

FUTURE DIRECTIONS - for the Consumer Data Right

A Summary of the Final Report

Principles and Fundamentals

There are “Four Fundamental Directions” for the Consumer Data Right:

- Towards data – empowered consumers

The CDR should be expanded to deliver more convenience to customers through digitally initiated actions.

- Towards an economy-wide foundation

Broader participation, new ideas, innovative data sets and interoperability in the CDR should be encouraged to create more choices for consumers.

- Towards an integrated data ecosystem

Specialisation, cooperation and interaction with digital economy in CDR should be enhanced to create a data ecosystem that consumers have confidence in.

- Towards international digital opportunities

International interoperability should be pursued to create choice for Australian consumers and opportunities for Australian businesses, both start-ups and established digital operations.

The Principles of the Consumer Data Right remain –

Consumer – Choice – Convenience - Confidence

Chapter 1 – Introduction to the Inquiry

In considering the potential future directions for the CDR, the inquiry was guided by the principles of the CDR – consumer focused, encourages competition, creates opportunities and is efficient and fair.

There were two recommendations from this chapter.

- A balanced approach to safety, efficiency and effectiveness will be needed to realise meaningful benefits to consumers and to grow participation in the new data ecosystem.
- The CDR will need to operate in conjunction with numerous pre-existing laws and regulations, including sectoral specificity. In order to create an effective and functioning CDR, it may be necessary to amend some of these instruments. The establishment of CDR may identify emerging behaviours and practices that require the attention of appropriate policy makers and regulators. The government will need to articulate with clarity whether a response will occur through the CDR, or through other instruments.

Chapter 2 – Future Directions for the Consumer Data Right

There are no formal recommendations from this chapter.

The concepts for the Four Fundamental Directions were further explored.

These future directions consider the ways that the Consumer Data Right can be expanded to strengthen the foundations of Australia’s Digital Economy. These recommendations should be expedited to deliver on the benefits of CDR and to match the expectations and potential of Australian businesses wishes to participate within the regime.

Chapter 3 – Expanding the Consumer Data Right to support switching

At present the banking version of CDR assists consumers to identify products that suit their needs based on analysis of their data and available market products. Expanding CDR will provide greater consumer benefit, costs savings and take action on their choices safely and efficiently.

There was only one recommendation from this chapter.

- The Consumer Data Right should facilitate the analysis and comparison of bundled products. The Data Standards Body should identify the most appropriate and efficient method of identification to enable product reference data pertaining to the range of services and bundled products be provided to consumers and accredited parties.

Chapter 4 – Action initiation framework

At its core, the future direction of the Consumer Data Right is the introduction of Action Initiation. Commonly referred to as “Write Access” in other jurisdictions, its inclusion will allow accredited persons to initiate actions on a consumer’s behalf, with their express consent.

In order for this to occur, the legislation that gives legal basis to the CDR will need to be amended to enable this critical cornerstone for the future of this framework.

In introducing Action Initiation, the current consent framework should be maintained.

Chapter 4 – Action initiation framework cont.’

This framework should also be strengthened by additional authorization processes to allow accredited participants and data holders to confirm the validity of Action Initiation requests and to comply with their obligations and protections.

Not surprising, this new inclusion in the Consumer Data Right has achieved a lengthy set of recommendations. There were twenty-four recommendations in this chapter.

- The CDR will need to be expanded to accommodate Action Initiations and this will require amendments to the CCA (2010). The amendments should delegate powers to the rule makers and DSB where appropriate and set out associated powers for Rules and Standards and enable the designation of actions within each sector by the Minister.
- There should be sector-assessment and alignment between the CDR and sector-specific regulation. The sectoral assessments should consider particular classes of actions based on matters in subsection 56AD(1) of the CCA (2010).
- The existing consent, authentication and authorization processes should apply. Action Initiation should only enable an accredited party to initiate actions that consumers are already able to perform with a data holder.
- There are certain actions that are deemed to hold significant risk to a consumers’ security or privacy that should be excluded from the CDR.
- Tiered accreditation for Action Initiation should be introduced.
- Restrictions should be placed on access consents that are not relevant to the provision of that specific service.
- Additional explicit requirements for the authentication of customers in line with international standards on authentication should be considered.
- There is an obligation for data holders act that have received a consumer request and valid authorisation if received from an accredited party. This mirrors their obligation to progress an action if directed by the consumer through another lawful channel.
- The general liability framework should extend the principles underpinning the operation of section 56GC of the CCA (2010).
- In designing the framework, processes should enable consumers to be notified when an action is initiated on their behalf by an accredited party.
- Rules should be included to consider the cessation of valid consent and the requirements for sufficient and standardized record keeping.

