

28 July 2022

The Hon S Jones MP
Assistant Treasurer, Minister for Financial Services
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

Dear Minister

Implementation of the Consumer Data Right (CDR)

Chartered Accountants Australia and New Zealand, CPA Australia, and the Institute of Public Accountants together represent over 290,000 professional accountants and a further 55,600 provisional accountants, many of whom are key participants in the financial sector who support individuals and businesses to comply with statutory obligations and plan a secure financial future.

Our members are well placed to support and drive the adoption of the CDR across the Australian economy by demonstrating the ways CDR data can provide benefits to both individuals and businesses. Yet, while the implementation of the CDR to date has attempted to democratise consumers' data, it has instead increased the power imbalance in favour of large entities designated as data holders or those entities with the deep resources needed to become an accredited data recipient (ADR).

This letter follows a meeting last month with your advisor, Chloe Andrews, where we outlined the disruption the implementation of the CDR is bringing to the relationship between consumers and their trusted advisers.

In Appendix A we provide details of the impact on this relationship, as well as the elements leading to this disruption. With this in mind, we seek that:

- the development of a CDR channel direct-to-consumer be commenced
- the CDR Rules be amended so it is mandatory for ADRs to facilitate the nomination of trusted advisers;
- the definition of CDR data captures only the data elements transferred from a data holder to an ADR; and
- the Data Standards Body withdraw the guidelines issued for pre-consent data flow.

On behalf of the undersigned, to arrange a time to discuss our comments and to address any further questions, please contact Jill Lawrence at Jill.Lawrence@charteredaccountantsanz.com.

Yours sincerely

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Appendix A

The following outlines our concerns with respect to the CDR implementation to date, which currently forces a consumer and their trusted advisers to enter into a commercial agreement with ADRs to access and utilise data, and any data it touches, (most of which is already available to the trusted adviser), received by the ADR through CDR channels.

Access for consumers

While the *Competition and Consumer Act 2010* (Cth) (the Act) enables rules for disclosure to both the consumer and accredited persons, making rules for disclosure direct to consumers is currently not scheduled. CDR implementation has created a significant burden for consumers as each participant holding their data must provide the consumer with a unique dashboard to manage consent and data flow. Consumers are therefore expected to manage multiple dashboards, each presenting information in unique forms, to provide informed consent to share data.

While the premise for prioritising the development of access to a consumer's data for third parties ahead of access for the consumer, was that consumers could not comprehend the CDR nor its potential benefits, with the CDR now active in banking this premise no longer holds true.

Now the basis for not commencing the build of direct-to-consumer appears to be a perceived increase in the risk of unauthorised access to the consumer's data. It is unclear how providing data directly to a consumer creates any greater risk than the current implementation, which enables access by ADR representatives and agents or any party seeking insights, all of whom may be unknown to the consumer.

Section 56BC of the Act makes it quite clear that a consumer should be able to request their own data for use as the consumer sees fit. We consider it is now time to commence the implementation of a channel to facilitate moving data in a human-readable form direct to the consumer.

Access for consumers' trusted advisers

Choosing a professional to provide a service is a commercial decision made by the consumer irrespective of the CDR regime. A relationship is established through some form of contract such as a letter of engagement. If the service delivered meets the expectations of the consumer, then, over time, that professional becomes a trusted adviser of the consumer.

The third update to the CDR Rules recognised the value of trusted advisers to consumers with the creation of a new class 'Trusted Adviser' in the CDR Rules, Rule 1.10C. Professions recognised as trusted advisers include qualified accountants, registered tax agents and legal practitioners.

Further clarification is provided in the Explanatory Statement to the Rules v3, critically, that an ADR 'may disclose the consumer's data outside the CDR regime'¹ to the consumer's nominated trusted adviser. That is, data provided to trusted advisers by an ADR is no longer classed CDR data. This reflects that '...trusted advisers are professions that are considered to be appropriately regulated to ensure a strong level of consumer protection is maintained.'²

The trusted adviser class is a specific artefact of the CDR with unique attributes. They must first be nominated to an ADR by the consumer. As a comparison, an entity seeking an insight can be unknown to the consumer yet send a request for data directly to the ADR. The ADR confirms the nominated person is in the Trusted Adviser class and records this nomination against the account held for the consumer. There is no time limit on this nomination, and it can only be removed at the direction of the consumer.

The intent of introducing the class of trusted advisers was to increase 'convenience and control for consumer'³ yet the CDR Rules do not make it mandatory for an ADR to accommodate nominating their trusted advisers. The consumer may prefer their trusted advisers to access, say, accounting data hosted by an ADR but be unable to nominate those trusted advisers to facilitate access.

¹ [Explanatory Statement](#), Competition and Consumer (Consumer Data Right) Amendment Rules (No.1) 2021

² *ibid*

³ [Explanatory Statement](#), Competition and Consumer (Consumer Data Right) Amendment Rules (No.1) 2021

The second barrier is the definition of CDR data in Part 56A1 of the *Competition and Consumer Act 2010* (Cth). This definition not only captures data transmitted in machine-readable form from a data holder to an ADR, the raw data, but also data *directly or indirectly derived* from that raw data.

