



Chapter 4: A Breakdown of the Inquiry into Future Directions for the Consumer Data Right - Final Report

CHAPTER FOUR - PART ONE

What started off as a sprint in bisecting and breaking down this report has transformed into a middle-distance event, with Chapters 4 through 6 vying for the longest in the report. There is a lot of information to digest with this topic of Action Initiation (formerly known as 'Write Access'). Building on Chapter 3: Expanding the Consumer Data Right (CDR) to support switching, we can now get into the nitty-gritty of how the CDR will make this possible.

The definition of Action Initiation by the report is:

A third party with write access to a data holder sending instructions to the data holder. Instructions may include initiating payments from a customer's account, and actions, such as switching, opening or closing an account, or updating details.

Before Action Initiation can begin, certain elements are required to complete an economy-wide system. These include:

- A secure communication channel is necessary for ensuring the integrity of any information sent or received.
- A common set of standards is required to enable action initiation requests to be interpreted correctly by a service provider, allowing an interoperable and competitive system to develop.
- A system of accreditation is necessary to provide those receiving instructions with confidence about the legitimacy of the initiator of the request and to ensure adequate protection for consumers.
- Processes for enabling consumers to provide direction and authorisation are needed for the system to operate for the consumers' benefit.
- A clear governance and liability framework would ensure, to the extent possible, that risks are appropriately assigned between participants in the system.

Not just focusing on data portability through Open Banking, the infrastructure created under the Consumer Data Right arrangements also provide the underlying elements needed to turn on Action Initiation. These include:

- A secure process for sending encrypted data requests and information between participants
- A process for standardising the format of data requests and responses
- An accreditation regime to regulate those who can send instructions to receive data
- The foundational requirement for consumer consent and authorisation for data sharing to occur, and
- A clear set of legislative boundaries as to what is and is not permissible, including security and privacy protections.

It would be preferential to extended existing digital CDR infrastructure than to create an entirely new system down the road. But this can only work by leveraging the consumer trust in any pre-existing scheme. And for that to happen, the initial phase of Open Banking must be complete and launched successfully in the eyes of the consumer and participants alike.

The Insurance Council of Australia states:

“The fundamental findings of the Review of Open Banking report remain relevant in order that customers can feel confident that their data is secure and it is only being used for the purpose for which consent is given under the current ‘read’ access. It may take some time before customers start feeling comfortable with third parties acting on their behalf and with an extension to ‘write’ access.”

Recommendation 4.1 – Action initiation through the Consumer Data Right

The Consumer Data Right should be expanded to enable third parties, with a consumer’s consent, to initiate actions beyond requests for data sharing. This expansion should build on trust developed in the system through the successful operation of the regime in enabling data sharing.

THE STRUCTURE OF CONSUMER DATA RIGHT POWERS

The Consumer Data Right has a layered, complex, and relatively unfinished regulatory framework, including Rules and Standards. To enable Action Initiation through the CDR legislation, the Competition and Consumer Act 2010 (CCA) will need to be expanded to provide a legal basis for CDR expansions.

Box 4.1 – Structure of Consumer Data Right powers

Legislation – The legislation sets out the CDR framework and builds key protections into the regime, including the sector designation process and Privacy Safeguards. CDR provisions set through legislation require Parliamentary approval to change.

Rules – The Rules outline many of the functional requirements for the CDR. These Rules are set by the rule maker, with the consent of the Minister. As the Rules can be more easily amended than legislation, they allow for solutions to be developed iteratively and CDR functionality to be expanded gradually.

Standards – The Standards detail the technical specifications required to engage with the CDR and are set by the Data Standards Chair. As ministerial approval is not required to amend the Standards, they are able to promptly make amendments to solve important technical issues.

The CDR designation framework empowers the Minister to designate a sector of the economy for data sharing. This should also enable the introduction of Action Initiation across these sectors by specifying.

- The classes of information (‘designated information’)

- The persons holding the designated information
- The earliest day applicable for beginning to hold designated information
- Any classes of designated information for which a fee can be charged, and
- The sectoral gateway or gateways, if applicable.

It is recommended that the minister has expanded powers to designate sectors, determine whether to designate data sharing, Action Initiation, or both, and expand/narrow each application's existing scope as needed.

