OAIC - Commissioner

From: STOKES,Andrew
Sent: Wednesday, 24 August 2022 9:49 AM
To: OAIC - Commissioner
Cc: OAIC - Executive Assistant; CANT,Shannon; AGO,Rocelle; HARDIMAN,Leo
Subject: For clearance - Joint IAID statement [SEC=OFFICIAL]

Snapshot	
Due date	26 August 2022.
Fixed or flexible	Flexible. Given further consultation with states and territories.
If fixed, why?	
Topic for clearance	IAID joint release
Product (e.g. brief / submission)	Media release: D2022/017666
Length / no. of pages	1
External parties	Commissioners and release to be made public
Clearance & consultation	Leo Hardiman, Rocelle Ago
Responsible director	Andrew Stokes
Final Clearance by	Information Commissioner

Good morning Commissioner
Please find a draft IAID statement for your comments/approval before it is distributed to the other commissioners.
Thanks to Leo and Rocelle for their comments.

Kind regards
Andrew

OAIC

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OAIC - Commissioner

From: BAKER,Heath
Sent: Monday, 22 August 2022 9:49 PM
To: OAIC - Commissioner; FALK,Angelene
Cc: HAMPTON,Elizabeth; CASTALDI,Andre; MOORE,David
Subject: For clearance: COVIDSafe Assessment 5 documents
Attachments: Advice advice for COVIDSafe Assessment 5 [SEC=OFFICIAL:Sensitive]

Snapshot	
Due date	24 August 2022
Fixed or flexible	Fixed
If fixed, why?	To give DoH maximum time to prepare documents ahead of due date (23 September)
Topic for clearance	COVIDSafe Assessment 5
Product (e.g. brief / submission)	Notification letter and assessment plan
Length / no. of pages	Letter 12 pages, Plan 16 pages
External party?	Department of Health and Ageing, and potential significant public interest
Clearance & consultation	Deputy Commissioner A/g Assistant Commissioner, R&S Heath Baker David Moore
Responsible director	Heath Baker
Final Clearance by	Commissioner

Dear Commissioner,

I would be grateful if you could please consider the notification letter (D2022/015571) and assessment plan (D2022/016529) for COVIDSafe Assessment 5.

The assessment examines whether Health has complied with its obligations to cease collecting data, delete data and notify app users as required by section 94P.

Engagement with PwC

Please note that we are using PwC as consultants for this assessment – they will conduct the fieldwork component. PwC have reviewed and are comfortable with the notification letter and the assessment plan.

I note the individual consultants we will use have supported us on previous COVIDSafe assessments, so we do not need another Authorising Instrument.

Assessment timing

We are working towards completing the assessment by mid-November. This timeframe aligns with the final COVIDSafe report under s94ZB.

We have discussed the timing of the assessment with PwC and Health – they are both comfortable it is achievable:

- Health will have 1 month and 1 week after the end of COVIDSafe data period to delete the data and respond to our document request
- PwC – 3 weeks to review documents, conduct interviews and prepare their input
- OAIC – 2 weeks to prepare and clear the draft report
- Health – 1 week of consultation on the draft
- OAIC – 1 week to finalise the report.

We have stressed to Health that the draft timing we have provided should not be taken as an indication of what we consider a reasonable timeframe to delete the COVIDSafe data.

Part VIIIA of the Privacy Act will be repealed 90 after the Minister's determination of the end of the COVIDSafe data period. (The repeal date is 14 November). s 42 [redacted]

Earlier briefs

Shortly after the COVIDSafe app launched in mid 2020, we prepared an EB outlining the assessments program (see D2020/011011), as well as an EB for assessment 5 (see D2020/009952).

s 47F [redacted]

Regards,
Heath

OAIC

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HORGAN,Llewellyn

From: ESLICK,Jessica
Sent: Monday, 22 August 2022 9:10 AM
To: AGO,Rocelle; HARDIMAN,Leo
Cc: DURVASULA,Suseela
Subject: [FOR CLEARANCE] Draft decision - s 47E(d); s 47F and Department of Defence (OAIC ref no MR18/00427) [SEC=OFFICIAL]
Attachments: Snapshot for clearance-IC review decisions[redacted].docx

Dear Rocelle and Leo

Further to Leo's comments on Friday in the draft decision to the above matter, I have updated the decision and responded to comments, and provided new comments.

I have also re-ordered the decision file, mainly in relation to the third party's submissions/lack of response, and adding a version of the IC review application that attaches the internal review application, because the applicant refers to that in their IC review application. I have also quoted from the internal review application in the decision. I have attached the updated snapshot.

Jess

OAIC

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Review officer: Emily Walsh **CONTAINS EXEMPT MATERIAL**

[MR18/00427] s 47E(d); s 47F and Department of Defence]

Snapshot	
Due date	17 June 2022
Fixed or flexible	Flexible
If fixed, why?	N/A
Topic for clearance	IC decision – s 47E(d); s 47F and Department of Defence [MR18/00427]
Product	Draft IC Review decision
Scope	The applicant sought access to documents in relation to s 47E(d); s 47F and s 47E(d) dealings with the Department in the production of a book.
Exemptions	Contrary to an order or direction (s 46(b)) Business information (s 47G)
Length / no. of pages*	Draft decision – 14 pages. Key documents on Resolve record [reference no MR18/00427] ***Tab 0. Draft IC Decision** *Tab 0. Decision Snapshot *Tab 00. Draft decision *Tab 1. FOI request *Tab 2: Third party consultation *Tab 3: FOI DECISION *Tab 4(a). Third party consultation on internal review 20.03.2018 *Tab 4(b): INTERNAL REVIEW DECISION *Tab 5: IC review application (attaches application for internal review) *Tab 6: Applicant's submissions *Tab 7 - Respondent's submissions: * Tab 7(a). Respondent's submissions 22.12.2020 * Tab 7(b). Respondent's submissions 22.01.2021 *Tab 7(c). Respondent's confidential submissions 06.07.2021 *Tab 7(d). Respondent's further consultation with third party 21.01.2022 *Tab 7(e). Respondent's advice: no response from third party 28.02.2022 *Tab 8 – Third party submissions 27.03.2018 *Tab 9 - Documents at issue [unredacted marked-up] **** Note the documents exempt under s 46(b) can only be viewed via Kojensi.**
Third parties	s 47E(d); s 47F, journalist is the third party. s 47E(d) was consulted during the course of FOI processing and objected to the release of the deed in full. Despite this objection, the Department proceeded to release parts of the deed to the applicant. A s 54P notice was not issued to s 47E(d); s 47F until 21.01.2022 due to oversight by the Department. The Department sought to again consult with s 47E(d); s 47F in Feb 2022 but received no response.
Issues for Commissioner	Whether the material contained in the documents at issue are exempt under ss 46(b) and 47G of the FOI Act.

Other considerations	Nil.
Review officer	Emily Walsh/Jessica Eslick
Clearance	Suseela Durvasula, Director Rocelle Ago, Assistant Commissioner Leo Hardiman, Freedom of Information Commissioner
Final clearance	Freedom of Information Commissioner

LIDBETTER,Samantha

From: KIELY,Amy
Sent: Friday, 19 August 2022 4:27 PM
To: OAIC Executive
Cc: STOKES,Andrew; OAIC - Corporate
Subject: All-staff meeting brief and PowerPoint [SEC=OFFICIAL]

Follow Up Flag: Follow up
Flag Status: Flagged

Snapshot	
Due date	COB Monday 22 August 2022
Fixed or flexible	Fixed
If fixed, why?	Meeting is 11 am Tuesday 23 August
Topic for clearance	All-staff meeting
Product (e.g. brief / submission)	Brief with high-level talking points: D2022/016243 PowerPoint slides: D2022/016244
Length / no. of pages	Brief: 9 Slides: 17
External parties	No
Clearance & consultation	Andrew Stokes, Shannon Cant
Responsible director	Andrew Stokes

Good afternoon Executive

Here is the brief (D2022/016243) and PowerPoint slides (D2022/016244) for the all-staff meeting at 11 am on Tuesday.

Angelene and **Leo**, we have prepared high-level talking points for you both. **Leo**, there should be time remaining after your update on IAID if there is any other content you would like to cover.

Melanie and Annamie, if you intend to use slides, please provide them and we will add them into the PowerPoint.

Andre, we have you down for the welcome, Acknowledgement of Country and overview of the agenda. **Rocelle**, you are down for questions and closing the meeting.

Please let Andrew and me know if you require any additional material for the meeting or have any questions.

Many thanks
Amy

OAIC

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OAIC - Commissioner

From: COLLINS,Sophia
Sent: Friday, 19 August 2022 2:40 PM
To: OAIC - Commissioner; FALK,Angelene; HAMPTON,Elizabeth
Cc: CASTALDI,Andre; FITZELL,Zoe; KING,Linda; EDWARDS,Kate; BAKER,Heath; PULS,Nicola; TALLON,Louise
Subject: CDR Board briefing - meeting of 23 August 2022 [SEC=OFFICIAL]
Attachments: CDR Board papers August 2022.pdf

Good afternoon Commissioner

Please find linked the brief for next Tuesday's CDR Board meeting: D2022/017570. I have attached the papers for the meeting (which are linked to within the brief itself).

Sam has set up a time in your calendar for 4.00pm on Monday for a verbal briefing on these papers.

Kind regards
Sophia

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Snapshot	
Due date	To support the Board meeting on 23 August 2022
Fixed or flexible	Fixed
If fixed, why?	The Board meeting is scheduled for 23 August 2022
Topic for clearance	Briefing – CDR Board meeting 23 August 2022
Product (e.g. brief / submission)	Briefing - D2022/017570
Length / no. of pages	19
External parties	Yes – CDR Board
Clearance & consultation	Andre Castaldi, Heath Baker, Kate Edwards, Sophia Collins
Responsible director	Linda King
Final Clearance by	Angelene Falk

Consumer Data Right Board – Meeting 29

Meeting Details

Date	Tuesday 23 August 2022
Time	9:00am – 10.30am
Location	Via Teams: link within meeting invitation

Microsoft Teams meeting

Join on your computer or mobile app

Click here to join the meeting

Join with a video conferencing device

s 47E(d)

Video Conference ID: 138 977 238 6

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Or call in (audio only)

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Phone Conference ID: 735 570 831#

Attendees

Role	Representative	Position
Chair	Robert Jeremenko	a/g Deputy Secretary, Treasury
Member	Peter Crone	Commissioner, ACCC
Member	Angelene Falk	Australian Information Commissioner
Member	Andrew Stevens	Data Standards Chair
Adviser	Kate O'Rourke	First Assistant Secretary, CDR Division, Treasury
Adviser	Paul Franklin	CDR Executive General Manager, ACCC
Observer	Libby Hampton	Deputy Commissioner, OAIC
Observer	Sheridan de Kruiff	a/g General Manager, Solution Delivery & Operations, ACCC
Observer	David Jones	General Manager, Regulatory, ACCC
Observer	Bart Hoyle	a/g Assistant Secretary, Regulatory Frameworks, Treasury
Observer	Emily Martin	Assistant Secretary, Policy and Engagement, Treasury
Observer	Andre Castaldi	a/g Assistant Commissioner, OAIC
Observer	Brad Grey	Director, ACCC
Presenter	Catherine Manson	Director, ACCC
Secretariat	Phil Schofield	Director, Treasury
Secretariat	Bronwyn Cameron	Assistant Director, Treasury
Secretariat	Harvey Thompson	Graduate, Treasury

Apologies	Representative	Position
Observer	Daniel Ramos	General Manager, Solution Delivery & Operations, ACCC
Observer	Belinda Robertson	Assistant Secretary, Data Economy and Governance, Treasury

Consumer Data Right Board – Meeting 29

AGENDA

	Item	Verbal / Paper	Responsibility	
1	**Standing matters**			**5 mins**
1.1	Acknowledgement of Country	Oral	Mr Jeremenko	
1.2	Welcome and apologies	Oral	Mr Jeremenko	
1.3	Conflict of Interest declarations	Oral	Mr Jeremenko	
1.4	Minutes from previous meeting	Paper	Mr Jeremenko	
1.5	Action Items	Paper	Mr Jeremenko	
2	**Matters for Consideration**			**50 mins**
2.1	Statutory Review ***For discussion:*** *Key issues and broad findings of the review and preliminary response.*	Paper	Ms Martin	20 mins
2.2	Incident Management, Data quality and Eco-System Performance Focus Group ***For discussion:*** *Feedback on the key issues emerging from the focus group.*	Paper	Mr Franklin	15 mins
2.3	Cross-agency participant guidance strategy ***For endorsement:*** *Members to discuss the key initiatives of the strategy and consider for endorsement.*	Paper	Ms Manson	15 mins
3	**Matters for Information**			**20 mins**
3.1	Program status report and Treasury update	Paper	Ms O'Rourke	
3.2	CDR ACCC update	Oral	Mr Franklin	
3.3	OAIC update	Oral	Ms Falk	
3.4	DSB update	Paper	Mr Stevens	
4	**Matters for Noting**			**10 mins**
4.1	Accessibility review update ***For noting:*** *Update on recent work to conduct accessibility analysis of the standards.*	Paper	Mr Stevens	
4.2	Program cyber security plan ***For noting:*** *Update on progress towards developing a whole of program cyber security plan.*	Paper	Mr Schofield	
4.3	Benefits management update ***For noting:*** *Update on CDR benefits management following engagement with external stakeholders.*	Paper	Mr Schofield	

Consumer Data Right Board – Meeting 29

5	**Other Business**			**5 mins**
5.1				

Next meeting: 27 September

CONSUMER DATA RIGHT BOARD

CONSUMER DATA RIGHT BOARD MINUTES - DRAFT

Date:	19 July 2022	Time:	9:00am – 10:30am
Chair:	Meghan Quinn (Chair) (Tsy)		
Members:	Andrew Stevens (Data Standards Chair), Angelene Falk (OAIC), Peter Crone (ACCC)		
Advisers:	Kate O'Rourke (Tsy), Daniel Ramos (ACCC)		
Observers/presenters/ stakeholder agency representatives:	Bart Hoyle (Tsy), Emily Martin (Tsy), Belinda Robertson (Tsy), David Jones (ACCC), Kat Savelli (ACCC), Libby Hampton (OAIC), Andre Castaldi (OAIC), Brad Grey (ACCC)		
Apologies:	Paul Franklin (ACCC)		
Secretariat:	Phil Schofield (Tsy), Bronwyn Cameron (Tsy), Cordelia To (Tsy)		
Meeting opened at:	9:00am		

Item 1	Standing matters	Lead: Ms Meghan Quinn

The Chair welcomed members to the meeting and made an acknowledgement of country. No conflicts of interest were declared.