Accordingly, active ADRs that receive some data through CDR channels will need to categorise all data hosted for a consumer as CDR data. Subsequently, CDR data transferred to a trusted adviser must be encrypted in transit. This will require trusted advisers to upgrade their system to meet the minimum information security controls in the CDR Rules though the disclosure of CDR data to a trusted adviser is considered to be outside the CDR regime.

By way of example, a small business (the consumer) chooses to reconcile their bank account via a software provider: MYOB receives transaction data directly from a bank (Data Holder) through the bank's CDR channel which the consumer reconciles with other receivables and payables previously entered into the software. AS a consequence of the definition of CDR data, MYOB must now consider all of the consumer's data it hosts as CDR data. Yet the consumer cannot receive an accurate financial position from CDR data alone as captured in a recent article, 'Accounting software is built to link through to traditional bank accounts, but small businesses **must reconcile output from both systems** to get a true reflection of their financial position.'⁴

For trusted advisers, such as our members, to continue to access the data necessary to provide services, they will need to establish

- if the provider of the platform hosting the data is an active ADR, and, if they are,
- if they facilitate the nomination of a consumer's trusted advisers, and if they do,
- if they require specific data security protocols to be met.

Only then will the consumer be able to provide

- a trusted adviser nomination to the ADR, and once recorded
- a TA disclosure consent.

These barriers have resulted in access to consumer's data being limited to large entities designated as data holders or those entities with the deep resources needed to meet the onerous requirements to become an ADR. The unintended consequence will be to significantly disrupt established relationships between consumers and their trusted advisers, such as qualified accountants and registered tax agents.

We recommend that the CDR Rules be amended to make it mandatory for an ADR to accept a consumer's nomination of their trusted advisers and that the definition of CDR data be limited to the data moved through CDR channels from a data holder to an ADR.

Pre-consent guideline

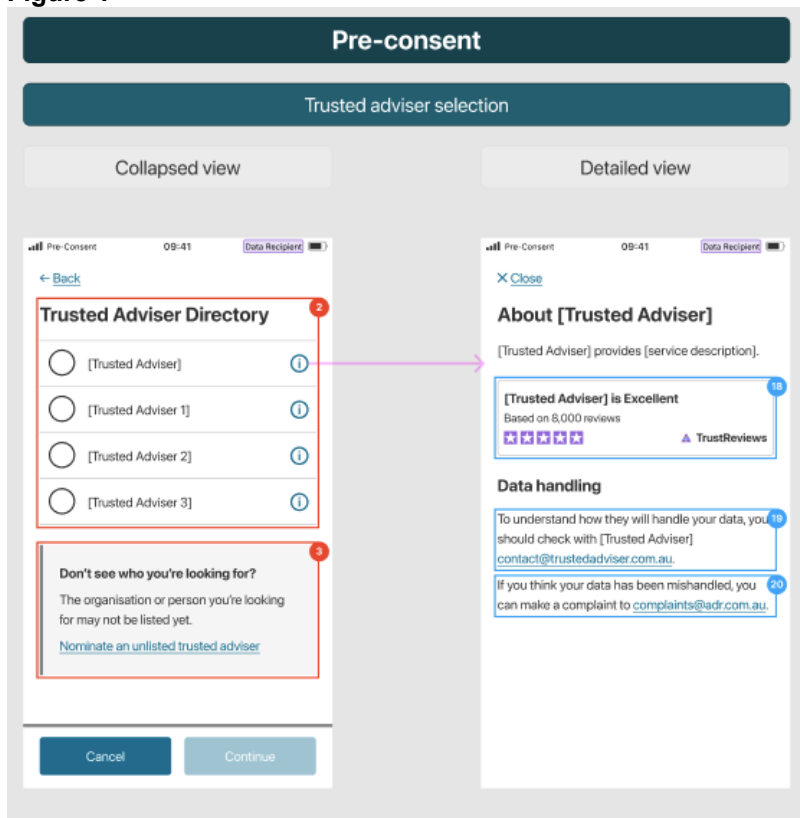
Compounding our concerns is the pre-consent guideline issued by the Data Standards Body to guide ADRs in facilitating consumers nominating their trusted advisers. The CDR framework does not include a 'pre-consent' mechanism. Yet, the nomination of a trusted adviser is part of the CDR framework though not a type or category of consent.

This pre-consent guideline suggests ADRs offer a consumer a list of professionals contracted to their platform, though unknown to the consumer, with a rating against each professional, similar to rating a driver with Uber (see Figure 1).

As outlined above, a consumer identifying and entering a commercial contract with a professional to provide a service is unrelated to the CDR. The first touch point with the CDR should be the nomination of a trusted adviser to an ADR by a consumer. Providing a list of professionals, unknown to the consumer, from which to select a trusted adviser is not an activity within the CDR. Rating a professional is not a function of the CDR (see Figure 1).

