For customers who may be able to technically service both lines of credit, this will ensure that

the old contract is closed – and remove the temptation for that customer to accrue debt on both cards.¹

Noting the potential beneficial use cases arising from action initiation, we consider it is important that the inquiry recognise the complexity of each form of action initiation² and the need to provide adequate implementation timeframes.

The legislation must ensure appropriate implementation timeframes

Overall, we consider that the biggest risk to the long-term success of the CDR regime (both in respect of action initiation and the broader regime) is delivering an underdeveloped system that does not meet the needs of consumers or businesses seeking to take advantage of the regime because it does not take account of the complexity and challenges faced by participants. This risk is heightened further in relation to the action initiation regime (compared to the existing data sharing regime) as a rushed action initiation regime (or specific type of action initiation) could result in significant loss or damage to consumers or participants in the CDR regime through fraud or other misfeasance.^{3,4}

In terms of earning consumer trust, we consider that any material implementation failures are likely to put the widespread consumer adoption of the regime back by years.

The Bill sets the overall framework for the CDR regime, with the Designation Instruments and CDR Rules establishing the relevant detail. Importantly, that means the relevant implementation dates of the action initiation regime are left completely to those subordinate instruments. Given the significant risks to the overall CDR regime that arise from insufficient timeframes, we consider that this is inappropriate.

We invite the inquiry to consider whether the Bill should take a more direct approach to ensuring that appropriate implementation timeframes are allowed for each type of action initiation to ensure that the regime is implemented properly and without posing unnecessary risks to consumers and other users of the regime. For example, we recommend that the inquiry consider including in the Bill both:

- Minimum timeframes for implementation of each type of action initiation; and
- Detailed principles for establishing what is otherwise an appropriate implementation timeframe (beyond those minimum timeframes). Those principles could, for example, require adequate consultation before setting timeframes and include an expectation

¹ We note, however, that this raises the question as to whether there would be any opportunity for the customer to withdraw their action initiation consent after the new account is opened but before the old one is closed (and, if so, whether the new provider would be responsible for any resultant overcommitment in that situation). We consider that this an example of the complexity that will arise from each type of action initiation that will need to be addressed through the relevant CDR rules (and potentially require ASIC guidance).

² For example, as described in relation to the above credit card example and the updating of personal details, below.

³ For example, the risk of financial damage to a vulnerable consumer in a coercive controlling relationship (i.e. domestic abuse) is likely to be heightened if the perpetrator can force the victim to perform transactions through the CDR action initiation regime (as that additional degree of separation between customer and service provider makes it even harder for the service provider to identify the customer's vulnerability).

⁴ Importantly, we note that the primary data sharing regime under the CDR is still undergoing significant development, including in relation to such fundamental concepts as the nature of 'consent'. While we strongly support that continual refinement, it will require significant additional investment and resources from CDR participants which must be considered before those participants are expected to implement action initiation.

that the implementation timeframes only *commence* from the point that the relevant requirements are certain (and be adjusted if those requirements are subsequently changed).

Instruction layer vs Action layer

The overall use case for CDR action initiation is described as including “making a payment, opening and closing and account, switching providers, and updating personal details (such as address) across providers”.

We note that Explanatory Memorandum (1.128) recognises that the “initiation of an action and its performance are two separate processes” and that the “CDR framework is not intended to regulate how actions are performed”. To give effect to that principle, subsection 56BGA(4) would provide that the consumer data rules “cannot include rules requiring an action service provider for a type of CDR action to perform (or not perform) a CDR action of that type in a particular way”.

The Explanatory Memorandum (again in 1.128) notes that this approach reflects the fact that each sector that is designated “is already governed by laws and regulations specifically designed for that sector”. We agree with that observation and note that, for credit providers, the regulatory obligations will arise from product specific regulation (e.g. NCCP and Corporations Act), entity specific regulation (e.g. Banking Act and prudential obligations) and broader regulations (e.g. AML/CTF). There may also be relevant codes of conduct that have a quasi-regulatory status (e.g. ePayments Code; Banking Code of Practice) and the expectations and approach documents of the Australian Financial Complaints Authority.