The Minutes from the last meeting were agreed by all members.

The Chair noted that four action items remain open.

- CDRB/211216/2 *(Update on Privacy Act review)*. Next update to be scheduled for later in the year.
- CDRB/220315/1 *(Update on benefits management framework)*. Phase 2 work on benefits has now commenced and an updated paper will be brought forward once this work has materially progressed.
- CDRB/220428/1 *(Update on consumer uptake)*. Action on this is not expected until August at the earliest, after the completion of the next reporting cycle.
- CDRB/220621/1 *(Update on comms strategy and campaign)*. Update not expected until early 2023.

Members observed that some of these action items better reflect a forward agenda for the Board rather than items requiring timely resolution. Members agreed that for future meetings the action items should be reviewed and restructured to separate matters that constitute a forward agenda for Board consideration.

Item 1.6	Program Status Report	Lead: Ms Kate O'Rourke

Ms O'Rourke introduced the program status report, noting that the status of the program remains green however issues are emerging that are placing pressure on the program. She flagged that the most significant issues relate to the ongoing implementation of the CDR in the energy sector, and well as pressures stemming from concurrent consultations across multiple workstreams. Ms O'Rourke observed that it is not unexpected that, as the data sharing commencement dates for the energy sector approach, the program will encounter an increasing number of issues. She informed members that as part of their response CDR agencies have increased the number of engagement forums to help identify and resolve these issues.

Ms O'Rourke highlighted a number of other points from the report.

- Subsequent to the preparation of the status report a new issue has emerged in the energy sector relating to product reference data, where there is a disputed position about the obligations of energy retailers. s 47E(d) [redacted]
- There is an ongoing issue re data quality, with further discussion anticipated as part of agenda item 2.3.
- There has been notable growth in the number of representative arrangements in the past month, observing that this may be a point of interest for more-detailed discussion at a later meeting.
- Engagement with the Assistant Treasurer has confirmed ongoing support for the implementation of the CDR in the telecommunications sector, with the timing of the implementation to be finalised at a later date.

- Work on action and payment initiation is progressing, with drafting instructions being prepared.
- The Statutory Review has reached its final stages. Copies of the draft have been shared with agencies to help check for any errors of fact ahead of the final report being presented to the Assistant Treasurer.
- Work on Version 5 of the rules is continuing, with the team working through various issues that have emerged. Treasury will consider whether there is a need to reduce the scope of the proposed amendments, potentially deferring lower priority changes to later rules updates.

Mr Crone shared his views on the status report.

- The report continues to be useful in capturing the views and assessments of workstream leads across the program. s 47E(d) [redacted]
- He cited his main concerns as relating to the implementation of the CDR in the energy sector, including the dependency on the passage of NEL/NER amendments in south Australia, as well as broader pressures currently faced by AEMO that may have flow-on impacts for their CDR implementation.
- Mr Crone noted the position of the Communications Alliance on the expansion of the CDR into the telecommunications sector. He contemplated the question of whether there is sufficient demand for this data in the community.
- Mr Crone queried the value of use cases for consumers with respect to government participation in the CDR. For example, use cases involving pre-filling of forms seemed unlikely to be compelling for consumers.

Members reflected on the points raised by Mr Crone.

- Ms Quinn advised members that the Assistant Treasurer will be writing to the South Australian Government to convey the importance of timely changes to the NEL/NER. She agreed that the impact of broader pressures on AEMO should be monitored, though noted that the CDR delivery arm of AEMO is separate from the operational arm so any consequential impacts on their CDR implementation are likely to be minimal. Ms Quinn observed that small businesses are also consumers for the CDR, and shared with members that the matter of access to government data through the CDR is raised with her regularly.
- Ms Martin advised members that the ABS is enthusiastic about the opportunities presented by the CDR, citing the example of compulsory business surveys where the use of CDR data would save small businesses a large amount of time in completing the survey while simultaneously improving the accuracy of data reported to the ABS.
- Mr Stevens reflected that the use of consumer data held by the ATO to support loans for small businesses is seen as a high value use case for CDR data. He observed that government held consumer data has increased significance in the context of cross-sectoral use cases. Mr Stevens noted the importance of having consistent consent processes for consumers across different data access initiatives (for example under the Data Availability and Transparency Act 2022). Mr Crone agreed there would likely be strong interest from CDR participants in designating ATO-held consumer datasets. However, he noted any decision to designate ATO datasets would undoubtedly require careful consideration by the Government.

The Chair invited Ms Martin to provide an update on the next steps and timing for the Statutory Review.

- Ms Martin explained that once the report has been presented to the Assistant Treasurer it needs to be tabled in Parliament within 15 sitting days. The Assistant Treasurer will be formally briefed when the report is finalised; it is not yet clear whether the Government intends to prepare a response to the Review. She concluded by advising members that a copy of the draft report has been sent to CDR agencies for review.

Mr Crone provided further updates for members on ACCC activities described in the program status report.

- The ACCC recently issued an infringement notice to the Bank of Queensland for alleged failure to meet CDR compliance obligations; the Bank of Queensland has paid the monetary penalty. The ACCC is currently considering potential enforcement action towards a second bank.
- The ACCC is turning its compliance and enforcement focus towards data quality as well as compliance of participants with consent processes.
- At a recent senior officer meeting with the Community Owned Banking Association (COBA), s 47E(d) [redacted]. Separately,

COBA advised that many of their members were keen to participate in the CDR program as accredited data recipients though observed that this would not be possible while members were still working to comply with their obligations as data holders.

Ms Quinn advised members that the Assistant Treasurer recently met with COBA and had advised COBA that he considered that any concerns with meeting obligation dates should be referred to the ACCC for administrative resolution.

Mr Ramos advised members that the ACCC released the latest version of the Register and Accreditation Application Platform (RAAP) on 15 July, and that the testing sandbox is on track to be released 22 July. He added that both the RAAP and sandbox supported the version of the data standards to be implemented by the energy sector. Mr Ramos reflected on the ongoing issue with energy product reference data and observed that, depending on the ultimate resolution, there is the potential for consequential changes to be needed for the RAAP and participant tools.

Ms Falk reflected on the status report and the guidance provided at Appendix A.

- She observed that ratings are influenced by how clearly risks and issues have manifested, noting that certain OAIC items have been assessed to have an amber rating on account of issues that have led to delays that are currently being experienced.
- Ms Falk noted that for certain risks and issues the consequences may not fully materialise until late in the process and considered whether this was the optimal approach for keeping the Board informed. Ms Falk noted that while comments are helpful for these risks and issues, they are not as clear as a green, amber or red rating.
- She suggested that the Board would benefit from having greater visibility of how issues are progressing, given the Board's role.
- Ms Falk noted that in light of the Gateway Review recommendations regarding governance arrangements there would be merit in reviewing the Board terms of reference.
- Ms Falk reflected on the importance of managing the tension between pushing to achieve obligation dates with the risk of compliance issues emerging with participants that cannot implement in time. She observed that if there is significant non-compliance there will need to be a stronger compliance posture and this may impact trust and confidence.
- Ms Falk considered the update on government participation, noting that government data can be used purposefully as a national resource, however it is important to be clear on the purpose of the CDR, including with respect to tell-us-once initiatives and improving convenience. In all cases the sharing of government data through the CDR should not undermine trust or the value proposition of the CDR.

Ms O'Rourke confirmed that Treasury was happy to work with other agencies to consider the optimal classification of status, risks and issues in the preparation of future reports, and to review the Board terms of reference to ensure they remain fit for purpose.

Members reflected on the points raised by Ms Falk, addressing a number of key points.

- Members agreed that it is normal and expected to encounter resistance from new sectors, and that this will be a recurring experience as the program expands.
- It will be important for messaging to be clear and consistent, including that compliance is expected from the obligation dates specified in the rules.
- Engagement with the energy sector is being increased to confirm the program's intent.

Mr Stevens shared his views on the status report.

- He concurred with previous comments that it would be helpful to review the rating schema and associated guidance.
- Mr Stevens reflected on the current issue regarding product reference data for energy, sharing his view that this would appropriately be rated red, acknowledging that the issue emerged subsequent to the creation of the report.
- s 42 [redacted]

s 42 [redacted]

- Mr Stevens reflected that the maintenance iteration approach operated by the DSB might be applied more-generally across the program for other elements of the regulatory framework. Mr Hoyle noted that this was already being considered by the rules teams.

Members discussed the details of the issue regarding product reference data, covering a range of key points.

- The potential impacts to the rules, enabling systems and/or data standards.
- The level of scrutiny of the legal framework for energy as we approach data sharing commencement dates is a likely pattern that can be expected to be repeated for the telecommunications sector. It is important that there is a solid foundation, and that definitive advice is sought early.
- Ms O'Rourke advised members that the Australian Government Solicitor advice has been sent as an urgent request and a response was anticipated to arrive in a matter of days. Treasury will coordinate engagement with energy providers next week.
- Members agreed that when facing issues or questions on multiple aspects of the framework it is critically important that all CDR agencies work together to resolve the matter and agree how to communicate outcomes to stakeholders.
- Ms Quinn shared with members her recent experience visiting Open Banking agencies in the United Kingdom (UK). She observed that the UK model has and continues to encounter a large number of operational risks and implementation issues. In the future our program will need to be ready to address risks and issues that emerge not just from expansion, but also operations and potentially feedback from compliance and enforcement processes.

The Chair drew the discussion to a close, sharing her view that the report is improving the detailed and rich conversation the Board has on the status and risks of the program and thanked the team for putting it together. She asked that the guidance provided with the report be reviewed to provide greater clarity and consistency for agencies preparing input. The Chair agreed with members that the dashboard sent to the Assistant Treasurer's office should be updated to highlight issues re concurrency of work as well as the emerging pressures in the energy implementation.

Action item: *Treasury to review the guidance for the program status report and be clear on how agencies should rate status, risks, and issues.*

Item 2.1	Expansion of the CDR to the telecommunications sector	Lead: Mr Bart Hoyle

Mr Hoyle introduced the discussion paper, highlighting a number of key points for members.

- The next milestone for the telecommunications workstream is to develop draft rules that are provided to the Assistant Treasurer for consideration by late August or September.
- The rules teams have been working closely with CDR agencies to work through the various complexities and challenges.
- The telecommunications sector has not been enthusiastic in its engagement, which presents challenges for ensuring that proposed rules changes have been well-tested with the community.
- The designation instrument is very broad, however the rules are proposing to narrow the base of designated entities through a de minimis threshold, product selection, as well as excluding large-spending customers from being eligible consumers.
- Data holders that fall outside of the de minimis threshold are able to participate on a voluntary basis.
- The rules propose that offline customers are excluded, on the basis that offline customers are understood to represent a very small proportion of the customer base.

The Chair invited members to discuss their views on the paper.

- Ms Falk advised that she saw no redline issues. She noted her focus is on what sensitive data is proposed for inclusion, observing that such data should only be included if there is a strong use case that could manage the privacy impacts in an acceptable way. Ms Falk noted issues around non-account holder information being included in CDR data. Regarding the de minimis threshold, Ms Falk assumed the same approach should be taken to voluntary participation as in the energy sector and that there is a requirement to comply with all the Privacy Safeguards. She discussed the OAIC approach to

dispute resolution and supported the idea of a staged implementation to ensure data holders can comply with the security and privacy obligations applicable to them.