⁴ ANZ circles MYOB for \$4.5b deal, Australian Financial Review, Jul 14, 2022, p1,

Figure 1



Irrespective that pre-consent is not an activity within the CDR, we are concerned that providing a list of professionals titled 'Trusted Adviser Directory' may mislead a consumer to believe that only the people on this list can be approached to provide the service they need. We note that there is an option to nominate someone not on the list, though in a much smaller font, which raises the concern that these trusted advisers will need to enter a commercial contract with the ADR to be captured in the list to provide the same service outside the CDR framework.

In conversations with the CDR data standards body, they indicate that the guidelines they issue are not a 'must', only a suggestion. Yet, 'It is the legislative function of the Data Standards Chair (Chair)... to make and review Data Standards that define the format and process for how consumer data is accessed.'⁵

We believe the legislative authority of the Chair does not extend to issuing guidelines for activities outside of the CDR and seek that this pre-consent guideline be withdrawn.

Imbalance of power

For entities that are the data holders in a sector, there should be no choice but to participate. Participation by all data holders is required to achieve competition by creating a level playing field for data holders. Yet, as the many consultation papers issued to date recognise, the cost of becoming, and continuing to be, a data holder is in the hundreds of thousands of dollars.

That the cost to participate is beyond the reach of smaller entities is recognised in the Australian Competition and Consumer Commission's (ACCC) submission to the expansion of the CDR to the telecommunications sector. The submission acknowledges that the CDR would be of value to all telecommunications customers yet participation by all data holders may be impractical given the disproportionate costs on smaller players. The ACCC supports a threshold for mandatory participation of data holders. It also supports a threshold for designation with a caveat that the threshold should only apply to consumer data, not product data, so generic product offerings from smaller players can be seen by a consumer.

⁵ Pwc, Accessibility obligations and conventions framework for the Data Standards Chair, July 2022

Such a caveat would result in only generic product data being available to consumers. We reference the ACCC inquiry into home line pricing in 2020 which found that, when presented with a high number of barely differentiated products, consumers may be overwhelmed and just stick with what they know. This indicates that the benefit of utilising CDR data would be lost.

That the complexity arising from the implementation to date makes it prohibitively expensive to participate in, and extremely difficult to be compliant with, the CDR, is evident with the recent fine issued by the ACCC. As reported in the Australian Financial Review on July 6 2022, the Bank of Queensland (BoQ) failed to meet its CDR compliance obligations.

The BoQ has been involved in the implementation of the CDR since its inception, has had over two years to become compliant and had invested in a \$440 million technology transformation. Yet it seems the BoQ has failed to meet its CDR compliance requirements.

Given the above, the current regime gives rise to questions such as, how can small data holders try to compete, even participate? How can consumers consider bespoke products when they cannot compare all offerings on the market? How can consumers' trusted advisers continue to provide critical services to consumers when they are unable to access the necessary data?

Rather than exclude data holders due to complexity in becoming and maintaining compliance with the CDR legislation, we recommend consideration be given to a government data holder into which smaller players can plug themselves.

Who can be an ADR?

Equally, the cost of becoming, and continuing to be, an ADR is in the hundreds of thousands of dollars. Therefore, the entities able to access and utilise a consumer's data are large entities with deep resources.

These costs have seen a new industry emerge, third parties who will undertake the ADR accreditation process on your behalf. For example, Adatree, a new business built on offering turnkey solutions to become a data holder, ADR or trusted adviser. In an article on the tasks required to become accredited, Adatree notes it '...is a massive list and more than 90% of the work items are addressing non-functional requirements that... do not contribute to retrieval of CDR data for solving the business problem.'⁶ Then, to ongoing costs, 'The CDR specification is updated every three months and Data Recipients must keep up to date with mandatory changes'.⁷

The impact of this constant change to the CDR Rules, some mandatory, some optional, some only if above or below a threshold, results in fragmentation of the CDR eco-system. The recent paper issued by the Data Standards Body, *Decision Proposal 158 – Participant capability discovery*, reflects this fragmentation and explores how to meet the need for data holders and ADRs to advertise the features they support.

The essence of the paper is to empower participants, not consumers, to release new capabilities at their pace. It aims to empower participants, not consumers, to integrate solutions that will gracefully adapt to change.

With the intent of opening up data held by banks for the benefit of the consumer, the implementation to date has instead locked out the consumer. New industries have emerged adding a third party between the consumer and their data and between the consumer and their trusted advisers.

With the CDR being active in the banking sector for some time we recommend a pause in the development of sector-specific rules for recently designated sectors and a pause on expansion into new sectors. We recommend the efforts of the government be directed to identifying and addressing issues emerging in the banking sector and amending the CDR framework to remove the barriers created between a consumer and their data.

⁶ https://www.adatree.com.au/adatreenews/simplified-integration-with-cdr-ecosystem-enables-fast-product-delivery?utm_campaign=Newsletter&utm_medium=email&_hsmt=214342487&_hsenc=p2ANqtz-9UjwrrFf5vLTztHng1A-hPzzqkG1P810T0aGphtYpHBhsabgdqr64tyOa3BawNx5JOOypauQuAGhBSV3iLJO-sezp_c0qYH76-NJpwT7ZMKi6r-xjPFEYpAl1k8ViClxPuGQ2&utm_content=214342487&utm_source=hs_email, 6 December 2021

⁷ *ibid*