However, to be clear, a businesses’ processes and requirements relating to the ‘action layer’ are not solely dictated by those laws and regulations. The action layer requirements of a particular action service provider will also depend on their own processes, systems, and overall risk tolerance.

We consider that the Explanatory Memorandum should explicitly recognise that an action service provider’s action layer requirements can reflect both those external laws and regulations, and internally-generated requirements. That is, action service providers must have certainty that they will maintain control over their own processes and procedures, and that the CDR action initiation regime will not force substantive changes at the action layer of their business.

Updating personal details

Based on commentary ARCA has observed about the potential benefits of action initiation, it appears that the updating of personal details has been identified as a key action initiation use case. We agree that allowing for a consumer to change their address or other personal details (e.g. name) through one portal (using what has been described as a ‘tell-me-once’ feature) will have significant convenience benefits for the consumer. The service may also benefit the relevant businesses as it should, if done well, reduce the operational costs of receiving updated instructions from customers⁵ and help to ensure the business maintains accurate details (which could reduce collections losses for credit providers).

However, we caution treating this use case as ‘low hanging fruit’. ARCA has extensive experience with the challenges faced in exchanging personal details (particularly name and

⁵ Although we note that those savings will be dependent on a large upfront investment to receive action initiation instructions through the CDR.

address) in a consistent and interpretable manner between businesses.⁶ There is no one formatting standard for addresses in Australia (with overseas addresses causing even more complexity). Likewise, individuals' names may not follow the standard of First Name, Middle Name(s), Surname (e.g. the names may be listed in a different order or may even consist of only a single name) and dealing with those differences can cause significant complexity.

At a minimum, the CDR rules relating to the provision of a 'tell-me-once' feature should require the provider of that service to collect personal information (e.g. name and address) using a standardised format (rather than allowing the customer to provide the data in an unformatted manner). Given the significant work that ARCA and signatories to the PRDE have done to develop standardisation in the credit reporting sector, we would welcome the opportunity to help Treasury to develop rules for this type of service.

Nevertheless, we must make clear that, despite any rules that standardise the data collection stage, it is still likely that a 'tell-me-once' feature will cause significant complexity for action services providers when they receive those instructions. This is because each business will maintain their own formatting structures for their customer's personal details.⁷

While this issue may not require changes to be made to the Bill, we have included this feedback to ensure that the inquiry understands that even 'straightforward' action initiation use cases will involve significant complexity. Again, ARCA would welcome the opportunity to assist Treasury to develop the relevant rules relating to this type of action initiation.

Efficiently, honestly and fairly

We note, and support, the obligation on accredited persons to act efficiently, honestly and fairly when initiating CDR actions and support that requirement.

We further note that stakeholders have identified the potential for significant consumer harms arising from the CDR regime, which reliance on consumer 'consent' is unlikely to protect against.⁸ ARCA shares those concerns and has previously recommended that Treasury consider ways to mitigate the risk (while maintaining the flexibility of a 'consent' based regime). We consider that imposing a general 'efficiently, honestly and fairly' conduct obligation on all relevant CDR participants (rather than simply those initiation CDR actions) would greatly assist in reducing the risk of poor consumer outcomes (and, at a minimum, strengthen the regulatory response against businesses who treat customers poorly).

If you have any questions about this submission, please feel free to contact me

Yours sincerely,

⁶ This experience has been gained through over 10 years developing the ACRDS for the exchange of credit information, including personal details such as name and address, from credit providers to credit reporting bodies.

⁷ Despite a significant amount of work, address formatting issues are the most common reason for credit reporting bodies to reject incoming data from credit providers (although, in the overall operation of the credit reporting system, those reject rates are very low).

⁸ See, for example, [Joint consumer submission to the CDR Sectoral Assessment for the Open Finance sector – Non-Bank Lending](#).

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