



Australian Government



Australian
**Small Business and
Family Enterprise**
Ombudsman

20 DECEMBER 2022

Rules Unit

Consumer Data and Digital Division

Treasury

Langton Cres

Parkes ACT 2600

via email: data@treasury.gov.au

Dear Sir/Madam,

Consumer Data Right (CDR) – CDR rules maintenance

We welcome the opportunity to comment on the Competition and Consumer (Consumer Data Right) Rules 2020 (the rules) and support the rule unit's efforts to ensure that they are 'fit for purpose'. Enabling small and family business engagement with the CDR is critical to realising the full scope of its benefits for Australia's digital economy. To this end, we provide the following comments:

- 1. The rules which govern the restricted access models of accreditation should be modified to better reflect the capacities and practices of small businesses.** Owing to the high costs of attaining unrestricted accreditation, the restricted access models will likely be the main participation channel for small businesses. However, these models are not yet capable of providing the functionality necessary for small business operations.

For example, rule 1.10C prescribes restrictive adviser classes for the trusted-adviser access model. This inflexible approach sits uncomfortably with the reality of small business engagement with a diverse range of advisers, often irrespective of certifications. This constraint, combined with the cost of accreditation, process change requirements, and resource management burdens, limits the perceived benefits in the model for small business participation.

- 2. Consideration should be given to changing the temporal nature of consent in Part 4 of the rules, to avoid deletion or de-identification of data triggered by unintended lapse of consent.** Small businesses are often under resource constraints, which can easily trigger consent lapse by oversight or administrative errors. For example, if a small business neglects to renew consent for its accounting software provider to gain access to its data, this can result in incomplete or inaccurate reporting to the ATO. The intricacies of managing time pressures related to consent can further amplify CDR system frictions, causing unnecessary process breakdowns, and poor CDR consumer experiences.
- 3. Part 4 of the rules should be revised to clarify key compliance elements, reduce stipulations, and simplify the consent-authorisation process.** In its current form, Part 4 is overly prescriptive and presents significant adaptation challenges for small businesses to integrate the rules into their existing processes. The constraints established by the rules creates higher opportunity costs for small businesses in embedding innovation and



efficiencies into CDR processes. This in turn impedes the development and maturity of the CDR system.

- 4. Where appropriate, all regulatory components of the rules should be streamlined and integrated with other relevant legislation.** The current low system uptake is partly influenced by the disjointed interaction between CDR and other policy frameworks, leading to both regulation overlaps and policy grey areas. This discourages participants of all sizes, especially small businesses who have limited resources in navigating the regulatory complexities. Specifically, the separation of CDR's privacy safeguards from the Privacy Act 1988 and other data security frameworks causes significant inefficiencies in implementation compliance, with uneven impacts for smaller participants.
- 5. The construct of 'derived data' should be revisited to ensure its definition effectively balances the policy objectives of data security and accessibility.** We acknowledge the ambitions of CDR in its expansive reach, which gives rise to the need for data that originates from CDR data to be secure as it moves through the system and externally. However, the broad coverage of 'derived data' imposes substantial regulatory burden on participants in practical operations. Any data 'directly or indirectly derived' from original data shared through the CDR process is regulated as CDR data. This further segregates the CDR system from external processes, CDR data from external data, which discourages CDR system use cases and engagement.
- 6. We support the continued re-evaluation of the rules to ensure its efficacy in delivering CDR as an economy-wide infrastructure that creates fair opportunities and competition for participants of all sizes.** The continued implementation of the CDR presents significant operational challenges for small and family businesses and discourages participation by the sector. Further, consultation fatigue has amplified system instabilities and stakeholder uncertainties produced by the rapidly changing environment of CDR.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Dianrong (Sophie) Li on 02 5114 6124 or at Sophie.Li@asbfeo.gov.au.

Yours sincerely

The Hon. Bruce Billson

Australian Small Business and Family Enterprise Ombudsman