- Mr Crone advised that he is broadly comfortable with what has been outlined in the paper. He supported the proposed de minimis threshold. Mr Crone informed members that the structure of the telecommunications industry is evolving rapidly which has potential implications for the expansion of CDR to the sector. He noted the importance of ensuring that any proposed rule changes do not preclude the ability of small challenger organisations from adopting the CDR early in order to compete with larger players.
- Mr Stevens advised that he is broadly comfortable and supportive of the approach outlined in the discussion paper. He reflected that he is a strong supporter of measures that enable voluntary participation in the CDR; among other advantages voluntary participation serves to soften the scale of go-live dates/events
- While noting the lack of engagement from the telecommunications sector, and the desire to narrow the base of designated entities and eligible customers, Mr Stevens encouraged the team to consider the value of **cross-sector** use cases that included telecommunications data. While there might be initial views of customers or data that is unlikely to bring benefit, without understanding potential cross-sector uses cases it is not possible to know the full value that that data may offer.
- Ms Quinn reflected that large users may want to be able to share data early, and therefore they should not be excluded from participation in the CDR forever. It is conceivable that there may be a niche, high-value, use case for servicing this small number of participants.

The Chair closed discussion on this agenda item, acknowledging the advice of Mr Hoyle that the next steps following the Assistant Treasurer's review is for the draft rules to be published for community consultation.

Item 2.2	Update on customer uptake of the CDR	Lead: Mr Daniel Ramos

Mr Ramos introduced the paper and highlighted a number of key points for members.

- The adoption figures outlined in the paper are based on active consents identified via GetMetrics reporting. The ACCC currently cannot identify one-off consents, for example where a consumer gives consent and then revokes it on the same day.
- The next round of Rule '9.4' reporting is due from data holders and data recipients at the end of July. This will provide greater insight into consumer adoption.
- A review of the GetMetrics API may be warranted to consider how to capture additional data about one-off consents. Changing the nature of GetMetrics reporting may require changes to rules as well as standards.
- Further consideration is being given as to how and when data about consumer adoption of the CDR might be published, noting that the performance dashboard maintained by the ACCC may be a suitable avenue for publication.

The Chair invited members to discuss their views on the paper.

- Mr Stevens shared with members feedback he had received from the CDR community that the point at which measurement is taken is important. If there are issues experienced by consumers that prevent consent from taking effect then such intended use of the CDR will not be able to be captured through a metric centred on active consents. He reflected that as data quality and consent flows improve the program may observe an increase in consumer adoption.
- Mr Crone reflected that 7% growth in a month is a good sign and, while the starting base may be low, the trend is encouraging. He noted that the ACCC will be able to provide greater insights following the next round of Rule 9.4 reporting. Mr Crone discussed the accreditation of NextGen as a data recipient. They support electronic lodgements to mortgage brokers, and have signalled the potential to utilise the CDR for around 900,000 mortgage applications per year.
- Ms Falk noted the increase in the number of consumers using the CDR. She advised members that she had no objections to aggregated consumer adoption numbers being published by the program, however if additional demographic information was considered for inclusion with the published adoption numbers then the OAIC will need to be consulted.

- Ms O'Rourke advised members that the Value Management Consulting Team is working to develop a dashboard of program metrics that will include consent and other performance information, and that it will be important to link this dashboard with future plans to publish adoption numbers for the program.

The Chair thanked Mr Ramos for the paper, and noted the need to be clear on how the measurement of one-off consent would be addressed.

***Action item**: Agencies to collaborate in exploring how the GetMetrics API may be extended to capture additional data about one-off consents, considering any law, rules and standards changes that may be required.*

Item 2.3	Update on the Incident Management Working Group	Lead: Mr Daniel Ramos

Mr Ramos provided members with a verbal update on the inaugural Incident Management Working Group held on Friday 15 July.

- The working group was attended by ACCC, Treasury, OAIC and the DSB, as well as representatives of data holders and data recipients.
- The ACCC plays a facilitative role for incidents that occur between participants. The ACCC does not hold powers to compel a data holder to respond to issues raised by data recipients in a particular period of time or to a common quality standard. A rule change may be required if it is desirable for the ACCC to hold and exercise such a power.
- The discussion included a number of suggestions for improvements to the incident management processes operated by the ACCC, including broad support to introduce service-level obligations.
- The next step will be for the ACCC to take a proposal on the introduction of service level standards to the next working group meeting for consultation.
- The working group discussed issues relating to data quality. A challenge for the ACCC is that there is no shared definition of 'data quality', which can span issues ranging from the consent process to misaligned expectations of what data is or should be available from a data holder.
- The ACCC has established an internal project to investigate the data quality issue. The project will consider metrics, including consent numbers, product reference data, and consumer data.

The Chair thanked Mr Ramos for the update and invited comments from other members.

- Ms Falk had no further questions, noting that she valued the opportunity for the OAIC to participate.
- Mr Stevens welcomed the update and observed that the establishment of the working group is a positive step forward for the program. He reflected that the working group would help address the inherent power imbalance that exists between data holders and data recipients in resolving issues between the participants.
- Ms Robertson advised that she is the co-sponsor of the incident working group, and agreed that it had been a productive discussion. She sees that the outcomes and outputs of the working group will feed into ongoing work on rules and standards, providing significant benefits to the program into the future.
- Ms Quinn reflected that holding an external focus in the working group was important and will encourage participants to engage with the program for resolving issues. She suggested that the ACCC consider how they can share the knowledge generated through the working group with the broader CDR community, to help participants triage matters and determine the appropriate contact points across the program.

The Chair summarised the views of members recognising that the establishment of the Incident Management Working Group is a positive step forward for the program, that the working group will be an important forum for helping to clarify and resolve issues across the program, as well as providing valuable intelligence on how the CDR is operating in practice.

Item 3.1	CDR Treasury update	Lead: Ms Kate O'Rourke

Ms O'Rourke introduced the July draft dashboard, noting that it would continue to be the means of communicating the status of the program to the Assistant Treasurer's office. She advised that Treasury was still waiting on feedback as to whether the dashboard met the needs of the Assistant Treasurer's office.

Members noted the update, and suggested that Treasury consider the purpose and content of the dashboard to ensure it remains fit for purpose, alongside feedback from the Assistant Treasurer's office once it received.

Mr Crone requested that an update on the whole of program cyber security plan be discussed at the next Board meeting.

Item 3.2	**CDR ACCC report**	**Lead: Mr Daniel Ramos**

Members noted the ACCC updates included in the program status report.

Item 3.3	**OAIC update**	**Lead: Ms Angelene Falk**

Members noted the OAIC updates included in the program status report.

Item 3.4	**DSB update**	**Lead: Mr Andrew Stevens**

Mr Stevens introduced the DSB update.

Mr Crone noted the recent publication of the report on CDR Data Standards security analysis, commissioned by the DSB. He sought guidance on progress with the whole of program approach to cyber security that Treasury was to oversee, as previously agreed by the Board. Mr Stevens provided a high-level overview of the findings of the Data Standards security analysis, noting that the report highlighted that certain elements of the rules and standards reflect requirements that were previously industry best practice, but no longer are.

Ms Quinn noted the work of the DSB regarding accessibility. Mr Stevens offered to bring forward an update on this matter for the next Board meeting.

Item 4	**Other business**	

Ms Quinn shared further information with members about her observations from her recent visit to the United Kingdom (UK), focussing on what lessons the CDR program can learn from the UK experience with Open Banking. She summarised her key takeaways to be:

- the big growth in UK Open Banking came via connection and action initiation with the tax system, therefore getting action and payment initiation right will be a critical step forward for the CDR, and
- while the Australian regulatory framework may not be perfect, major redesign is not warranted.

Members discussed a number of use cases where the sharing of government data may accelerate realisation of the benefits of the CDR. They noted that various challenges would need to be considered such as fraud risks, and balancing the benefits of sharing data with the need to ensure protections for consumers.

The Chair noted that the agenda for the next Board meeting should look to include:

- a discussion of the Statutory Review
- an update from the Incident Management Working Group
- a more detailed update on the work the DSB has undertaken on accessibility
- an update on progress developing the whole of program cyber security plan, and
- an update on the progress of work on benefits management.

The meeting closed at 10:47am.

19 July 2022 CDR Board – Action Items Summary

Action Item	*Meeting Date*	*Description*	*Responsible Party*	*Due Date*	*Status*
CDRB/220719/1	19 Jul 2022	Treasury to review the guidance for the program status report and be clear on how agencies should rate status, risks, and issues.	Treasury	23 August 2022	Completed out of session. Guidance has been refined in the program status report template.
CDRB/220719/2	19 Jul 2022	Agencies to collaborate in exploring how the GetMetrics API may be extended to capture additional data about one-off consents, considering any law, rules and standards changes that may be required.	Treasury	TBC	Treasury will coordinate analysis across CDR agencies to identify desirable metrics, linking this with work on benefits management. Any potential/proposed changes to GetMetrics will be consulted through the established data standards consultation mechanisms.

Forward agenda items

Description	*Target Board meeting*	*Other comments or notes*
Treasury to arrange for a representative of the Attorney General's Department to present a subsequent update on the Privacy Act Review in the first half of 2022.	To be confirmed	
Treasury to bring forward a further update on the benefits management framework following engagement with external stakeholders	August 2022	Noting paper scheduled for the Aug 2022 Board meeting.
ACCC to provide a further update to the Board on customer uptake after the conclusion of the next rule 9.4 reporting cycle at the end of July.	September 2022	To be scheduled following completion of the next reporting cycle. No earlier than Aug 2022.
Treasury to provide the Board with an update on the communications strategy and campaign, including sequencing and timing.	March 2023	To be scheduled when a full strategy proposal is ready, no earlier than early 2023.

CONSUMER DATA RIGHT BOARD: 23 August 2022

AGENDA ITEM 2.1

Statutory Review of the Consumer Data Right

Lead: Emily Martin, Assistant Secretary, Treasury

Recommendations

That the Consumer Data Right Board:

1. **Discuss** the recommendations of the independent Statutory Review of the CDR.
2. **Note and discuss** the initial response matrix, with particular regard to prioritisation.

Background

The independent Statutory Review of the Consumer Data Right (the Review) is required under Section 56GH of the *Competition and Consumer Act 2010* (the Act) and has now been completed by Ms Elizabeth Kelly PSM.

The purpose of the Review was to explore the extent to which implementation of the CDR statutory framework supports the core policy objectives of driving value for consumers, increasing competition within designated sectors, and driving innovation across the data services sector. The final report is available at **Attachment B**.

Key Issues

- Ms Kelly's report makes 15 findings and 16 recommendations that provide comments on the state of the CDR as well as suggested changes to the Statutory Framework. The recommendations are general in nature and do not lock in specific actions, allowing the Government scope to respond flexibly to the issues raised.
- The report finds that the CDR's Statutory Framework has been broadly effective in supporting the rollout to date. It found the framework is sufficiently flexible and robust to accommodate further changes to achieve CDR policy objectives in the short to medium term, but that it may need to be adjusted as the CDR develops into the future.
- The 16 recommendations of the report are summarised at **Attachment A**. The table provides early analysis of the recommendations, including commentary on whether existing work is underway, whether legislative or funding would likely be required, and notes the proposed lead agency.
- The report has been provided to the Assistant Treasurer for consideration and tabling in both houses of Parliament within 15 days of receiving the report.
- Treasury has recommended that there be a Government response to the Review recommendations.

- The next step will be for the Government to table the report in parliament and if Ministerial agreement is obtained, commence work on preparing a Government response. The Minister may also engage with key stakeholders around the report's release, and briefing is being prepared to support this.
- Treasury will lead the development of the Government response in consultation with CDR agencies and other relevant stakeholders.