Chapter 5 – Action Initiation in the banking sector

Not to be outdone, Chapter 5 is equally hefty, as the immediate benefit of including Action Initiation within the banking sector is explored. The enthusiasm of the market and the immediate perceived benefit of introducing Action Initiation is growing, with this now being considered the mark of success for CDR in Australia.

The inquiry found that Action Initiation should be included in the CDR with two broad classes of actions – ‘payment initiations’ and ‘general action initiations’.

There were twenty-one recommendations in this chapter.

- The banking sector of the CDR should be expanded to accommodate Action Initiations and this will require thorough regulatory and privacy impact assessments and extensive consultation prior to a final decision by the Minister.
- Bank account-to-account payment initiation should be expedited and prioritization given in design coordination with changes to the Australian Payments Industry. This will bring increased benefit to the consumer.
- Payment Initiation should apply to all deposit-taking institutions subject to mandatory data-sharing obligation under Open Banking and they should be obliged to comply with third-party payment initiation by accredited participants.
- Both payer and payee payment initiation should be enabled to initiate payments with consumer consent, to allow flexible ongoing payment initiation consents and authorisations, and permit step-up authentication by the customer’s authorised deposit-taking institution when required.
- Payment Initiation should be designed to allow competition among payment systems in order to improve consumer outcomes.
- Suitable accreditation to engage in payment initiation is necessary.
- ADIs should be obliged to receive Payment Initiation instructions from accredited parties via a standardized API. The DSB should consider major payment systems that are not specific to a particular payment system. E.g. NPP API framework, the UK Open Banking standards or other international payments frameworks.
- ADIs should be able to charge for complying with CDR requirements, however the ACCC should intervene if unreasonable fees are charged.
- Consistency should be achieved through designing payment initiation to integrate with the rest of the CDR

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Chapter 5 – Action Initiation in the banking Sector cont.’

- Explicit consent and authentication requirements should be determined based on an assessment of the risks inherent to payment initiation to ensure consistency in the consumer experience.
- The rules and standards should outline the level of specificity that a consumer should be allowed to authorize their ADI/Accredited party to perform in line with the expectation and benefits of the system.
- Existing compensation arrangement between banks and their customers, including the ePayments Code should continue. The conduct of the accredited party should be akin to a party authorized to act on an account on the consumer’s behalf. The accredited party should be responsible for any losses incurring from their actions, i.e. as a result of an unauthorized payment from a consumer account.
- A Payment Initiation roadmap should be developed and published, informed by consultation with market participants.
- Once CDR payment initiation nears full implementation, consideration should be given to prohibiting payments by 3rd party access to digital banking portals.
- General Action initiation will enable product applications, updating details, managing products, closing a products and other associated general actions.
- Priority of product applications supporting the switching of products/services should be given.
- Licensing requirements for CDR participants offering data sharing or action initiation services should be sought from relevant regulators, i.e. ASIC. This will differ based on the sector-specific requirements and obligations.
- The Consumer Data Right should support consumer-directed sharing of Know Your Customer outcomes to the extent to which reliance is allowed on that outcome, in the event that proposed amendments to the reliance provisions in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* are passed by Parliament.

Chapter 6 – Future Directions for the Consumer Data Right

The inquiry considered additional concepts such as the expansion to ‘read-access’ rules and enhancements. There were twenty-four recommendations in this chapter.

Chapter 6 – Future Directions for the Consumer Data Right cont.’

- The CDR should support specialization and a sophisticated data ecosystem to allow businesses to design their own business models, promote innovation and raise the safety and efficiency of our digital economy.
- The CDR should include Outsourced Service Providers to participate. The ADR will retain liability, and the OSP will need to comply with the rules and framework. In addition ADR to ADR transfers should be included.
- In line with the Authorised Representative role in the AFSL regime, ADRs should be able to share data with their Authorised Representatives.
- The CDR should allow regulated 3rd parties operating outside of the CDR to receive data with the consent of the consumer. This should include CDR data or derived data for regulated activities and compliance activities. This could include data for low risk public benefit or insights data derived from CDR data.
- Accredited data recipients should be obliged to comply with a consumer’s request to share data which is the subject of a sectoral designation as well as equivalent data held by them in relation to sectors which are not yet designated.
- ADR below a certain size should be excluded from reciprocity requirements.
- Identification of equivalent data should be subject to the same principles which apply to the selection of data sets through the formal sectoral assessment and designation process. Guidelines on the identification of equivalent data should be published by the regulator.
- The accreditation criteria should not create an unnecessary barrier to entry by imposing prohibitive costs or otherwise discouraging suitable parties from participating in the Consumer Data Right.
- The Data Standards Chair should be able to approve standards for new voluntary data sets developed using different pathways. Guidelines should be provided and Standards for new data sets introduced by industry participants.
- The DSB should include a non-exhaustive dictionary and conduct ongoing consumer research reflective of the needs of consumers, ADRs and DHs.
- A central body should not be mandated to collect all consumer consent and authorisation information. Consumers should be able to authorise an accredited person to perform certain actions in regards to Consumer Data Right consents and authorisations on their behalf as a Consumer Data Right action.
- the potential privacy impacts of facilitating the transfer of consent data should be separately reviewed.

