

Attorney-General's Department responses to questions on notice from the Senate Standing Committee on Economics hearing into the *Treasury Laws Amendment (Consumer Data Right) Bill 2019* (6 March 2019 at Sydney).

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CHAIR: What about the interaction between the privacy laws and the ombudsmen, the external dispute resolution bodies? They said it could open up the potential of a whole new body of complaints to them. Is that something you've considered?

Ms Virtue: I don't know that we have. We could probably provide some more information on notice.

Attorney-General's Department response

The Information Commissioner has the power to recognise external dispute resolution (EDR) schemes to handle specific privacy-related complaints under section 35A of the *Privacy Act 1988* (Privacy Act).

There are currently nine EDR bodies that have been recognised by the Information Commissioner. These EDR bodies provide EDR services in relation to the purpose of their recognition and subject to any conditions specified by the Information Commissioner. Subject to these terms, the EDR bodies are broadly recognised to receive, investigate, facilitate the resolution of, make decisions and recommendations for, and report on the acts and practices of the members of that scheme. The jurisdictions of EDR schemes primarily relate to interferences with the privacy of individuals under subsections 13(1) and/or 13(2) of the Privacy Act.

Under the *Treasury Laws Amendment (Consumer Data Right) Bill 2019* (Bill), EDR bodies with the ability to hear Consumer Data Right complaints must be recognised by the Australian Competition and Consumer Commission (Commission) in accordance with section 56DA of the Bill. Before recognising an EDR body, the Commission must consult the Information Commissioner about the scheme. This mechanism was developed by Treasury in consultation with the Attorney-General's Department and creates a similar avenue for recognising EDR bodies to that in the Privacy Act; however the jurisdiction will diverge to the extent that complaints relating to the Consumer Data Right must be adjudicated by the recognised EDR body with reference to the Privacy Safeguards under the Bill, and within the jurisdiction recognised by the Commission, rather than under the Privacy Act recognition.

On this basis, the Attorney-General's Department considers that it is unlikely that there will be an increase in privacy complaints to EDR bodies under the Information Commissioner's recognition in relation to Privacy Act matters as any complaint would need to be considered in relation to the Commission's recognition under section 56DA of the Bill.

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Senator KETTER: Do you have formal meetings to discuss the bill?

Mr Malone: I guess we do have formal meetings, but unlike the Data Standards Body or either of the regulators we don't have a formal role in the process. Rather, the Attorney-General's portfolio role of lead responsibility for privacy means that we have a keen interest in those areas, and we do have a role in terms of how it interacts with the privacy legislation. But, in terms of a formal role, not specifically.

Senator KETTER: But in terms of a formal meeting to pass on your advice to the Treasury, does it happen?

Mr Malone: Yes, it does.

Senator KETTER: Can you provide, on notice, the dates on which those meetings have occurred?

Ms Virtue: Yes, I can.

Attorney-General's Department response

In its evidence to the Committee, the Attorney-General's Department provided that the Department was first consulted in relation to the Consumer Data Right in April 2018. The Department clarifies that the Department was consulted by the Treasury from April 2018 regarding the drafting of the *Treasury Laws Amendment (Consumer Data Right) Bill 2019* (Bill), but was first consulted on the Consumer Data Right policy as part of the Government Response to the Productivity Commissioner Report *Data Availability and Use* (completed May 2017) in June 2017.

The Attorney-General's Department confirms that staff met with the Department of the Treasury (sometimes with other agencies also attending) on the following dates about development of the Consumer Data Right. The Attorney-General's Department also notes that these meetings were held on an as-needed basis rather than through a recurring or 'formal' series of meetings.

- 1 June 2017
- 15 June 2017
- 22 June 2017
- 27 July 2017
- 10 August 2017
- 29 September 2017
- 29 November 2017
- 5 January 2018
- 1 February 2018
- 20 February 2018
- 28 February 2018
- 6 March 2018
- 27 March 2018
- 2 May 2018
- 7 May 2018

- 12 June 2018
- 2 August 2018
- 17 October 2018
- 14 November 2018

The Attorney-General's Department also provided regular phone and email feedback on drafting instructions and draft legislation from April 2018 until the introduction of the Bill, in particular to offer advice and expertise in relation to the drafting of the Privacy Safeguards under the Bill and relevant interactions with the *Privacy Act 1988*.