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Senate Standing Committees on Economics

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Analysis of Treasury Laws Amendment (Consumer Data Right) Bill 2018 [Provisions]

First, what will be required to transfer data, *second*, who will be accredited, *third*, which consumers will benefit from the CDR, *fourth*, which data will be caught, *fifth*, how will transfer of data occur, will there be charges for transfer of data, *seventh*, how will the CDR be *sixth*, safeguarded, *eighth*, how will performance be monitored and what are the consequences of non-compliance, and *ninth*, who will bear the costs of implementation.

If the organisation incurs an “eligible data breach”, within 30 days it must notify individuals whose personal information is likely to result in serious harm due to the breach. The notification must include recommendations about the steps individuals should take in response to the breach. The organisation must also alert the Australian Information Commissioner of an eligible data breach. This can be done through online form, the Notifiable Data Breach statement, and this is what is required to be mentioned.

The Australian government has confirmed that the banking sector will be designated and later the telecommunications and energy sectors.

The role of the ACCC is to promote competition and customer focussed, whilst the Office of the Australian Information Commissioner (OAIC) will be focused on ensuring privacy protection and overseeing privacy complaints.

The Bill gives new power to the ACCC to recognise an external dispute resolution scheme for the resolution of disputes involving the CDR for one or more designated sectors. The draft explanatory gives recognition to the Australian Financial Complaints Authority (AFCA) will be recognised by the ACCC to undertake the external dispute resolution role to Open Banking.

The ACCC has released the CDR Rules Framework proposing a CDR computer can do any of the following:

- a) request their CDR data from a data holder using:

- an online mechanism such as website or application if the customer uses that same platform to perform actions on their account; or
 - an open application programming interface (API);
- b) nominate specific CDR data in their request; and
- c) receive their CDR data in variety of electronic formats.

The Bill is a departure from the current approach of the Australian Privacy Principles which are established under the *Privacy Act 1988* (Cth) and which regulate 'personal information'. Breach of the new safeguards will attract civil penalties and OAI will have additional powers to enforce them. The safeguards impose stricter obligations.