

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into Financial Technology and Regulatory Technology

2020 - 2021

Division: Consumer Data Right Division
Topic: Consumer data right queries
Reference: Written— 16 March 2021, IQ21-000030

Question:

The committee has heard evidence of the need to ensure that the CDR as it develops is interoperable with other parts of the digital economy in Australia, in particular the Digital ID framework and legislation being developed by DTA. How will Treasury ensure that this occurs as the CDR rollout continues?

The OAIC gave evidence to the committee that additional protections for consumers may be required if any of the ‘Big Tech’ digital platforms seek to become CDR data recipients (for example, placing limits on what existing personal information CDR data could be able to be combined with by Big Tech platforms).

o What work has Treasury done to assess what additional protections may need to be put in place in relation to the Big Tech companies joining the CDR regime?

In its supplementary submission to the inquiry, Finder raised the proposal of establishing CDR ‘prompts’ as a mechanism to encourage consumers into taking expedited action to improve their finances.

o Has any work been done on the possibility of introducing this kind of mechanism into the CDR regime?
o How could such a mechanism work if it were to be implemented?

Answer:

1. The Consumer Data Right Division in Treasury, which works closely with the Australian Competition and Consumer Commission and the Office of the Australian Information Commissioner, has a number of mechanisms to ensure the Consumer Data Right (CDR) is developed and rolled out with appropriate coordination with other important Government digital initiatives. Regular meetings are held with government agencies, including the Digital Transformation Agency (DTA), on key priorities and developments across the Government’s digital initiatives, including CDR. The Government’s recent reallocation of responsibilities to the Minister for the Digital Economy and the Treasury further supports the effective coordination across government in progressing the roll-out of the CDR across the economy.

The Government is considering the recommendations of the *Inquiry into Future Directions for the Consumer Data Right*, including how customer authentication in the CDR should encourage the use of interoperable authentication solutions and minimum assurance standards for authentication. The Report of the Inquiry states that CDR should support participants in their choice of digital identity or authentication provider when designing CDR-based services. The Report notes the DTA's Trusted Digital Identity Framework as one such framework that would support interoperability.

2. Treasury continues to monitor the protections required to safeguard consumers who share data with accredited data recipients (ADRs).

CDR privacy protections are designed to ensure that consumer data will be safe, secure, and will only be used for appropriate purposes. A foundational principal of the Consumer Data Right is to ensure consumers have control of their data, ensure that it can be used to their benefit and not be misused.

Under the CDR all disclosures, collections of use of consumer data require informed and explicit customer consent. Other important protections include data minimisation obligations; de-identification obligations; restrictions on the selling of data; and restrictions on direct marketing using CDR data. The regime provides the minister with the ability to make further rules to prohibit inappropriate data practices.

Under the CDR, all consumers also have rights to require deletion of data relating to them (or unilaterally withdraw their consent for a business to transfer or use their data).

Importantly, breaches can attract high penalties – and these penalties can scale with the size of the businesses. Depending on the breach, penalties may be up to \$10 million, three times the benefit gained by the breach, or 10% of the domestic turnover of the perpetrator. The CDR also provides for a range of avenues for customers to seek meaningful remedies for breaches, such as access to external dispute resolution schemes and direct rights of action. Regulators can also seek compensation orders on behalf of victims.

3. Treasury continues to consider opportunities to encourage greater participation by consumers, ADRs and service providers in the data economy. Additional functions, such as 'prompts' to consumers, could be established by ADRs and service providers to increase consumer participation and increase consumer benefit.

The Government is considering the recommendations of the *Inquiry into Future Directions for the Consumer Data Right*, which include a recommendation that the CDR regime be extended by permitting 'action initiation' by ADRs on behalf of consumers.