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Sectoral Assessments
Consumer Data Right Division
The Treasury
Langton Crescent
PARKES ACT 2600

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Consumer Data Right – other operational enhancements

Chartered Accountants Australia and New Zealand, CPA Australia, and the Institute of Public Accountants together represent over 290,000 professional accountants and a further 55,600 provisional accountants, many of whom are key participants in the financial sector who support individuals and businesses to comply with statutory obligations and plan a secure financial future.

We welcome the introduction of disclosure to a specified person to meet a business purpose. We consider this recognises how consumers that also have enterprises manage their affairs.

However, we do not support restricting this purpose to only 'business consumers' being a consumer that is not an individual or holds an Australian Business Number (ABN). Nor do we support the basis for restricting the proposed consent to business consumers at paragraph 46 of the Exposure Draft Explanatory Materials. This paragraph considers that only businesses;

- have existing relationships with a range of service providers; and
- are more likely to have existing data security and sharing procedures in place.

The reason for our concern is that:

- individual consumers also have existing relationships with a range of service providers such as accountants, financial advisers and software providers; and
- owners of small businesses and sole traders are, in essence, individual consumers who happen to be carrying on an enterprise. Incorporating a business or obtaining an ABN does not elevate the data security literacy of, or require putting in place sharing procedures by, the individual consumers behind that enterprise.

We also welcome extending the consent duration beyond 12 months for consent to disclose CDR data for business purposes. However, we are concerned that there are no requirements on an ADR to verify that the individual providing a business purpose consent has the authority of the business to do so. Equally, we are concerned that an ADR is not required to retain a record of the required business purpose statement.

We expand on our comments in Appendix A and recommend that the proposed consent be identified as a 'business purpose disclosure consent' and that requirements be placed on ADRs to verify the individual's authority to provide consent and retain a record of the business statement.

To arrange a time to discuss our comments and to address any further questions, please contact Jill Lawrence at Jill.Lawrence@charteredaccountantsanz.com.

Yours sincerely

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Appendix A

The following provides greater detail on our position.

Business purpose disclosure consent

We welcome the recognition of the need for consumers to disclose their data with an unaccredited specified person to receive a service or good for a business purpose. We believe the business purpose should be the definitive element of the proposed consent, not if the consumer is, or is not, an individual, or does or does not hold an ABN.

We consider the demographics of businesses in Australia support our member's experience that there is little difference in the data security literacy of an individual or non-individual consumer. This reflects the fact that, in Australia, the only requirement to become incorporated is to be over 18 years of age. To obtain an ABN the only requirement is to be carrying on or starting an enterprise. There are no requirements around data security or data sharing.

As reported by the Australian Bureau of Statistics in series 8165.0, of the 2,569,900 businesses operational at the close of June 2022, 1,550,151 were non-employing (60%) and a further 728,759 employed less than 5 people (28%). Together, this group relies on service providers, such as an accountant, to manage both their personal and enterprise affairs.

In consideration that the engagement of an accountant or a bookkeeper, and a subscription to a software provider, will be under some form of contract, we recommend that 'business purpose' be defined along these lines in the CDR Rules. For individuals and small businesses, which is the target group of these proposed changes, this would also introduce the added protection of the *Australian Consumer Law*.

We recommend changing the proposed consent at rule 1.10A(v) to read *'to a specified person in accordance with a business purpose disclosure consent,'* and that a definition of a 'business purpose', such as "a good or service provided under a commercial contract", be added to the CDR Rules to invoke protections under the *Australian Consumer Law*.

Business purpose statement

In line with the above, we recommend that at rule 1.10A(7) a *'business consumer statement'* be changed to read a *'business purpose statement'*. We consider this more accurately reflects the aim of such a statement, that is, to verify that disclosure of CDR data is for a business purpose.

Absent from the proposals is a requirement on the ADR to validate that the individual providing a business purpose statement has the authority to do so on behalf of the enterprise. Also absent is a requirement for an ADR to make and retain a record of the business purpose statement. For a consent that discloses data to an unaccredited, specified person, there may not be other regulatory or professional standard obligations. Therefore, a record of this statement is critical for consumer protection.

We recommend that the statement that enables an ADR to disclose CDR data to a specified person be called a 'business purpose statement' and that an ADR must validate the authority of the individual to provide such a statement. They should also be required to retain a record of the statement.

Consent duration

We welcome the extension of the consent duration for business purpose disclosures. However, we are unclear how such a duration interacts with the record-keeping obligations of consumers that are also directors of an entity. In particular, if this consent is withdrawn within 7 years and the deletion requirements of the CDR Rules are invoked.

For consumers who rely solely on digital records hosted by an ADR and built of CDR data, how do the CDR Rules interact with record keeping requirements in s286 of the *Corporations Act 2001* (Cth) or s262A of the *Income Tax Assessment Act 1936* (Cth)?

For clarity, we recommend that a clause be added to the CDR Rules that clearly states that where a conflict arises, record keeping requirements under Commonwealth legislation take precedence.

CDR data security – in transit and at rest

Like other disclosure consents, and as raised in previous submissions, we are concerned that the control of a consumer's data will still rest with the ADR. In line with a trusted adviser disclosure, where an ADR considers a specified person's digital system does not meet the requirements for data security under the CDR regime, they may decline to action a business purpose disclosure consent.

We seek amendments to the CDR Rules to include the specific circumstances under which an ADR may decline a disclosure consent for business purpose, similar to the provisions in the CDR Rules for data holders.

Trusted advisers

We note the findings of the Statutory Review of the Consumer Data Right (the Review). In particular, the statement that 'Extensive consent requirements can perversely inhibit a consumer's understanding of what they are consenting to, and complicated consent processes can also deter consumers from engaging with CDR'.

A consumer being able to disclose their data for a specified purpose could significantly reduce the complexity of the consent process. Were our recommendations above adopted, consideration could also be given to removing the Trusted Adviser (TA) consent. As we raised in previous consultations, current participants in the CDR have no plan to build the ability for a consumer to nominate a trusted adviser and to do so is entirely at an ADR's discretion.

Coupled with the inability to affect a TA consent, and as our members are experiencing, consumers do not consider their personal affairs separately from those of their small business or an enterprise operated under their ABN. The consumer will seek to give consent to their trusted adviser—i.e., their service provider—to disclose all data related to them and their enterprises.

Our recommendations above strive to reduce the type of consents a consumer may need to provide. It would also facilitate the ability of our members, professional accountants, and most others in the class of trusted adviser, to access required data captured by the definition of CDR data as a specified person.

If the proposed addition to the CDR Rules is amended to facilitate disclosure for business purposes irrespective of whether the consumer is or is not an individual, we recommend consideration be given to removing the Trusted Adviser consent and associated rules.

Conclusion

We welcome the proposed changes to the CDR Rules and consider it a significant step forward in providing consumers control over their data captured as CDR data. To reflect how consumers, who also have enterprises, manage their affairs, we recommend that the proposal be changed to facilitate disclosure for a business purpose irrespective of whether a consumer is an individual, a holder of an ABN, or not an individual.