Recommendation 4.2 – Framework and sector designation powers for action initiation

The expansion of Consumer Data Right functionality to include action initiation should be implemented primarily through amendments to Consumer Data Right framework in the *Competition and Consumer Act 2010*. These amendments should delegate powers to the Consumer Data Right rule maker and Data Standards Chair where appropriate. The amendments should set out the associated powers for the making of Rules and Standards and enable the designation of actions within a sector by the Minister.

SECTORAL ASSESSMENTS

The current designation framework outlines the processes that must take place in order to alter or add a new designation. Firstly, a sectoral assessment must be conducted to inform the Minister of the expected impact. This process must include:

- The interests of consumers
- The efficiency of relevant markets
- The privacy or confidentiality of consumers' information
- The impact on promoting competition
- The impact on promoting data-driven innovation
- Any intellectual property in the information to be covered by the designation, and
- The public interest.

A range of other requirements must be considered; the likely regulator impact of allowing the Rules to impose requirements relating to the information covered by the instrument (Sections 56AD and 56AE of the CCA).

In addition to the Minister, the OAIC must conduct a separate assessment of the sector's potential privacy implications. The OAIC must analyse the likely effect on the sector on both

privacy and the confidentiality of consumers' information. These reports are then passed onto the Minister for further consideration.

Other items of consideration include the benefits and costs of designating specific classes of action within the sector, the sector's digital maturity, and the potential regulatory barriers to enabling Action Initiation from occurring in a safe, efficient and effective manner.

Recommendation 4.3 – Sector assessment for action initiation

Sectoral assessments should be required prior to the designation of action initiation in a sector. The process for conducting a sectoral assessment for action initiation should be analogous to that for data sharing. Sectoral assessments for action initiation should consider particular classes of actions based on the matters in subsection 56AD(1) of the *Competition and Consumer Act 2010*, adapted as required.

Additionally, the sectoral assessment should consider sector-specific regulatory barriers that may prevent action initiation from being facilitated safely, efficiently and effectively, and the digital maturity of the sector to implement action initiation.

The OAIC should also consider specific classes of actions when assessing potential privacy and confidentiality implications of designating a sector.

COORDINATION BETWEEN THE CONSUMER DATA RIGHT REGIME AND SECTOR-SPECIFIC REGULATION

The sectoral assessment process should assist in identifying pain points where changes to integrating CDR related data-driven services within the existing arrangements of the new sector. Any potential benefits that CDR can bring must be weighed against potential disruption to the sector's existing regulations. There are existing regulatory processes in both banking and energy that could limit CDR-enabled Action Initiation's scope. The following is an example within the energy sector.

Prior to the energy sector's inclusion in the CDR, the ACCC and the Australian Energy Market Commission (AEMC) considered issues around explicit informed consent (EIC). Existing requirements under the National Energy Retail Law (NERL) may impact 'switching'. The National Energy Market (NEM) operates in the ACT, NSW, QLD, SA, TAS and VIC, and provides a regulatory framework for these jurisdictions. Existing retailers' obligations to obtain explicit informed consent in writing, verbally or electronically, before transferring a consumer's account from another retailer or entering into a new contract has been identified as a barrier to switching. Whilst all parties involved consider that consent plays

an important role in consumer protection, there is no ability for third parties to give EIC on behalf of a consumer.

In response, the ACCC has recommended the regulation be changed to clarify the EIC provisions to ensure consumers can provide consent through third-party intermediaries. The AEMC has agreed that the most valuable development that CDR can bring is Action Initiation and has committed to working with all agencies and regulators in delivering the CDR to the energy sector.

Recommendation 4.4 – Alignment between the Consumer Data Right and sector-specific regulation

When conducting sectoral assessments, consideration should be given to whether regulatory and legal changes are required and appropriate to enable action initiation within a sector.