Attachments

Attachment A: 2.1.1 Summary of Recommendations and initial response matrix

Attachment B: 2.1.2 Statutory Review of the CDR – Final Report

Attachment A: Summary of Statutory Review Recommendations and initial response matrix

Statutory Review Recommendations							
No.	**Recommendation**	**Status**	**Priority ***	**Funding Required ****	**Rules/Legislative Amendments**	**Lead Agency**	**Consultation**
1.1	In the short to medium term, the existing sector-by-sector approach can support the inclusion of targeted datasets that enable cross-sectoral use cases. Further consideration should be given to whether the sectoral approach for expansion is sufficiently flexible to support continued rollout of the CDR, with particular consideration given to introducing action initiation and government-held consumer data.	s 47C; 47E(d)		s 47C; 47E(d)	✓	Treasury	OAIC ACCC DSB
1.2	A streamlined mechanism to update a designation instrument for technical/minor considerations should be introduced if relevant details arise after designation. Any such mechanism should not replace the need for a full sectoral assessment for genuine system expansions.				✓	Treasury	OAIC ACCC
1.3	To ensure that privacy is properly factored into the designation design, it is recommended that the Information Commissioner's assessment on privacy and confidentiality is considered as part of the sectoral assessment report.				✓	Treasury	OAIC
1.4	To provide greater clarity and certainty to all participants, the Government, with CDR agencies, should provide greater transparency on CDR consultation processes and a timeline that outlines expected future developments.				✗	Treasury	DSB OAIC ACCC Industry stakeholders
1.5	Greater visibility of success measures and system objectives will provide increased confidence and assurance to participants. Success measures should incorporate measures of system health and meaningful outcomes for consumers.				✗	Treasury ACCC DSB	Industry stakeholders Consumer Advocates

Attachment A: Summary of Statutory Review Recommendations and initial response matrix

Statutory Review Recommendations							
No.	**Recommendation**	**Status**	**Priority ***	**Funding Required ****	**Rules/Legislative Amendments**	**Lead Agency**	**Consultation**
2.1	Screen scraping should be banned in the near future in sectors where the CDR is a viable alternative. Importantly, the Government should clearly signal when and how the implementation of the ban would take effect. This would provide certainty and adequate time for businesses to transition, along with stronger incentives to invest in moving to the CDR.	s 47C; 47E(d)		s 47C; 47E(d)	✓	Treasury	DSB OAIC ACCC Industry stakeholders
2.2	Creating a trusted ecosystem that supports the development of a range of products will encourage new market-driven innovation in the CDR. It is recommended that prospective Accredited Data Recipients have the flexibility to choose who they undertake preliminary systems testing with, including through an accredited private sector solution or the Australian Competition and Consumer Commission.				✓	ACCC	Treasury Industry stakeholders
2.3	Changes to CDR governance should not be made now, however, improvements to coordination within the existing CDR structures should be undertaken as a priority in the short to medium term. CDR agencies should make it easier for participants and users to resolve issues and seek advice, including by clarifying responsibility and ownership of issues, coordinating consultation and system releases, and publishing comprehensive statistics on the progress of the CDR.				✓	Treasury	DSB OAIC ACCC Industry stakeholders
2.4	To encourage and incentivise the development of innovative use cases, the Government should look to support initiatives like the UK's Open Up 2020 Challenge, which could target a use case that drives social benefit that is not being developed by the market. Collaboration with consumer advocacy groups should be considered to help identify relevant consumer challenges that could be addressed by the CDR.				✗	Treasury	Consumer Advocacy Groups Industry stakeholders
2.5	The current pace of CDR rollout into new sectors has not allowed enough time for the system to mature and capitalise on the lessons learnt. Focussing on improving CDR functionality and data quality within already designated sectors should be prioritised, balanced with overall forward momentum into new sectors over time.				✗	Treasury	ACC OAIC DSB Industry Stakeholders

Attachment A: Summary of Statutory Review Recommendations and initial response matrix

Statutory Review Recommendations							
No.	**Recommendation**	**Status**	**Priority ***	**Funding Required ****	**Rules/Legislative Amendments**	**Lead Agency**	**Consultation**
		s 47C; 47E(d)		s 47C; 47E(d)			
2.6	At this point in the CDR's development, Government should consider undertaking a whole of ecosystem cyber security assessment to ensure that the CDR cyber security architecture continues to be fit for purpose into the future.				✗	Treasury	DSB ACCC OAIC Government agencies (SCSC, Home Affairs)
2.7	Where appropriate, accreditation under the CDR should be aligned with other obligations on participants, in particular, accreditation requirements for Digital Service Providers registered with the ATO.				✗	Treasury	ATO ACCC OAIC Industry Stakeholders
3.1	Government should consider ways to increase small business participation in the CDR. This could include giving small businesses flexibility to consent to share their CDR data with parties outside the limited 'trusted adviser' categories currently defined under the CDR Rules. Consideration should also be given to enabling small businesses to consent to share data outside the CDR to a third party for explicitly business-related purposes. Any amendments to support wider sharing of CDR data should ensure the maintenance of existing protections offered to individual consumers and carefully consider the impacts of any potential overlap between business and personal data.				✓	Treasury	OAIC ACCC DSB Industry Stakeholders Consumer/privacy Advocates
3.2	Facilitating government participation in the CDR should be a priority to ensure consumers benefit from more seamless government interactions and an ability to share their data across a greater range of services. Consideration should be given to how designation, accreditation and standard setting processes can optimally facilitate government involvement alongside other initiatives, such as the Data Availability and Transparency scheme.				✓	Treasury	OAIC ACCC DSB Participating Govt Agencies Industry Stakeholders
3.3	The consumer voice is amplified through consumer advocacy groups. These advocacy groups are generally under resourced, inevitably diminishing the consumer input into the development of the CDR and other government consultation processes more broadly. Additional funding may be needed to support consumer advocacy groups to meaningfully participate in not just the development of the CDR but across government initiatives.				✗	Treasury	Government agencies Consumer advocacy groups

Attachment A: Summary of Statutory Review Recommendations and initial response matrix

Statutory Review Recommendations							
No.	**Recommendation**	**Status**	**Priority ***	**Funding Required ****	**Rules/Legislative Amendments**	**Lead Agency**	**Consultation**
4.1	Further consideration be given to other issues raised during the Statutory Review in the context of ongoing future legislative, rule-making and standard-setting updates to ensure that the CDR remains fit-for-purpose.	s 47C; 47E(d)		s 47C; 47E(d)	✓	Treasury	OAIC ACCC DSB

Statutory Review Findings		
No.	**Finding**	**Action**
1.1	The Review has found that the objects of Part IVD of the Act are broadly fit for purpose and will continue to support the economy-wide expansion of the CDR into the medium term.	Noted.
1.2	In developing the CDR, multiple agencies are seeking regular feedback from a wide range of stakeholders. CDR participants, particularly smaller ones, have found it difficult to engage with these successive consultation processes. Consultation is important to successfully implement the CDR, however, the extent and scope of consultation are barriers particularly for smaller participants and consumer groups. Without better coordination or consideration of ways to lessen the consultation load, there may be adverse competition outcomes that are contrary to the policy objectives of the CDR.	This will be addressed as part of Recommendation 1.4 and 2.3.
1.3	Submissions recognised the risks associated with enabling direct-to-consumer data sharing under the CDR, particularly at this point in time. While many submissions supported this form of sharing in principle, few were able to offer examples of tangible consumer benefits that could justify enabling sharing in the presence of these risks. The Review finds that the statutory framework may require further consideration in the future if direct-to-consumer data sharing is to be enabled, particularly in relation to liability for loss. As the CDR matures, the risks associated with direct-to-consumer data sharing may decrease, at which point enabling data transfers should be reconsidered.	Noted. This will be considered as part of any future changes to the statutory framework.
2.1	Data quality is limiting the wider adoption of the CDR. Addressing it as a priority, including through enforcement actions when necessary, will increase participant confidence in the CDR, leading to the development of new CDR products that benefit consumers and decrease reliance on risky practises like screen scraping.	This will be addressed as part of Recommendations 2.1 and 2.5.
2.2	The consent process is central to CDR's realisation of informed consumer decision making and delivery of consumer benefits. Complex consent processes may limit participation in the CDR and contribute to 'consent fatigue', which may undermine genuine consumer consent. As the CDR evolves, the consent process should be monitored and adjusted to ensure benefits are realised, and as the CDR expands to include actions and payments, further consideration should be given to other consent models, such as bundling of consents.	Noted. The consent process will be monitored as the CDR evolves and grows.
2.3	The Review heard from participants that their experience in the CDR has been compliance focussed to date. Concerns were raised by participants about complex and overly prescriptive rules and standards that have prevented them from focusing on developing new products and services. As the system develops and matures, including through the introduction of action initiation, consideration should be given to ways that implementation can reduce the complexity associated with rules and standards for participants.	This will be considered as part of Recommendation 1.4.
2.4	The introduction of new access pathways, such as the representative and sponsor-affiliate model, has increased available avenues for participation in the CDR. Government should monitor participation and uptake to ensure settings remain appropriate. If a particular model or pathway has low uptake, further exploration should be done to understand why it is not being used and to affirm that liability settings are meeting desired policy outcomes.	Noted. Treasury will monitor participation and uptake to ensure settings remain appropriate.
2.5	As the CDR gains momentum and the incentives to participate increase, reciprocal data holder obligations should be monitored to ensure they are appropriately supporting the growth of a vibrant CDR ecosystem.	Noted. Treasury will monitor reciprocal data holder obligations as the system grows.
3.1	The CDR has the potential to provide benefits to millions of small businesses across Australia but, at present, participation is low. The Government should consider settings to facilitate small business participation, such as consent durations, data handling and deletion setting requirements. Derived data settings should also be revisited to ensure that they remain appropriately calibrated and reflective of data disclosure needs and uses.	This will be considered as part of Recommendation 3.1.

Attachment A: Summary of Statutory Review Recommendations and initial response matrix

Statutory Review Findings		
No.	**Finding**	**Action**
3.2	Expanding the CDR to deliver cross-sectoral use cases will require a method of consumer identification that spans different sectors and interactions. This will require utilisation of identity solutions beyond the existing unique identifiers adopted in energy, financial and telecommunications sectors to enable seamless user experiences.	Noted.
3.3	Prioritising the development of the CDR as an internationally interoperable data portability initiative will deliver significant consumer benefits by way of a greater willingness for participation from international product and service offerings.	Noted. This will be considered in any future work on international interoperability.
3.4	Protections provided by the CDR are designed to ensure the integrity of the scheme is maintained as it moves across each sector working alongside the *Privacy Act 1988*. Where opportunities for alignment with the *Privacy Act 1988* are identified, the CDR protections should be reviewed to reduce duplication and increase alignment.	Noted. This will be considered in any future design work on CDR protections.
3.5	The regulatory environment that the CDR operates within is complex. Where possible, the CDR should seek opportunities for alignment with other regulatory schemes, limiting duplication and overlapping regulatory obligations to make the CDR easier to navigate, reducing additional compliance burdens and confusion for participants.	Noted. This will be considered in any future design work particularly on expansion to other sectors.
3.6	There is significant enthusiasm for the delivery of action initiation under the CDR, with many submissions noting the opportunities for the CDR to capitalise on concurrent work being undertaken within payments systems, such as PayTo. Where possible, the CDR should work in conjunction with other initiatives to minimise potential friction points and reduce regulatory compliance for participants, with the objective to create more streamlined consumer experiences.	This will be considered as part of the work being undertaken on action initiation within the CDR.
3.7	Consider a future statutory review within the next five years. This review may consider direct-to-consumer data sharing, the implementation and governance arrangements of the CDR and other digital economy initiatives, reciprocal data holder obligations, as well as any other issues that arise.	Noted. Advice will be provided to Government.

*** Three types of priorities to be considered:**

- **Critical – Must be successfully accomplished within a specific time period.**
- **Important – Can have a positive and significant impact on performance with no set period of time.**
- **Desirable – May help performance but is not as significant as other priorities.**

**** Ongoing funding across all CDR agencies is required and is proposed to be sought in the 2023-24 Budget context. This column indicates where additional specific funding may be required.**

Australian Government

Statutory Review of the Consumer Data Right

Report

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Foreword

The Consumer Data Right (CDR) is at a critical point in its implementation as Australia's national data portability scheme. The focus for the past three years has been squarely on building what most agree is the world's most ambitious, safest and secure data sharing scheme to deliver value to consumers as it drives the digital economy. Much of the hard work has been done and without exception, I found all participants, data holders and data recipients, as well as policy agencies and regulators, had applied themselves with great diligence and professionalism.

The task of implementation is enormous, complex and technically challenging. It has consumed the attention and resources of participants as they have worked towards complying with the significant new regulation that the CDR has imposed. Now that the foundation has been laid within the banking sector, there is scope for attention to move to the opportunities that the CDR can provide. All CDR participants are excited to develop new CDR-powered products and services and I am confident that we will see these markets grow rapidly.

Of course, there are lessons to be drawn from implementation thus far.

It is vital that the CDR is consumer-centred and use case driven to deliver value to consumers and to shape its development in terms of data covered by the system and the products and services powered by that data. That will require a stronger consumer voice in the CDR ecosystem. In addition to individual consumers, the role of small and medium business as a consumer of CDR products and services should be given greater prominence in policy design and implementation to ensure the CDR is accessible to their operating models.

Whilst overall the statutory framework is robust, there is scope to further explore its limits and we should be open to further considering aspects as the CDR develops.

We must also be alert to potential anti-competitive effects. The size, complexity and technical depth required to participate in the CDR does, of necessity, create a disproportionate burden for smaller, less sophisticated entities. The requirement to comply with rules and data standards should not be implemented in a way that stifles product innovation.

Data quality must improve for the CDR to realise its potential and provide a viable alternative to less secure practices such as screen scraping. Participants, regulators and policy makers each have a role to play. In order to incentivise participation in CDR, Government should chart a clear path away from less secure practices and clearly signal that the CDR is the Australian data sharing system for accredited sectors.

The implementation architecture of the CDR is complex with multiple regulators. Given the economy-wide scope of the CDR and its deep technical demand and complexity, there is no obvious alternative at present. I believe that significant improvements are possible within the current architecture if all commit to greater coordination, so that roles are more clearly delineated, and I have been encouraged to see that CDR agencies are already actively working to this end. Government should maintain an open mind on future architecture as the CDR further matures and other relevant Government initiatives develop such as digital identity.

Government has an important ongoing role in the CDR. It should ensure that the regulatory architecture is as seamless as possible for participants and consumers, and it should also require that related initiatives, such as the payments system reform, the *Data Availability and Transparency Act 2022*, the ongoing Privacy Act review and Digital Identity are all designed and implemented in a way that supports the CDR, does not duplicate infrastructure or require business or consumers to repeat analogous steps unnecessarily such as accreditation. Government should also commit to participating in the CDR and work with participants to identify government data to support future use cases.

