



Senate Standing Committees on Economics
PO Box 6100
Parliament House
CANBERRA ACT 2600

Re: Treasury Laws Amendment (Consumer Data Right) Bill 2022

Thank you for the opportunity to comment on the Senate inquiry into the Treasury Laws Amendment (Consumer Data Right) Bill 2022.

About FinTech Australia

FinTech Australia is the peak industry body for financial technology businesses and represents over 420 fintech companies and startups across Australia. As part of this, we advocate on behalf of a range of consumer data right (CDR) participants as well as fintechs spanning payments, consumer and SME lending, crypto and blockchain, wealthtech and neobanking, regtech and insurtech. Our vision is to make Australia one of the world's leading markets for financial technology innovation and investment.

General comments

Overall, FinTech Australia supports passage of this Bill and the enabling framework for CDR action initiation it will establish. We are excited about the potential of action initiation to be a game-changer for CDR.

Action initiation will empower consumers and businesses to do more with CDR, including sending instructions to make payments, updating contact details and switching service providers. These, and many other, new use cases will drive fintech innovation and greater participation in the scheme.

We support the general approach taken in the Bill to leverage and build on the existing regulatory framework for information sharing, minimising the compliance burden for those already integrated with the CDR and focusing on the instruction layer. Importantly, the provisions of the Bill establish a framework which is flexible and able to adapt to new use cases and models over time.

This Bill is a welcome first step in establishing the enabling framework for action initiation. However, we note significant further work and consultation will be required to implement specific action types through delegated legislation (i.e. action type declarations, rules and standards). We hope guidance can be provided on the prioritisation and timelines for the implementation of future action types, including how this will be phased for different designated sectors and new datasets.



The functional expansion of CDR by enabling action initiation has been recommended and supported by the Inquiry into Future Directions for the CDR and the recent Statutory Review of the CDR, as well as by many stakeholder submissions, including FinTech Australia's, to these processes.

The CDR is at a critical point and its rollout and key functional reforms like action initiation are important to keep momentum as the ecosystem transitions from a long 'build phase' to a period of adoption and uptake, with the emergence of new CDR-powered products and services.

Trust and confidence in the CDR regime are also vitally important and persistent compliance issues among data holders and data quality must improve. Accordingly, FinTech Australia strongly supports a continued focus on ensuring that existing Open Banking *data sharing* is operating optimally. Sectoral and functional expansion through initiatives like the rollout of Open Finance and action initiation are undoubtedly important but there is room for improvement to support and ensure the success of the CDR ecosystem which has already been built. Maintenance and compliance of the existing regime must be prioritised and balanced with the complexities of functional and sectoral expansion.

FinTech Australia is excited by the potential for CDR to support the rapidly developing, data-driven economy here in Australia. It is an ambitious, world-leading piece of digital infrastructure for Australian consumers, and it will be a driver of fintech innovation for years to come.

We make additional minor comments about the Bill below.

Accredited Action Initiator definition

FinTech Australia has raised concerns about the definition of accredited action initiators (AAI) being limited to accredited persons.

To ensure consistency with the current CDR Rules, CDR representatives of ADRs should also be included in the accredited action initiator definition. Limiting the AAI definition so that only unrestricted ADRs can send action instructions, will significantly limit the cases, innovation and the value of action initiation to consumers.

Limiting the AAI definition to accredited persons will create a significant barrier to entry for smaller fintechs which do not have the resources to become accredited. As a direct consequence, this will stifle and discourage innovation and creativity, which will ultimately inhibit the growth and potential of the CDR regime.

We support a consistent approach which leverages the existing representative, affiliate and trusted advisor pathways in the CDR Rules, by allowing these CDR participants to be action initiators as well. This will allow smaller fintech startups to participate in action initiation, without having to go through the costly and lengthy accreditation process. Consumers would still be protected as the CDR principal will remain liable for all the actions of the CDR representative. In this situation, it may be reasonable for the AAI Principal to undertake additional assessments on the CDR representative in



relation to actions, so access to data sharing and each action would be managed separately. We note this is an issue that can be resolved through forthcoming CDR Rules, separately to this Bill.

Prioritisation of action types

We support the approach taken to not prescribe specific action types or their prioritisation in the Bill. Further consultation will be required on how specific action types should be prioritised and designed.

FinTech Australia has queried an initial focus on payment initiation as the action initiation use case to be prioritised. We encourage a broader lens to the banking sector and to broaden the focus to other initial use cases, including product switching (e.g. bank accounts, loan products).

We understand the initial emphasis on payments, given the prevalence of use cases in this area. However, FinTech Australia encourages greater consideration of other use cases, such as product switching (e.g. between bank accounts or loan products) where the CDR regime and action initiation can provide a significantly improved consumer experience as compared to what is currently available.

We echo the finding of the recent Statutory Review of the CDR, which found there are opportunities for the action initiation to capitalise on concurrent work being undertaken within payments systems, such as PayTo and that where possible, the CDR should work in conjunction with these other initiatives to minimise potential friction points and reduce regulatory compliance for participants, with the objective to create more streamlined consumer experiences.

We also note the Bill does not address other likely practical complexities around product switching as a use case such as AML/KYC checks. For example, if consumers want to switch bank accounts, there will likely be AML/KYC checks required before a consumer can switch to a new bank account, and so the CDR framework would need to either include mechanisms for sharing this data or provide an "outside CDR" pathway for this to occur.

Again, we understand this Bill is establishing an enabling framework and these matters of practical implementation can be further considered and addressed when action type declarations are consulted on.

Fee charging

Our members are concerned about the lack of clarity or a framework for the regulation of fee charging.

Currently, there is no regulation of the fees that can be charged by action service providers (ASP) for receiving instructions. As such, this may result in price discrimination. For instance, if an ASP charges a fee to an AAI, CDR action initiation may not be a price competitive option for consumers and they may not choose to engage with action initiation through the CDR as a result.



The anti-discrimination principles for the action layer in the Draft Legislation will be of limited value if ASPs are able to charge unlimited fees for receiving instructions. As a result, we support a clearer and more robust framework around fee charging.

Members have also raised concerns about the risk of performance discrimination in the action layer and proposed that ASPs should be required to act on an action instruction in the most efficient way possible. For example, in relation to payment initiation, if a bank is real-time payments enabled, a payment instruction should be actioned through this capability rather than a non-real-time alternative.

Standardisation of action initiation outcome responses

We recommend ASPs be required to notify AAls with the required details of the outcome of each instruction in a standardised way.

To provide a smooth customer experience, AAls require detailed outcomes of each action initiation request from ASPs. This is particularly important for AAls as they are the consumer facing entities through which consumers request actions to be completed on their behalf. Without this information, AAls (and therefore consumers) will not know if a particular action failed or succeeded (or how and when it failed or succeeded).

These responses should be standardised and, where possible, consistent with existing practices around response codes and messages relevant to particular actions. This will ensure that consumer experiences are consistent across fintech platforms. We acknowledge these matters can be considered and prescribed through subordinate legislation.

We appreciate the opportunity to contribute to the inquiry and look forward to the implementation of the enabling framework for CDR action initiation and future consultation on the design of specific action types, rule and standards.