THE PROCESS IN ACTION - SARAH'S NEW HOME

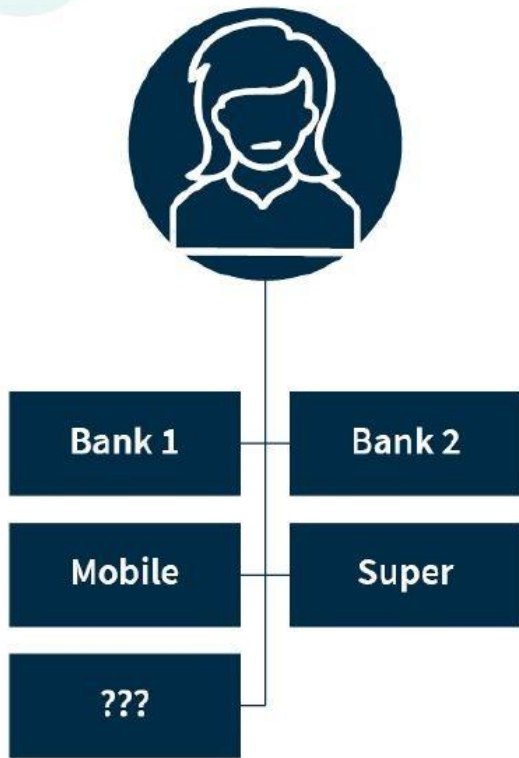
Sarah is moving out of home for the first time and needs to update her address information. Sarah is dreading needing to wade through all of the separate sites she would need to go through to individually update her address with her banks, mobile phone provider, superannuation fund and who knows who else she's forgotten.

Rather than separately trying to coordinate this process, Sarah decides to use 'UpDets', an app powered by the CDR that offers to help handle this for her. Sarah creates an account with UpDets and gives it permission to send instructions through the CDR to her service providers to update her address. Sarah then enters her new address into UpDets and looks through the list of service providers to find the ones she would like UpDets to contact. (GovAgency! Sarah always forgets about them.) After this, Sarah's providers come to her!

Each of the providers Sarah asked UpDets to contact comes back to her to confirm that she has authorised UpDets to request a change to her address and asks her to check the request to make sure all of the details are correct. Once Sarah confirms with each of these providers, the task is done! A process that would have otherwise taken Sarah hours is now solved in minutes, leaving Sarah more time to decorate her new home!

BEFORE

Sarah would need to update her address multiple times



AFTER

Sarah updates her address once with 'UpDets' and it takes care of the rest.

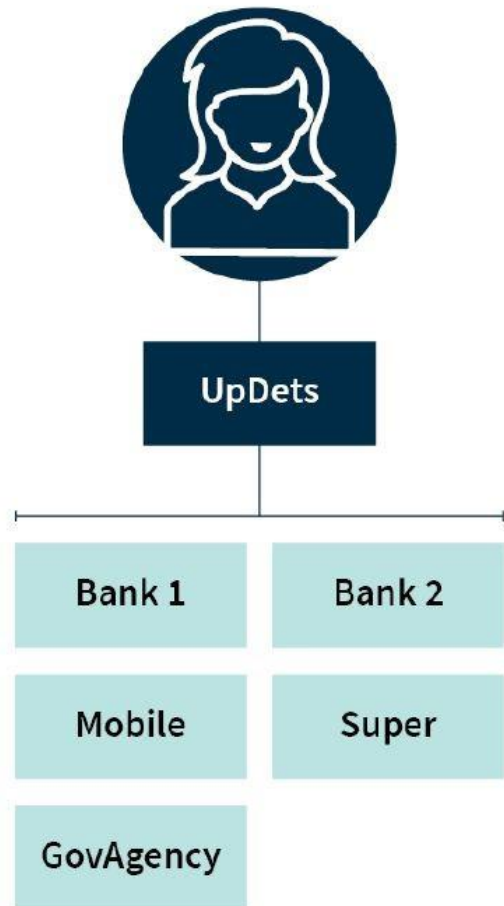
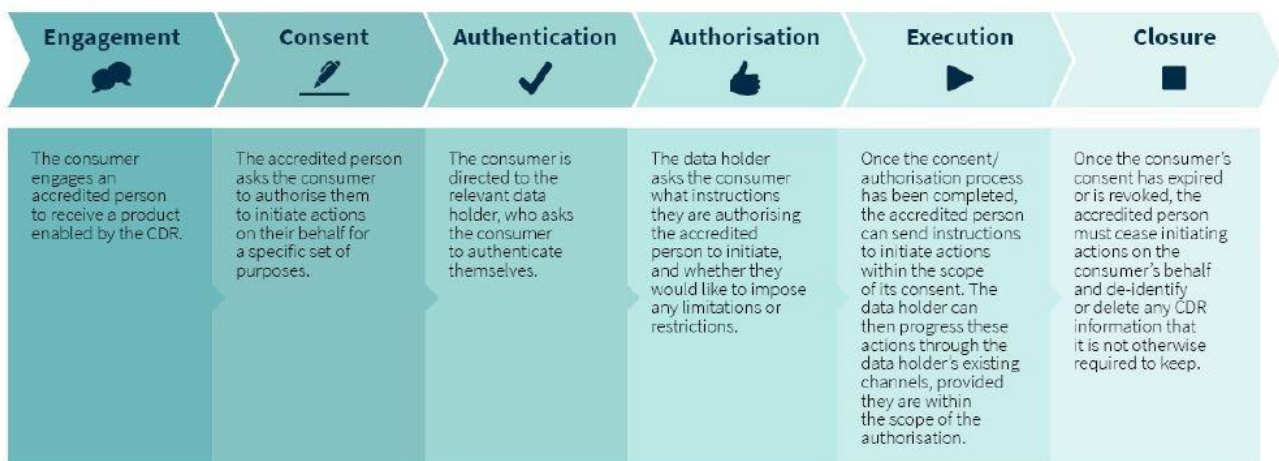