It has been a great privilege to be appointed as the Statutory Reviewer of Australia's national data portability scheme at this time in its implementation. I have been greatly assisted by the many people who took time to meet with me and make thoughtful submissions to the inquiry as well as the substantial work undertaken by others such as Scott Farrell in considering the future of the CDR. Finally, my deep thanks goes to the committed, clever and professional officers in my secretariat from the Treasury whose support and hard work made my review possible.

I am very optimistic about the future of the CDR. Australians can be rightly proud of what has been achieved so far by Government and industry as they have laid firm foundations for a world-leading system.

Elizabeth Kelly PSM

Executive Summary

Review Background

The Consumer Data Right (CDR) is Australia's national data portability initiative. It gives individuals and businesses the ability to share their data with trusted and accredited third parties, along with limited types of data with non-accredited parties. In turn, these third parties can use this data to provide products, services and insights that benefit consumers. This includes, for example, providing a single view of a consumer's financial position, lending product comparisons or, in the future, faster loan applications and easy switching between different products and service providers. The CDR is a significant reform in terms of ambition, technical complexity and potential for consumer benefits. It is being implemented on a sector-by-sector basis, with the intention to ultimately achieve an economy-wide coverage.

The CDR is now in its third year of implementation, with data holders in open banking covering over 99 per cent of banking customers able to share data. The CDR is expanding across the economy. The CDR will enable energy consumer data sharing later this year, the telecommunications sector has been designated, and Open Finance has been identified as the next priority area for expansion.

The focus to date has been on building the ecosystem, developing new regulatory settings, including rules and standards, and building compliant systems. Innovative product offerings are only starting to become available, meaning significant consumer benefits are yet to be realised. As the system moves from the establishment and build phase, participant, government and regulatory focus is shifting to greater consideration of system functionality and growth. While this has meant significant industry and government investment in the CDR, the Review has heard that participants in the CDR are still waiting for the scheme to deliver broad and tangible benefits to consumers, as well as to system participants – including data holders and data recipients.

This Review is occurring at a significant point of inflection for the system, providing an opportunity to reflect on the CDR's development to date against the scheme's overall objectives and vision. It has been initiated under part IVD of the *Competition and Consumer Act 2010* (the Act), from which the CDR derives its primary legislation (section 56GH). The terms of reference for the Review (at Appendix A) broadly explore questions related to the extent to which implementation of the CDR statutory framework supports its core policy objectives.

Given it has been undertaken in the context of significant policy and governance developments in the CDR, the Review considers the unprecedented scale of the scheme without apparent equivalent examples operating globally, as well as its transitional stage of development.

The Review regularly heard that the emphasis on establishment and rollout is coming up against significant implementation constraints, including system complexity, early setting revisions, inadequate participant access to resources and skills necessary for building compliant systems, and inconsistent regulatory coordination.

The Review has considered the statutory settings in the context of the benefits and constraints imposed by the implementation experience to date. Through the CDR's build phase, setting the foundation and bringing in the datasets have been the priority. This, however, must shift towards innovation and uptake, and generating the products, services and CDR use cases that benefit consumers with the focus on allowing the system to mature and capitalise on the lessons learnt. Major revisions to the framework need to be deliberate and justifiable considering the investments from participants and government to date.

Key Issues and Themes

Common themes through the consultation spanned the statutory framework, implementation issues, and the CDR's role in the digital economy. Other themes included maintaining the vision of the CDR to benefit consumers, the ability for the scheme to drive innovation, building and maintaining trust in the CDR system, and integrating the CDR within the wider digital economy.

The Review heard that the consumer-centric utility of the CDR should remain a core objective and that further consideration be given to the needs of different cohorts, particularly small business consumers. Consumers' collective and individual benefit should remain the system's primary objective and should factor significantly in its future development.

The Review also heard that the CDR provides an adequate framework for potential development of data-driven innovation; novel applications combining data and insights from a range of datasets should offer consumers new benefits and increase competition between participants. This opportunity will only be realised if participants can meet costs, manage complexity and ensure data is improved.

The strong privacy requirements of the scheme have supported the establishment of the CDR. They create a foundation of trust, safety and security, all of which will be central to engagement and uptake of the CDR from consumers and participants – particularly when compared to other, less secure data sharing mechanisms like screen scraping (also known as Digital Data Capture (DDC)). It is recognised that these requirements have made participating in the scheme complex and costly for participants, and the ongoing impact of these obligations will have to be monitored.

The Review also heard that the CDR has significant potential as foundational national digital infrastructure and should be progressed in alignment with other digital reforms and existing infrastructure, such as *Data Availability and Transparency Act 2022* (DATA 2022), the payments system reforms, and ongoing work on digital identity. The CDR should align with these developments as much as possible to create opportunities it could not by itself offer, and should reduce additional regulatory burdens and duplication.

The Report is made up of four parts: Part One provides analysis of issues relating to the CDR statutory framework, Part Two reflects on the implementation of the statutory framework to date, Part Three provides an overview of the how the CDR can develop into the future, and Part Four acknowledges other issues raised in submissions.

Part One: Consumer Data Right Framework

Part One considers the issues relating to the CDR statutory framework and how it supports the objectives of the CDR. The Review finds that the objects in the Act are broadly fit-for-purpose, but that there are elements that are currently or will soon produce challenges for participants and regulators seeking to deliver consumer benefits.

The sector-by-sector approach to CDR designation is being challenged by contemporary business models, while the process flow of privacy assessments and uneven coordination between regulatory bodies generates friction within the CDR system. Policy settings are sufficiently flexible in the short to medium term, but should be revisited as the CDR matures to support the growth of the digital economy and reflect changing business practices, as well as to ensure they continue to meet the operational demands of the increasingly complex system. The framework also supports the option of direct-to-consumer functionality and additional success metrics.

Part Two: Implementation and lessons learnt

Part Two considers feedback related to the development and the functioning of the CDR to date, as well as lessons that can inform future rollout, including governance structure, speed of expansion, the level of complexity in the system and the accreditation process.

The quality of CDR data is a key concern for existing and prospective data recipients. The accreditation process and role division between government agencies has created confusion and complexity for participants. Multiple regulators and a proliferation of information channels has resulted in participants, at times, receiving inconsistent advice. Improving coordination within the existing CDR structure should be prioritised in the short to medium term. The Review notes that Government incentives for private sector solutions to system management also appear to be increasingly viable as the CDR grows and matures.

Complex obligations around data handling also present participants with various challenges. The delineation of obligations between different instruments means participants take time to develop system understanding to ensure compliance. Technical considerations like those with consent flows appear to generate friction for consumers.

Part Three: CDR within an emerging digital economy

Part Three provides an overview of areas that were identified in which the CDR can provide new opportunities; both through its own evolving functionality and through interactions with the broader digital economy.

Technological and regulatory developments offer the potential for alignment between other initiatives and the CDR. Care must be taken to avoid duplicate obligations or infrastructure in areas like payments, digital identity and other data transfer initiatives.

A key area of the digital economy that has seen significant and rapid development is payments. The New Payments Platform (NPP) has already demonstrated improvements to consumer payment experiences and promises to deliver further consumer value in the coming years, including through its PayTo service. Further development of the CDR should consider how its unique framework for secure transfers of consumer, product and service data can integrate with and augment existing and emerging payment channels.

Alongside these technological advances, there have also been relevant advances and updates to the legislative framework of Australia's digital economy, for example, the recent DATA 2022 and the ongoing *Privacy Act 1988* review. The CDR is already a complex statutory framework and, where possible, should try to integrate and operate in alignment with other government initiatives.

Part Four: Other issues raised in submissions

Part Four covers additional suggestions from stakeholders that could be adopted or considered in the future development of the scheme such as possible changes to the objects, rules or the consumer testing processes.

Findings and recommendations from the Review

The underlying conclusion of the Review is that the statutory framework has been broadly effective in the rollout of the CDR to date, and that it is sufficiently flexible to accommodate further changes to achieve CDR policy objectives. The Review offers 15 findings and 16 recommendations that provide specific comments on the state of the CDR as well as suggested changes to the statutory framework. Findings provide a summary of significant insights from the review process, while recommendations offer direct suggestions for changes to the statutory framework. Findings may also suggest a direction for possible resolutions to issues and prompts for future discussion.

Consultation Process

The Review published an Issues Paper on 16 March 2022, calling for submissions from interested stakeholders on any or all aspects of the terms of reference by 20 May 2022.

The Review received 43 submissions in response (which are noted in Appendix B), from a wide range of stakeholders including:

- Fintech businesses.
- Industry bodies.
- Consumer and privacy groups.
- Private individuals.
- Regulators and other government agencies.
- Banking and financial services sector.
- Energy providers.

To supplement information gathered through formal submissions, the Review secretariat met with a wide range of stakeholders. In total, 44 engagements were held with representatives from industry, consumer and privacy advocates, banks, fintechs, subject-area experts, government agencies and regulators and other interested parties.

Findings

Finding 1.1

The Review has found that the objects of Part IVD of the Act are broadly fit for purpose and will continue to support the economy-wide expansion of the CDR into the medium term.

Finding 1.2

In developing the CDR, multiple agencies are seeking regular feedback from a wide range of stakeholders. CDR participants, particularly smaller ones, have found it difficult to engage with these successive consultation processes. Consultation is important to successfully implement the CDR, however, the extent and scope of consultation are barriers particularly for smaller participants and consumer groups. Without better coordination or consideration of ways to lessen the consultation load, there may be adverse competition outcomes that are contrary to the policy objectives of the CDR.

Finding 1.3

Submissions recognised the risks associated with enabling direct-to-consumer data sharing under the CDR, particularly at this point in time. While many submissions supported this form of sharing in principle, few were able to offer examples of tangible consumer benefits that could justify enabling sharing in the presence of these risks. The Review finds that the statutory framework may require further consideration in the future if direct-to-consumer data sharing is to be enabled, particularly in relation to liability for loss. As the CDR matures, the risks associated with direct-to-consumer data sharing may decrease, at which point enabling data transfers should be reconsidered.

Finding 2.1

Data quality is limiting the wider adoption of the CDR. Addressing it as a priority, including through enforcement actions when necessary, will increase participant confidence in the CDR, leading to the development of new CDR products that benefit consumers and decrease reliance on risky practises like screen scraping.

Finding 2.2

The consent process is central to CDR's realisation of informed consumer decision making and delivery of consumer benefits. Complex consent processes may limit participation in the CDR and contribute to 'consent fatigue', which may undermine genuine consumer consent. As the CDR evolves, the consent process should be monitored and adjusted to ensure benefits are realised, and as the CDR expands to include actions and payments, further consideration should be given to other consent models, such as bundling of consents.

Finding 2.3

The Review heard from participants that their experience in the CDR has been compliance focussed to date. Concerns were raised by participants about complex and overly prescriptive rules and standards that have prevented them from focusing on developing new products and services. As the system develops and matures, including through the introduction of action initiation, consideration should be given to ways that implementation can reduce the complexity associated with rules and standards for participants.

Finding 2.4

The introduction of new access pathways, such as the representative and sponsor-affiliate model, has increased available avenues for participation in the CDR. Government should monitor participation and uptake to ensure settings remain appropriate. If a particular model or pathway has low uptake, further exploration should be done to understand why it is not being used and to affirm that liability settings are meeting desired policy outcomes.

Finding 2.5

As the CDR gains momentum and the incentives to participate increase, reciprocal data holder obligations should be monitored to ensure they are appropriately supporting the growth of a vibrant CDR ecosystem.

Finding 3.1

The CDR has the potential to provide benefits to millions of small businesses across Australia but, at present, participation is low. The Government should consider settings to facilitate small business participation, such as consent durations, data handling and deletion setting requirements. Derived data settings should also be revisited to ensure that they remain appropriately calibrated and reflective of data disclosure needs and uses.

Finding 3.2

Expanding the CDR to deliver cross-sectoral use cases will require a method of consumer identification that spans different sectors and interactions. This will require utilisation of identity solutions beyond the existing unique identifiers adopted in energy, financial and telecommunications sectors to enable seamless user experiences.

Finding 3.3

Prioritising the development of the CDR as an internationally interoperable data portability initiative will deliver significant consumer benefits by way of a greater willingness for participation from international product and service offerings.

Finding 3.4

Protections provided by the CDR are designed to ensure the integrity of the scheme is maintained as it moves across each sector working alongside the *Privacy Act 1988*. Where opportunities for alignment with the *Privacy Act 1988* are identified, the CDR protections should be reviewed to reduce duplication and increase alignment.

Finding 3.5

The regulatory environment that the CDR operates within is complex. Where possible, the CDR should seek opportunities for alignment with other regulatory schemes, limiting duplication and overlapping regulatory obligations to make the CDR easier to navigate, reducing additional compliance burdens and confusion for participants.

Finding 3.6

There is significant enthusiasm for the delivery of action initiation under the CDR, with many submissions noting the opportunities for the CDR to capitalise on concurrent work being undertaken within payments systems, such as PayTo. Where possible, the CDR should work in conjunction with other initiatives to minimise potential friction points and reduce regulatory compliance for participants, with the objective to create more streamlined consumer experiences.

