

ACCC consultation submission themes

Following the closing of the consultation period for ACCC CDR Amendment No. 3, the ACCC have now published the 52 submissions received. The consultation paper contained more than 20 proposals for change including new restricted accreditation classes, ADR to ADR data sharing, sharing CDR data with non-accredited trusted advisors, extension of data sharing to non-individual account types and revision of the consent model to separate “consent to collect” from “consent to use.”

The ACCC received submissions from the full spectrum of participants in the CDR regime including banks, fintechs, energy companies, intermediaries, lawyers, consulting firms, and industry associations amongst others. As expected, there is a wide range of views expressed from those highly supportive and seeking rapid implementation of the proposals to those vehemently opposed and seeking substantial delays in implementation. The one area with widespread support was the extension of data sharing to non-individual accounts such as company and trust accounts. Nearly all the other proposals had divided support. The other notable observation is that 18 responses (including all except one of the banks) pushed back on the proposed implementation timeframes compared to just three that supported them.

Here are several of the key themes we have observed across the responses:

Tiered accreditation

In response to industry concerns with the barriers to entry for Data Recipients the ACCC has placed three models for restricted accreditation on the table for discussion.

Opinion on these models was predictably divided. Fintechs were supportive, albeit keen to see simpler implementation models. ADIs were less supportive of most of the restricted accreditation models. Key concerns were:

- Limited Data Restriction - That while this might be appropriate for other sectors, banking data was all regarded as high risk by ADIs. Similarly the energy sector called out the highly sensitive nature of some of their account information
- Data Enclave Restriction - Use cases were unclear and there were concerns that it would be technically hard to prevent data leaking from the enclave
- Affiliate Restriction - Belief that the commercials around such an arrangement would make it no more cost effective for the affiliate than becoming an unrestricted ADR due to the liability framework and consequent oversight costs by the sponsor

Several submissions pointed to the Australian Tax Office DSP Operational Framework and the Security Standard for Add-on Marketplaces (SSAM) model as a basis for a lower level accreditation.

Another key input to this debate will be the recommendations of the Inquiry into the Future Directions of the CDR where “the scope for use of tiered accreditation to promote broader access without increasing risk” was one of the topics submissions were invited to address.

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Impact on the accounting sector

The proposal to permit CDR data to be shared with "trusted advisors" has engaged the accounting profession in the CDR debate. The sector is concerned that the way the CDR legislation is written, financial statements produced using shared CDR data would fall under the definition of 'derived data'.¹ This suggests that, for example, reconciliation of accounting ledgers to transaction data received through the CDR would make those ledgers CDR Data and thus any subsequent user of that data would need to become an Accredited Data Recipient.

Modern accounting packages involve ecosystems of "plug in" services that number in the hundreds - it may be that if an accounting package ingests CDR data, then all those "plug in" services would need to either become accredited or at least comply with Outsourced Service Provider obligations. It is notable that all the professional associations involved in accounting have responded to the consultation and requested more time to review the impact on their profession.

It is noted that the CDR Data definition is part of the Act, not the Rules, so any changes to this will require legislative amendment rather than rule changes by ACCC.

Impact of proposed changes to the consent model

The ACCC also proposed to introduce changes which would make consent more nuanced, but also more complex. As part of these changes they proposed to separate the "consent to collect" from the "consent to use" and "consent to disclose". This proposal was supported by 12 submissions and opposed by seven. The primary concerns were the added complexity for consumers to understand and manage consents effectively and the consequence that they could no longer withdraw all consent from the Data Holder dashboard.

When considered with the proposals to permit CDR data to be disclosed to other ADRs, there is potential for long consent chains to form that would be cognitively challenging for consumers to keep track of. At a minimum, submissions encouraged a thorough customer experience evaluation be carried out before implementing these proposals.

Degree and pace of change

Eighteen submissions raised concerns at the quantity and pace of the proposed changes including the short consultation and submission review periods. The non-major ADIs, in particular, called out the potential impact to the delivery of their data sharing obligations if they are required to amend their build specification as a consequence of any proposed rule changes. To quote the Community Owned Banking

¹ Section 56AI of the Act makes the following definition: "CDR data is directly or indirectly derived from other CDR data if the first-mentioned CDR data is wholly or partly derived from the other CDR data after one or more applications of paragraph (1)(b).", where paragraph 1(b) specifies that CDR Data includes data derived wholly or partly from designated CDR data.

Association: "Given the CDR regime is still in its introductory implementation phase, we believe more time is needed to embed this foundational phase of the regime before it is significantly expanded."

In summary

The ACCC needs to balance the competing interests of Data Holders, Data Recipients and Consumers with several submissions calling out that the proposed amendments focus too much on the needs of the Data Recipients to the detriment of Consumers. The consultation has also brought to light potentially unintended consequences of the broad definition of CDR Data.

In summary, it would seem to be challenging for the ACCC to address the wide range of concerns expressed in this consultation and meet their self-imposed December rule making target. It would also seem prudent to await the report of the Inquiry into the Future Directions for the CDR before finalising many of these proposals.

Response by organisations

The response by organisations in light of these proposals will necessarily differ driven by their role in the ecosystem.

Data Holders will need to continue to push forward to implementation in order to meet their compliance obligations under the existing rules. It appears that the ACCC is sensitive to not impacting the existing roll out and will likely time new obligations for Data Holders with a longer horizon.

Intending Data Recipients will need to assess whether to proceed with implementation under the existing rule set, or await further clarity on the timing of any changes that flow from this consultation if they believe it would improve their offering or implementation cost.

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Quill Peak



Quill Peak is a boutique consultancy specialising in assisting organisations with their CDR journey. We can assist with becoming and remaining compliant and CDR strategy in general.

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