Figure 4.2 Consumer Data Right — Action initiation flow



CONSIDERATIONS REQUIRED FOR ACTION INITIATION

<p>Supported instructions:</p> <ul style="list-style-type: none">Which instructions should be supported by CDR? <p>Accreditation:</p> <ul style="list-style-type: none">What level of accreditation should be required for action initiations? <p>Accredited persons' interactions with other regulatory regimes:</p> <ul style="list-style-type: none">How should accredited persons in the CDR interact with other regulatory regimes?	<p>Consents to initiate actions for specific purposes:</p> <ul style="list-style-type: none">What should be the consent process for action initiation? <p>Ongoing consent arrangements:</p> <ul style="list-style-type: none">How should ongoing consents for action initiation be enabled?	<p>Customer authentication standards for data holders:</p> <ul style="list-style-type: none">What requirements should there be for data holders to authenticate consumers? <p>Authentication requirements by accredited persons:</p> <ul style="list-style-type: none">What authentication requirements should be on accredited persons?	<p>Authorisations to accept instructions:</p> <ul style="list-style-type: none">How should consumers provide authorisation to data holders to accept instructions received through the CDR? <p>Authorisation for taking a particular action:</p> <ul style="list-style-type: none">When should data holders require specific authorisation at the time an instruction is to be progressed? <p>Fine-grained authorisation:</p> <ul style="list-style-type: none">What level of detail should consumers be able to give in their authorisations?	<p>Obligations to act on CDR instructions:</p> <ul style="list-style-type: none">What obligations should be in place for data holders to act on CDR instructions? <p>Existing data holder obligations and commercial imperatives:</p> <ul style="list-style-type: none">What must be done to enable data holders to comply with existing obligations and processes? <p>General liabilities and responsibilities:</p> <ul style="list-style-type: none">What liability framework should be in place? <p>Duties when sending instructions:</p> <ul style="list-style-type: none">What duties should be in place when initiating actions? <p>Action status and reversal:</p> <ul style="list-style-type: none">How should consumers/ accredited persons be able to monitor and reverse actions?	<p>Cessation of agreements:</p> <ul style="list-style-type: none">What should accredited persons be required to do when action initiation consents expire?
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ADDITIONAL CONSIDERATIONS

Record Keeping: What record-keeping obligations should be in place?

Dashboards: What changes should be made to consumer dashboards?

Privacy Safeguards: Will the Privacy Safeguards need to be amended to enable action initiation?

CDR and the ability to contract on behalf of a consumer: How can a consumer enter into a contract through the CDR?

Due to the sheer size of Chapter 4 and the importance of everyone's social media reading time, I have broken this chapter into two parts. Stay tuned for part 2, Action Initiation Process.

Report this - Published by [Jamie K Leach](#) Data Champion | Digital Finance | Technologist | MAICD Published • 4mo



As we explore the meatier chapters of the Future Directions for the Consumer Data Right - Final Report, we will bisect Chapter 4 into two parts. This week's exploration includes considering Action Initiation within the Consumer Data Right, sectoral assessments and designations, and the framework for Action Initiation. Stay tuned for Part 2 - the Action Initiation

process....