Chapter 7 – Consumer Safeguards

Additional consumer safeguards will be required as the CDR’s functionality expands to ensure consumers benefit, and their rights are protected. Key protections should be extended and adapted for CDR action initiation, with consumers having access to appropriate remedies if accredited persons or data holders act without appropriate consumer consent or authorisation.

There were eleven recommendations in this chapter.

- Interactions and potential overlap between industry-specific protection measures and the CDR should be considered when assessing potential sectoral inclusions with any barriers or conflicts appropriately resolved.
- Regulatory settings for accreditation should enable the accreditor to take into account all matters relevant to the applicant’s suitability to initiate actions of the type proposed. This may include comprehension of rules, vulnerable consumers or other associated factors.
- In the event that an ADR sends Action Initiation instructions with a valid request from the consumer, the consumer should have a right to take action against the ADR. Other remedies should include civil penalties, suspension/revocation of accreditation, etc.
- Consumer protections in Part IVD of CCA (2010) should be extended and applied to action initiation.
- Where an accredited person is granted a consumer’s consent to initiate actions with a data holder, the accredited person should be obliged to act efficiently, honestly and fairly in relation to initiating actions. If they are pursuant to a higher standard of their sectoral designation, they must meet the standard of conduct required of them.
- The ACCC should monitor and assess the impact on vulnerable consumers and an evaluation on its impact in the CDR should be completed 24 months after action initiation’s commencement. In addition innovation that benefits vulnerable consumers should be encouraged.
- Additional explicit requirements for the authentication of customers in line with international standards on authentication should be considered.
- CDR agencies should development and implement a timely consumer education program. The market should be involved.
- The government should explore ways that consumer advocacy groups can contribute their expertise to developing the CDR.
- The PIA and ISA should consider protections proportionate to the risks involved for Action Initiation authorisation, consent and instruction data, and if need, identify suitable protections.

Chapter 8 – Opportunities for connecting the CDR to the Data Economy

As Australia’s digital economy grows, the established framework and infrastructure supporting the CDR has potential for wider use domestically and internationally. There were fourteen recommendations in this chapter.

- Support is needed in developing authentication solutions that are interoperable and based on compatible international standards.
- A minimum assurance standard for authentication should be developed for DHs and ADRs. Safe harbours for existing requirements should be included. This should include a risk taxonomy and risk matrix for particular data sets and functions.
- The ‘data safety licence’ and supporting register should be available to meet equivalent requirements in other regimes, consistent with best practice cybersecurity risk management frameworks. Efforts should be made to align similar data safety ‘accreditations’.
- Where external data safety accreditations align with Consumer Data Right requirements, these could be recognised by the Consumer Data Right or at least enable their ‘accreditation holders’ to go through streamlined Consumer Data Right accreditation.
- Further guidance about transparency requirements relating to data aggregation activities, e.g. the use of algorithms, the importance of privacy by design and the application of relevant ethical frameworks, including the AI Ethics Framework when utilising AI technologies.
- Open International Standards should be adopted as a starting point for CDR rules and standards. If not adopted, the reason for this should be clearly articulated during consultation with stakeholders and industry. Equivalent foreign accreditation should be streamlined.
- Mutual arrangements should be sought from the United Kingdom and New Zealand. Government should seek to convene an international forum for CDR.

Chapter 9 – Consumer Data Right Roadmap

To enable effective implementation and maximum benefit to consumers, the path forward must be planned with an understanding of which CDR components complement one another, and what costs are likely to be incurred by participants. An integrated CDR Roadmap must be developed signalling the major steps to be taken as the CDR develops to enable investors in the data economy to prepare accordingly.