Finding 3.7

Consider a future statutory review within the next five years. This review may consider direct-to-consumer data sharing, the implementation and governance arrangements of the CDR and other digital economy initiatives, reciprocal data holder obligations, as well as any other issues that arise.

Recommendations

Recommendation 1.1

In the short to medium term, the existing sector-by-sector approach can support the inclusion of targeted datasets that enable cross-sectoral use cases. Further consideration should be given to whether the sectoral approach for expansion is sufficiently flexible to support continued rollout of the CDR, with particular consideration given to introducing action initiation and government-held consumer data.

Recommendation 1.2

A streamlined mechanism to update a designation instrument for technical/minor considerations should be introduced if relevant details arise after designation. Any such mechanism should not replace the need for a full sectoral assessment for genuine system expansions.

Recommendation 1.3

To ensure that privacy is properly factored into the designation design, it is recommended that the Information Commissioner's assessment on privacy and confidentiality is considered as part of the sectoral assessment report.

Recommendation 1.4

To provide greater clarity and certainty to all participants, the Government, with CDR agencies, should provide greater transparency on CDR consultation processes and a timeline that outlines expected future developments.

Recommendation 1.5

Greater visibility of success measures and system objectives will provide increased confidence and assurance to participants. Success measures should incorporate measures of system health and meaningful outcomes for consumers.

Recommendation 2.1

Screen scraping should be banned in the near future in sectors where the CDR is a viable alternative. Importantly, the Government should clearly signal when and how the implementation of the ban would take effect. This would provide certainty and adequate time for businesses to transition, along with stronger incentives to invest in moving to the CDR.

Recommendation 2.2

Creating a trusted ecosystem that supports the development of a range of products will encourage new market-driven innovation in the CDR. It is recommended that prospective Accredited Data Recipients (ADRs) have the flexibility to choose who they undertake preliminary systems testing with, including through an accredited private sector solution or the Australian Competition and Consumer Commission (ACCC).

Recommendation 2.3

Changes to CDR governance should not be made now, however, improvements to coordination within the existing CDR structures should be undertaken as a priority in the short to medium term. CDR agencies should make it easier for participants and users to resolve issues and seek advice, including by clarifying responsibility and ownership of issues, coordinating consultation and system releases, and publishing comprehensive statistics on the progress of the CDR.

Recommendation 2.4

To encourage and incentivise the development of innovative use cases, the Government should look to support initiatives like the UK's Open Up 2020 Challenge, which could target a use case that drives social benefit that is not being developed by the market. Collaboration with consumer advocacy groups should be considered to help identify relevant consumer challenges that could be addressed by the CDR.

Recommendation 2.5

The current pace of CDR rollout into new sectors has not allowed enough time for the system to mature and capitalise on the lessons learnt. Focussing on improving CDR functionality and data quality within already designated sectors should be prioritised, balanced with overall forward momentum into new sectors over time.

Recommendation 2.6

At this point in the CDR's development, the Government should consider undertaking a whole of ecosystem cyber security assessment to ensure that the CDR cyber security architecture continues to be fit for purpose into the future.

Recommendation 2.7

Where appropriate, accreditation under the CDR should be aligned with other obligations on participants, in particular, accreditation requirements for Digital Service Providers registered with the ATO.

Recommendation 3.1

Government should consider ways to increase small business participation in the CDR. This could include giving small businesses flexibility to consent to share their CDR data with parties outside the limited 'trusted adviser' categories currently defined under the CDR rules. Consideration should also be given to enabling small businesses to consent to share data outside the CDR to a third party for explicitly business-related purposes.

Any amendments to support wider sharing of CDR data should ensure the maintenance of existing protections offered to individual consumers and carefully consider the impacts of any potential overlap between business and personal data.

Recommendation 3.2

Facilitating government participation in the CDR should be a priority to ensure consumers benefit from more seamless government interactions and an ability to share their data across a greater range of services. Consideration should be given to how designation, accreditation and standard setting processes can optimally facilitate government involvement alongside other initiatives, such as the Data Availability and Transparency scheme.

Recommendation 3.3

The consumer voice is amplified through consumer advocacy groups. These advocacy groups are generally under-resourced, inevitably diminishing the consumer input into the development of the CDR and other government consultation processes more broadly. Additional funding may be needed to support consumer advocacy groups to meaningfully participate in not just the development of the CDR but across government initiatives.

Recommendation 4.1

Further consideration should be given to other issues raised during the Statutory Review in the context of ongoing future legislative, rule-making and standard-setting updates to ensure that the CDR remains fit-for-purpose.

Part One: Consumer Data Right Framework

Part One is an overview of the CDR statutory framework and describes how it supports the objectives of the CDR. It also analyses perspectives raised through submissions regarding operation of the legal framework, particularly the legislated sectoral designation approach, the rules and standards framework, the visibility of success measures, and the development of direct-to-consumer data sharing as outlined in the primary legislation. This legal framework provides the foundation of the CDR as an innovation, competition and consumer empowerment initiative. Subsequent sections consider the implications of the legal framework for ongoing implementation and the role of CDR within a broader digital ecosystem.

The CDR was enacted by the *Treasury Laws Amendment (Consumer Data Right) Act 2019* (Cth), which inserted a new Part IVD into the *Competition and Consumer Act 2010* (Cth) (the Act). This enabling legislation sets out the role, functions and powers of Treasury, the Australian Competition and Consumer Commission (ACCC), the Office of the Australian Information Commissioner (OAIC), the Data Standards Chair and the Data Standards Body (DSB) and outlines the overarching objectives and principles for the CDR. The Act also gives the Minister the power to designate a sector of the Australian economy to be subject to the CDR, and to make consumer data rules. A sector is designated by legislative instrument, which specifies the broad classes of data subject to the CDR and the class or classes of persons who hold the designated information (the data holders).

The designation instrument itself does not impose data sharing obligations. The requirement to disclose particular data emanates from the *Competition and Consumer (Consumer Data Right) Rules 2020* (the rules), which provide the framework for how the CDR operates in a particular sector. The rules have been developed to apply universally across all sectors of the economy to the extent possible, with sector-specific provisions and modifications catered for in sector-specific schedules, and will be progressively updated as the CDR evolves and expands. The technical standards, made by the Data Standards Chair on the advice of the DSB, specify how the data holder will comply with the requirements of the rules. Further information on the designation and sectoral assessment processes, CDR rules and standards are summarised in Appendix C.

1.1 Objects of the CDR

The objects of the CDR are set out in section 56AA of the Act[1] (see Box 1.1) and have remained robust over the initial development stages of the CDR and appear to broadly support the scheme as it moves into an operational phase. To the extent that submissions raised concerns about the objects, these concerns where generally either minor in nature or regarded the application of the objects rather than the objects themselves. The minor changes recommended in submissions are considered in Part 4.

The Review has conducted its assessment of the CDR on the basis that the objects of the Act define the broad scope and purpose of the CDR. The Review acknowledges that CDR policy settings will continue to evolve over time in response to changing priorities and ecosystem development. Ultimately the scheme's core purpose and policy settings remain a matter for Government. As such, the Review has not sought to redefine the intent or purpose of the CDR and acknowledges that the scheme will continue to develop in the future.

1 s 56AA, Part IVD, *Competition and Consumer Act* 2010. These are also presented in Appendix C.

Box 1.1 – Objects of 56AA of the Act

a) to enable consumers in certain sectors of the Australian economy to require information relating to themselves in those sectors to be disclosed safely, efficiently and conveniently
   i) to themselves for use as they see fit; or
   ii) to accredited persons for use subject to privacy safeguards; and
b) to enable any person to efficiently and conveniently access information in those sectors that:
   i) is about goods (such as products) or services; and
   ii) does not relate to any identifiable, or reasonably identifiable, consumers; and
c) as a result of paragraphs (a) and (b), to create more choice and competition, or to otherwise promote the public interest.

The Review heard that consumer benefits can take various forms, ranging from outcomes like lower prices through greater competition on comparable products and services – easing frictions on provider switching – to more individualised products and services that leverage data from across multiple sectors. For example, PEXA's submission suggested that the CDR could bring value to consumers in the property sector by utilising multiple datasets to provide additional information and transparency on factors that may have an impact on property valuation, lending and insurance by using environmental, traffic and land use data. It is expected that cross-sectoral applications of this nature will begin to emerge as new datasets come into the CDR from energy and, later, telecommunications and other financial sectors. Many submissions to the Review noted that the scheme should prioritise the inclusion of targeted datasets that enable use cases of greatest consumer benefit.

As the CDR matures, the Government should reflect on the different needs of consumer cohorts in the system. Under the statutory framework, a CDR consumer is not limited to an individual retail customer and includes small businesses and other entities utilising CDR data-powered products and services.[2] Many of the datasets accessible under the CDR have been most beneficial to individual consumers (for example, consumer banking data). As the system matures, the CDR could better distinguish between business and individual consumers and consider how it supports the different needs of both (see section 3.1). The CDR presents an opportunity for small businesses to access new products and services that increase the efficiency of their operations, further reducing the burden of business administration and enabling more focus on growing businesses.

Data safety, security and information privacy also remain priorities for all participants in the system, from consumers to data holders, to intermediaries and data recipients. A recent report by a CDR Accredited Data Recipient (ADR) Frollo, for example, surveyed consumers who rated security as one of the most important features of financial information-sharing.[3]

2 s 56AI, Competition and Consumer Act 2010.

3 Frollo, Open Banking: The Consumer Perspective, May 2022, https://frollo.com.au/open-banking/open-banking-consumer-perspective/

The CDR is an ecosystem based on trust, safety and security. Obligations for participants around access, use and handling of personal information through the Privacy Safeguards embedded in the Act provide a strong foundation that will promote uptake of the CDR from both consumers and participants. When compared to the Australian Privacy Principles (APP) established under the *Privacy Act 1988*, many submissions noted the CDR's Privacy Safeguards afford a higher level of protection for consumers than the APP, reflecting the increased volume and accessibility of personal information under the scheme. Submissions also acknowledged CDR as a more secure system for data sharing than other channels like screen-scraping. To this end, the Data Standards Chair has also overseen the development of comprehensive data standards that reflect the high-level of data, privacy and security protections required under the CDR.

While important to building trust in the CDR, some participants report that regulatory requirements and standards have led to significant regulatory costs and continue to form a barrier to entry for smaller entities without sophisticated IT capabilities and significant resources. There is clearly a balance to be struck between data security and safety on the one hand and increased consumer choice, innovation and competition on the other – with the former currently outweighing the latter. Both remain valid objects of the CDR, however, and most participants agree that the existing high levels of information and data security are necessary to underpin trust and confidence in the CDR, and provide a secure foundation for future expansion. For the same reasons, the privacy safeguards continue to be viewed as an important element of the CDR, especially in building a trusted system.

The Review also heard that the CDR offers safe and secure access to datasets from which to create consumer-centred products and services. The immediate consumer benefits of greater access to data have been well-documented, particularly around provider comparison and switching. Participants anticipate that the designation of new datasets from energy, telecommunications and finance will drive the development of new use cases, increase uptake and, especially with the introduction of action initiation (noted by some as the 'game changer'), will enhance the potential to deliver efficiency and convenience to consumers.

> *"Red and Lumo have consistently supported the CDR and recognise the potential benefits it will generate for Australian energy consumers. It will assist them with their energy choices, encourage efficient energy use and facilitate efficient investment in solar, batteries and other distributed energy resources. The potential benefits are wide ranging and include product innovation, reduced energy prices and more efficient use of energy infrastructure"* ***– Red Energy and Lumo Energy***

While efficiency and convenience remain important objects for the CDR, it is apparent that they have not yet been broadly achieved for participants. Partly reflecting the stage of implementation of the CDR, many participants currently find participation in the scheme complex and expensive (further discussed at section 1.5). As the system matures, focus should be on removing complexity and encouraging greater ease of participation for consumers, data holders and ADRs.

Finding 1.1

The Review has found that the objects of Part IVD of the Act are broadly fit-for-purpose and will continue to support the economy-wide expansion of the CDR into the medium term.

1.2 Sector-by-sector approach to expansion

The CDR is designed as a whole-of-economy measure and its implementation has been on a sector-by-sector basis, commencing with banking, to be followed by energy and telecommunications. The Review considered whether the designation process has the agility to support the CDR as it brings in datasets from across different sectors of the economy, driven by an increased focus on cross-sector use cases. The international experience of other jurisdictions (see Box 1.2) and the findings of the Treasury-led CDR Strategic Assessment (2022)[4] were also considered.

The Strategic Assessment recommended a consumer use case focused approach to designation, starting with exploring CDR applications across the finance sector, including non-bank lending, merchant acquiring services and key datasets in general insurance and superannuation (collectively referred to as 'Open Finance').[5] The Strategic Assessment found that the activity of data holders and businesses was increasingly moving beyond traditional sectoral boundaries and definitions (see Appendix C). A data purpose-driven approach, which considers how datasets would complement data already designated and produce the most compelling consumer use cases, was proposed as a pathway for more targeted and agile expansion of the CDR.

