

Adjunct Professor George Newhouse

27 Feb 2019

Our ref: GN:Cyber

The **Committee Secretary**
Senate Economics Legislation Committee
PO Box 6100,
Parliament House, Canberra ACT 2600

Dear Sir

Thank you for your invitation to make a submission to Senate Economics Legislation Committee inquiry into the [Treasury Laws Amendment \(Consumer Data Right\) Bill 2019¹ \(CDR Bill\)](#).

My concern is that some parties may use demands for exorbitant fees and charges (or expensive or unavailable preconditions before granting access to data) as artificial barriers to restrict full and fair participation in the CDR scheme. CDR participants may need rules to cover such matters and a venue in which to dispute them.

Accordingly, I recommend the following amendments to the CDR Bill.

1. Preconditions

To add a rule making power to Section 56BJ to permit the promulgation of Consumer Data Rules about the preconditions that can be imposed by CDR Participants before providing others with data.

This will require inserting an additional sub section identified as 56BJ (fa) on page 29 by inserting the following sub section after sub section 56BJ (f):

“(fa) rules about the following matters:

(i) the manner in which CDR participants may impose preconditions on the provision of CDR data; and

(ii) giving notice of, or publicising, such preconditions;”

And by amending section 56BE by adding the words:

“or preconditions” after the word “requirements” in section 56BE (a) and (c).

¹https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/TLABConsumerDataRight

2. Fees and Charges

To add a rule making power to Section 56BJ to permit the promulgation of Consumer Data Rules about the quantum of fees and charges that can be charged by CDR Participants before providing others with data.

This will require an amendment to Section 56BJ (f) on page 29 by inserting the following sub section before sub section 56BJ (f) (ii):

“(ia) the fees and other charges that a CDR participant can charge for CDR data;”

And it would also require the additional words **“or other charges”** after the word **“fee”** wherever it appears in sub sections 56BJ (f) (i), (ii) and (iii).

3. Scope of the Scheme

To ensure that the scope of the External Dispute Resolution Scheme is broad enough to cover all of the Rules, in particular to regulate any fees, charges and preconditions that might be imposed by CDR participants before providing them with data.

This will require an amendment to Section 56DA (3) on page 47 by inserting the following sub section before sub section (g):

“(fa) the scope of the scheme; and”

The issue of legal or practical barriers to accessing data was explored in the submission from the [Australian Cyber Insurance Think Tank](https://www.linkedin.com/groups/10392474/)² to the Australian Competition & Consumer Commission (ACCC) [public consultation process on Consumer Data Right Rules Framework](https://www.accc.gov.au/media-release/accc-seeks-views-on-consumer-data-right-rules-framework)³. That submission is published <https://www.accc.gov.au/system/files/CDR - Rules - Submission to framework - members of the Australian Cyber Insurance Think Tank.pdf> [here](#)⁴.

The Rules should incorporate the matters in paragraphs 1 and 2 above and the Commission should ensure that the scope of the dispute resolution scheme captures all relevant matters for dispute.

I trust that my submission is clear but would welcome the opportunity to explain it further.

Your sincerely,

ADJ PROF GEORGE NEWHOUSE

²<https://www.linkedin.com/groups/10392474/>

³<https://www.accc.gov.au/media-release/accc-seeks-views-on-consumer-data-right-rules-framework>

⁴ <https://www.accc.gov.au/system/files/CDR - Rules - Submission to framework - members of the Australian Cyber Insurance Think Tank.pdf>