An expansion approach that considers and prioritises high value use cases sector-by-sector is a viable way of achieving a wider coverage of CDR in the economy over the medium term. This includes designating targeted datasets to support high value use cases (see also section 1.3). The current statutory framework appears flexible enough to allow targeted datasets to be brought into the system as more use cases are identified. This will be tested in the current sectoral assessment process for targeting datasets in Open Finance. The general insurance sector is expected to focus on targeted datasets informed by the most apparent and compelling consumer use cases.

Sectoral assessments are required to add new datasets into the system. The current legislative framework provides sufficient flexibility to bring in new datasets from an existing sector without the need to reassess datasets that have already been designated.

The suitability of sector-based assessment should be considered in the context of the ongoing expansion of the CDR. Increasingly consumers will expect to access data-enabled services that have touch points across a broad range of sectors and data holders. As the CDR evolves, and as more cross-sectoral use cases develop and business models increasingly move beyond conventional sectoral boundaries, further consideration should be given as to whether the sector-based assessment model remains fit-for-purpose and provides an appropriate framework for CDR expansion. This includes considering how to bring in government-held datasets and how to enable action and payment initiation.

4 CDR Strategic Assessment: Outcomes, January 2022 https://treasury.gov.au/sites/default/files/2022-01/p2022-242997-outcomes-report_0.pdf

5 Commonwealth Treasury, CDR Sectoral Assessment for the Open Finance Sector – Non-Bank Lending, April 2022, https://treasury.gov.au/consultation/c2022-253782

The existing sectoral approach only permits inclusion of government data where it relates to a designated sector (further discussed in section 3.4). For example, the Australian Energy Market Operator (AEMO), a secondary data holder in the energy sector, will provide consumer energy usage data that retailers do not have direct access to. The sectoral approach also does not readily accommodate 'government' as its own sector. Further consideration should be given on how to include complementary consumer data that does not relate to their activities in designated sectors, including interactions with other data sharing initiatives like DATA 2022.

Future consideration of expansion should also include how to enable actions and payments. The Future Directions Inquiry explored the current framework and found that it is not equipped for introducing actions into CDR and made recommendations affirming that legislative changes will be necessary.

This range of considerations demonstrates that a more flexible and agile designation process will become increasingly valuable to optimise the CDR rollout. A new approach would likely better support the implementation of action initiation and may be necessary in the context of introducing future voluntary datasets.

Recommendation 1.1

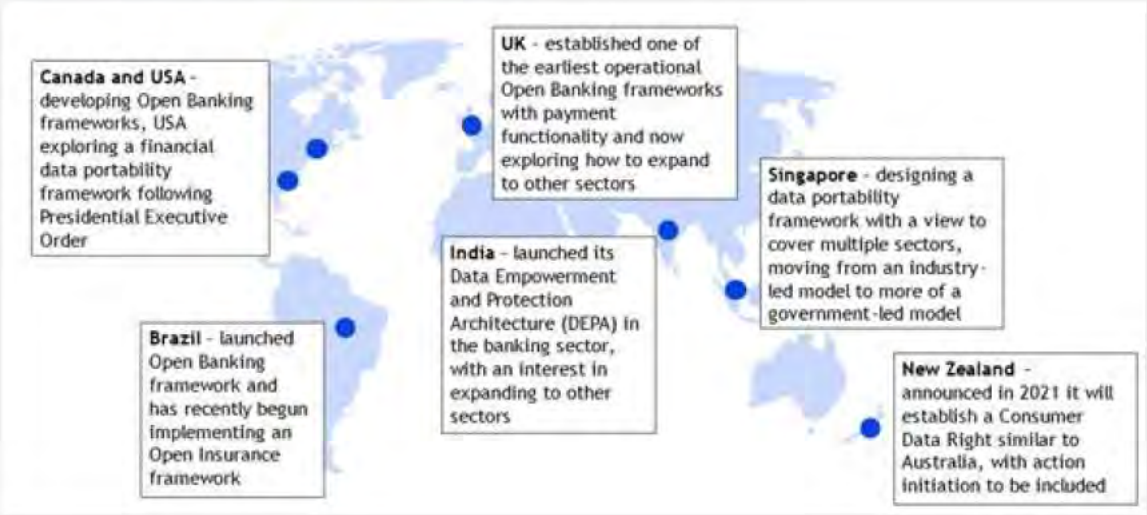
In the short to medium term, the existing sector-by-sector approach can support the inclusion of targeted datasets that enable cross-sectoral use cases. Further consideration should be given to whether the sectoral approach for expansion is sufficiently flexible to support continued rollout of the CDR, with particular consideration given to introducing action initiation and government-held consumer data.

Box 1.2 – Data Portability Coverage in the UK and New Zealand

Although the UK has one of the most mature open banking schemes operating globally, its economy does not yet have an equivalent of Australia's data portability scheme. Open banking in the UK was the result of the Payment Services Regulations (PSRs), transposing the EU's Second Payment Services Directive (PSD2) in the UK and the Competition and Markets Authority's Retail Banking Order, which mandated participation for the nine largest UK banks. This scheme is supported by several legislative instruments including the *Data Protection Act 2018*, which is the UK's implementation of the EU's General Data Protection Regulation (GDPR). The UK's Open Banking scheme includes functionality that has not yet been incorporated in the Australian scheme, in particular, customers being able to initiate payments via open banking – Australia has focused on building the foundations for data sharing or 'read access' to date. While the UK began with deeper functionality, it is only now introducing legislative changes to expand beyond Open Banking through its 'Smart Data Initiative'. This contrasts with the Australian approach, which established a framework that encompasses a wider section of the economy with substantial capacity to expand through the sectoral assessment and designation processes.

New Zealand's data portability scheme, announced in July 2021, intends to follow a path similar to Australia's by establishing a statutory framework rolled out on a sector-by-sector basis that can support the wide expansion of data portability across different markets, industries and sectors.[6] [7] The implementation of New Zealand's Consumer Data Right is intended to allow consumers to consent to both read access data sharing and action initiation in the initial designation process.[8] While the design is being finalised, the New Zealand Government is expected to introduce a bill implementing a consumer data right to the New Zealand Parliament in 2022.[9] Figure 1.1 provides an overview of selected international data portability initiatives.

Figure 1.1 – Snapshot of data portability internationally



1.3 Narrower and targeted designations

The Review considers that a narrower approach to designation introduces greater focus and better targeting of CDR use cases. It means that there is greater clarity on the coverage of datasets for designated entities from the outset, and no requirement from data holders to potentially overhaul systems for low-value CDR datasets or bespoke products. As discussed in section 1.2, the Strategic Assessment endorsed a more targeted approach to designation, which informed the sectoral assessment process currently underway for Open Finance. Taking a targeted approach will also ensure that the most useful and valuable datasets are integrated into the CDR as matters of priority.

> *"The ABA notes the current approach of taking an 'all in' approach to banking datasets has been done without a clear evaluation on the benefits for consumers or the value of those datasets as CDR data. For example, products used by mainly institutional clients are within scope, which are unlikely to be used by those clients nor retail consumers or small businesses."* ***– Australian Banking Association***

The designation process is currently aimed at broadly capturing datasets and participants across a candidate sector. A robust sectoral assessment is undertaken to consider the viability of a sector for inclusion in the CDR. It identifies the consumer and product datasets, data holders, and other relevant factors, which then underpins the creation of a designation instrument if the sector is considered a viable addition. The designation instrument defines the broad classes of information and product types, and the designated entities known to hold that data. The rules then narrow the requirements around which datasets and products data sharing obligations will apply within the broad parameters established by the designation instrument.

The Review acknowledges the implications of adopting narrower designations, which elevates the need to 'get it right' the first time. The experience with rules revisions demonstrates that certain insights may only be revealed by way of implementation, and so an element of flexibility is desirable to ensure that a designation can appropriately support the innovation and use case outcomes the CDR is designed to encourage.

A targeted designation requires a significant upfront depth of knowledge of sectoral data practices for the assessment and runs the risk of missing product or consumer data classes (once enacted) that the rules would normally address and capture. Any attempts to revise a designation will require a fresh sectoral assessment process, which adds burden across the system for policymakers, regulators and participants for what may be a minor but important amendment to meet the intended coverage of the underpinning sectoral assessment.

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6 Ministry of Business, Innovation and Employment, Consumer Data Right, November 2021, https://www.mbie.govt.nz/business-and-employment/business/competition-regulation-and-policy/consumer-data-right/

7 Minister of Commerce and Consumer Affairs, Media release; Govt agrees to establish a consumer data right, July 2021, https://www.beehive.govt.nz/release/govt-agrees-establish-consumer-data-right

8 Ministry of Business, Innovation & Employment, Minute of Decision: Establishing a Consumer Data Right, July 2021, https://www.mbie.govt.nz/dmsdocument/15539-establishing-a-consumer-data-right-minute-of-decision-proactiverelease-pdf

9 Ministry of Business, Innovation and Employment, Consumer Data Right, November 2021, https://www.mbie.govt.nz/business-and-employment/business/competition-regulation-and-policy/consumer-data-right/

In this scenario, revisiting a designation is administratively cumbersome and will likely require an additional sectoral assessment process to revisit the same designated datasets. The requirements around such assessments could be amended to allow a streamlined designation update if conducted within a reasonable timeframe since the initial sectoral assessment. A streamlined process for designation may also be useful in the context of future considerations to introduce voluntary datasets.

Recommendation 1.2

A streamlined mechanism to update a designation instrument for technical/minor considerations should be introduced if relevant details arise after designation. Any such mechanism should not replace the need for a full sectoral assessment for genuine system expansions.

From a data holder's perspective, the impact of a narrow versus a broad designation is significant in either scenario, so there may be occasions where a broader designation is preferred. Data holders will likely need to centralise data systems and initiate an internal technological infrastructure overhaul to meet the requirements of the CDR. The initial outlay to comply with a narrower designation may, in some cases, be similar or even identical to a more comprehensive designation, which would also introduce more datasets and opportunities for innovation. While this will inevitably vary across data holders, some industry practices may mean that the types and range of legacy systems look similar and would support a broader designation, particularly as businesses are already initiating digital transformation programs.

1.4 Consideration of privacy issues in the designation process

Many participants' submissions to the Review highlighted the importance of privacy to the success of the CDR and generally supported maintaining high privacy standards. The role of the Information Commissioner is crucial in this respect.

Currently the Act provides that, before designating a sector, the Minister must consider the privacy or confidentiality of consumers' information, as well as factors including (but not limited to) the interests of consumers, competition outcomes and, opportunities for data-driven innovation. In addition to a thorough sectoral assessment needing to be undertaken, which includes consulting with the Information Commissioner to gauge this, the Minister must write to the Information Commissioner directly to seek views on the likely effect of designating a sector on the privacy and confidentiality of consumers' information.

This process ensures privacy is included by design right from the beginning. In its submission the Financial Rights Legal Centre suggested the Privacy Impact Assessment (PIA) should be embedded and implemented at an earlier stage in the process to influence the outcome. Whilst the Review acknowledges this recommendation, the review notes the PIA is informed by the consultation process which includes the Information Commissioner's assessment, and it is the timing of this assessment into the consultation process that is crucial rather than the timing of the PIA. The Review has identified an apparent lack of clarity in the legislation on when the assessment from the Information Commissioner must be provided to the Minister. For any advice to be well considered and capable of influencing the scope of the Minister's designation, it must come earlier in the process, before the finalisation of the sectoral assessment report.

Consideration should be given to ensuring the Information Commissioner's assessment is provided as part of the sectoral assessment and designation processes. Failure to do so may diminish the role of privacy and the ability to appropriately balance advice on the privacy impacts and other objectives, such as consumer benefit, competition and innovation.

Additionally, these processes should be reviewed over time to ensure they are continually fit-for-purpose and recalibrated as required. Once the system reaches a level of maturity, consideration could be given to streamlining these processes.

Recommendation 1.3

To ensure that privacy is properly factored into the designation design, it is recommended that the Information Commissioner's assessment on privacy and confidentiality is considered as part of the sectoral assessment report.

1.5 Complexity of engagement with multiple CDR processes

There is a view by many CDR participants that the assessment, designation, rule-making and standard-setting requirements are time-consuming, duplicative and expensive. Making enhancements or updates to the CDR requires consultation or stakeholder engagement on:

- Amendments to the Competition and Consumer Act 2010
- Sectoral assessment processes
- Sectoral designation instruments
- Changes to foundational CDR rules
- Changes to CDR rules for specific sectors
- Changes to CDR data standards or guidelines
- Privacy Impact Assessments
- Changes to the Register and Accreditation Application Platform (RAAP), and
- Introduction of regulatory guidance.

These consultations may be separately run by Treasury, the ACCC, the OAIC or the Data Standards Body, and may require different processes and timelines.

A number of participants spoke of the difficulty of participating in these processes with concurrent consultations with multiple regulators requiring deep technical knowledge and expertise to meaningfully contribute and resolve issues. These requirements mean that businesses must devote resources to regulatory compliance and provision of advice rather than product development and innovation, with a resulting opportunity cost. This sentiment was shared by both large and small participants, who suggested it was difficult to see the forest for the trees when they cannot adequately devote time to meeting compliance obligations and considering commercial opportunities. Consumer and privacy groups also highlighted the significant burden of consultation as being a barrier to adequately representing consumer perspectives in the scheme.

> *"While consumer groups have been actively engaged in CDR over a number of years, the burden placed on consumer groups during consultation is extensive and excessive." – Consumer Policy Research Centre*

This opportunity cost can more easily be borne by larger participants with the ability to commit resources to policy engagement and compliance in a competitive market. Many smaller participants, however, will find it increasingly difficult to contribute to policy development and ensure compliance with the CDR. The review heard this may result in some data holders considering merging with other data holders to pool resources and expertise as a viable option to avoid dropping out of the market entirely or risk being overtaken by a larger participant. In any scenario, this has the potential to reduce the level of competition in the market, which is contrary to the policy objectives of the CDR.

> *"there is a risk that the CDR could be used to further expand the consumer market share of the major retailers, enabling them to further dominate the market, as they have the means and ability to join as a [data recipient], alongside their [data holder] obligation, and invest in CDR opportunities. With high barriers to entry it makes it challenging for smaller retailers to gain the benefits of participating in the CDR" – EY*

Smaller participants find it difficult to fully participate in the various consultation processes involved in the rollout of the CDR. Without the capacity and resources to dedicate to multiple consultation processes and tight submission deadlines, smaller participants may become disenfranchised, leaving the CDR to be steered by larger players. This could disadvantage smaller players by leaving them unable to advocate for their interests and may harm consumers who lose access to the innovative CDR products offered by smaller players should they exit the market.

Finding 1.2

In developing the CDR, multiple agencies are seeking regular feedback from a wide range of stakeholders. CDR participants, particularly smaller ones, have found it difficult to engage with these successive consultation processes. Consultation is important to successfully implement the CDR, however, the extent and scope of consultation are barriers particularly for smaller participants and consumer groups. Without better coordination or consideration of ways to lessen the consultation load, there may be adverse competition outcomes that are contrary to the policy objectives of the CDR.

Though industry submissions raised some clear issues with the current approach to consultation, there are also potential benefits from maintaining aspects of the status quo. For instance, having separate processes allows each topic to be considered in sufficient detail, prevents progress across the entire initiative being delayed due to complications in distinct streams of work, and allows stakeholders who are only interested in specific aspects of the CDR to determine what is and is not most relevant to them.

There were also suggestions that any updates to rules and standards be signposted well in advance, with the Australian Banking Association (ABA) recommending that they be updated in predictable

intervals that allowed for sufficient time to "consult, comply, and integrate to the software management and oversight processes". These intervals, it was proposed during consultations, should correspond to business cycles for IT projects, such as 6 months intervals between changes or as required. This is not an unreasonable request from participants.

A first step towards achieving greater coordination of consultation processes includes publishing a unified consultation schedule for all CDR agencies, and ensuring adequate time on submission deadlines for consultation. The Government should consider appropriate timing for releasing rules and standards to provide participants the maximum allowable time to undertake the required changes and reduce the risk that deadlines will be missed.

Recommendation 1.4

To provide greater clarity and certainty to all participants, the Government, with CDR agencies, should provide greater transparency on CDR consultation processes and a timeline that outlines expected future developments.

1.6 Direct-to-consumer data sharing

Direct-to-consumer data sharing is a key part of CDR objects and has totemic significance. In the initial formulation of the CDR,[10] the scheme was conceived not only as a competition policy, but also as a means to provide consumers with access to their own data held by organisations. The CDR rules do not currently oblige the sharing of data directly from data holders to consumers, with the obligation effectively turned off within the commencement timeline for the banking sector, and not applying in the energy sector. The Review has considered some of the risks and opportunities associated with direct-to-consumer data sharing and whether the objectives of the Act remain fit-for-purpose in this regard.

Two perspectives emerged through the Review's consultations. The first is best represented in submissions from the Financial Rights Legal Centre and the Consumer Policy Research Centre, which raised concerns that s56AA(a)(i), stipulating consumers can disclose data "to themselves for use as they see fit", has yet to be fulfilled. This perspective asserts that consumer benefit and empowerment would not be realised in the CDR until consumers can directly access and interrogate their data from data holders, rather than through a third party.

The second and more commonly held perspective came from many CDR participants who identified risks of direct-to-consumer data sharing in a machine-readable form, citing the dangers of frictionless data transfer. Once CDR data leaves the protection of the CDR system, the data conceivably becomes vulnerable to exploitation or misuse. Unscrupulous actors may direct a consumer to request their data in machine-readable form to be forwarded, allowing for the circumnavigation of protections within CDR and for that data to be used, shared, and altered in any way without the consumer's consent. While it could bring about a potentially safer alternative to screen-scraping – by allowing individuals to request and share their data without giving up password information to third parties – it would also reduce the incentive to become an ADR and invest in creating CDR-powered products. Why would a

10 Productivity Commission, *Data Availability and Use – Productivity Commission Inquiry Report*, *No. 82*, March 2017, https://www.pc.gov.au/inquiries/completed/data-access/report/data-access.pdf

prospective participant go through the process of becoming an ADR when it would be far simpler to build an application to process consumer-provided data outside CDR protections?

Submissions to the Review largely focused on whether it was appropriate to pursue direct-to-consumer data sharing at this stage of the CDR rollout and emphasised that the existing CDR legislation can already support these data sharing opportunities. Few submissions were able to suggest a use case for direct-to-consumer data in a machine-readable form. CDR data, of itself, is unlikely to be useful without the addition of third party products or services. Although there could be a small subset of consumers with the technical expertise to make use of their own CDR data in machine-readable form, the vast majority of consumers would either be unable to do so and unlikely to have desire to do so.

> *"The key issue with direct to consumer data access is not whether the framework should, and could safely, facilitate this kind of access but rather the timing and extent to which this should occur across designated sectors given the current barriers to entry that exist for participation as an ADR… We consider that these issues need to be addressed before direct to consumer access is contemplated, otherwise this will exacerbate the issues with participation in CDR by incentivising businesses to obtain indirect access to machine-readable data via consumers to avoid CDR obligations."* ***– TrueLayer***

> *"In our view, imposing [direct to consumer data sharing] obligations is not yet timely… given the complexity of the CDR ecosystem and the importance of ensuring data is handled safely and securely, it is essential to first establish that the current system is functioning as intended. The roll out of CDR needs to be a step-by-step secure process."* ***– Scientia Professor Ross P Buckley & Dr. Natalia Jevglevskaja, University of New South Wales***

It is easy to see how direct access to consumer data could result in consumer harm. Under current settings, it is not clear how the CDR could be altered to restrain data-disclosed consumers without fundamentally undermining consumers' freedom to hold and use their own data. Further expansion of direct-to-consumer data sharing must be underpinned by a comprehensive liability framework, which does not currently exist and would likely be administratively complex. In any scenario considering disclosures to unaccredited parties, CDR settings should ensure that consumer risks are reduced by either limiting the eligible recipients or requiring that the data disclosed meet a specific, limited purpose – as is the case with trusted advisors (see also section 3.2).

A number of submissions also noted that, outside the CDR, consumers are increasingly offered personal data from data holders in banking, energy, telecommunications sectors and other non-CDR spheres like social media.[11] Opportunities, however, vary between sectors. For instance, as noted in Origin Energy's submission, customers with smart meters can log into their energy companies' web portals to obtain energy consumption data and in-home energy displays can be installed allowing for the real-time viewing of usage, or alternatively they can directly request information from energy companies. These provide some avenues for consumers beyond what can be offered under the CDR, at least in the short to medium term. In the longer term, as recommended in the recent Strategic Assessment of the CDR, it is worth considering how these existing data sharing opportunities could be integrated with the CDR to offer consumers access to relevant data in a potentially more standardised form than currently available.

The Review acknowledges both main perspectives on the treatment of direct-to-consumer data access. It also recognises the potential self-interest inherent in the cohort of data holders and recipients advocating for restricting direct-to-consumer data access. While different consumer cohorts will have different risk profiles, at the time of this Review, data literacy across the broad community is still relatively low, lending weight to warnings of adverse outcomes for consumers if direct-to-consumer data sharing is enabled too early.

The statutory settings themselves are fit-for-purpose in facilitating direct-to-consumer data transfers, and there is a built-in capacity to enable direct-to-consumer functionality through the rules. The current priority should be to continue building maturity in the system, which may lead to a change in the risks associated with direct-to-consumer data disclosures. For example, as the system matures, the incentives for participating outside the CDR may diminish. A more mature system may also build stronger consumer representation and greater data literacy, which, together, may decrease the risk of consumer harm. Given these risks will change as the CDR matures, direct-to-consumer data sharing is likely to become a valuable feature of the CDR in the future. Until that point, it is in the interest of consumers that this function remain disabled.

Finding 1.3

Submissions recognised the risks associated with enabling direct-to-consumer data sharing under the CDR, particularly at this point in time. While many submissions supported this form of sharing in principle, few were able to offer examples of tangible consumer benefits that could justify enabling sharing in the presence of these risks. The Review finds that the statutory framework may require further consideration in the future if direct-to-consumer data sharing is to be enabled, particularly in relation to liability for loss. As the CDR matures, the risks associated with direct-to-consumer data sharing may decrease, at which point enabling data transfers should be reconsidered.

11 Australian Banking Association, Cuscal, Comms Alliance, FDATA ANZ, Internet Association of Australia.

1.7 Clear measures of success provide certainty and direction for participants

Many submissions[12] to the Review noted that the success of the CDR to date has been difficult to gauge due to the lack of visibility of public success measures for the CDR as a whole. Without public visibility of success measures, uncertainty could erode the trust between CDR agencies and participants in the CDR ecosystem.

> *"Metrics need to be established and tracked to assess the actual benefit that the CDR is delivering in terms of practical outcomes for consumers. The focus currently on the number of parties accredited is not a success metric of CDR"*
> *– Consumer Action Law Centre*

Currently, the CDR website offers up-to-date metrics on performance in the system, showing the service availability of data holders, average response times and number of data holder brands. For example, for the period of 1 June 2022 to 30 June 2022, the data holders' average service availability (the percentage of time data holders' systems were able to service data requests) was 97.1 per cent.[13] This is a starting point for participants and the public, however, it could be improved with additional data relevant to the growth of the ecosystem. For example, in the UK, the Open Banking Implementation Entity (OBIE) provides details on wide-ranging success measures through its *Open Banking Impact Report* – the most recent edition of which (June 2022) includes statistics on the growing use of Open Banking services, the number of payments made via Open Banking, how customers are engaging with Open Banking, and customer feedback on savings through Open Banking.[14]

One success measure raised by the *Inquiry into the Future Directions for the Consumer Data Right* (Future Directions Inquiry) was the degree to which screen scraping is used relative to the CDR. The consultation process revealed that there is still significant use of screen scraping in sectors both within and outside the CDR. A submission from Digital Service Providers Australia and New Zealand noted that some of their members reverted to screen scraping because of data quality issues in the CDR. Becoming more aware of the use and prevalence of screen scraping could inform how the evolution of the CDR should both address the needs of those that use screen scraping and encourage adopting CDR given its significantly better privacy and security.

It is important to also overlay any success measures with a visible timeline for the CDR (see Recommendation 1.4). Greater visibility of success measures and system objectives will provide increased confidence and assurance to participants who have made significant investment to date either as data holders or ADRs, and reinforce with participants that success in the CDR will not be achieved overnight.

12 Australian Communications Consumer Action Network, Consumer Action Law Centre, Consumer Policy Research Centre, FDATA ANZ Financial Rights Legal Centre, Internet Association of Australia, Telstra.

13 Consumer Data Right, Performance https://www.cdr.gov.au/performance.

14 Open Banking UK, The Open Banking Impact Report, June 2022, https://openbanking.foleon.com/live-publications/the-open-banking-impact-report-june-2022/

Recommendation 1.5

Greater visibility of success measures and system objectives will provide increased confidence and assurance to participants. Success measures should incorporate measures of system health and meaningful outcomes for consumers.

Improving the visibility of success measures may further help to resolve data quality issues (see also section 2.1) by highlighting deficiencies in direct compliance efforts, thus building a level of public transparency and better performance. In early 2022, the DSB opened for public consultation a proposal to capture further metrics directly from ADRs on the performance of Data Holders via an API.[15] Whilst the proposal closed with no decision taken, it reflects there has been thinking undertaken and there is a desire to capture measurable metrics, which if implemented effectively could assist regulators and participants to identify data quality issues. Care should be taken not to create unnecessary burdens on participants in developing the measures.

There is significant effort currently underway within CDR agencies to expand the visible success measures of the scheme. The continued focus on this important work is strongly encouraged.

1.8 Part One – Conclusion

The CDR objects remain fit-for-purpose in the medium term and have broad support among system participants. During the implementation phase, priority has been appropriately given to safety, security and privacy safeguards, which have built trust in the system. As implementation continues, and consumer participation and confidence in the system grows, the relative weighting of CDR objectives may need to be adjusted, with greater focus assigned to creating more consumer choice, promoting innovation and increasing competition to promote the public interest.

15 Decision Proposal 240 – ADR Metrics, February 2022, https://github.com/ConsumerDataStandardsAustralia/standards/issues/240