



Review of the Treasury Laws Amendment (Consumer Data Right) Bill 2019.

Submission to the Senate Economics and Legislation Committee

28 February 2019

Level 1, 131 Canberra Ave
Griffith ACT 2603
Australia

61 2 6281 9400
info@aiaa.com.au
www.aiaa.com.au

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Senator Chris Ketter, Chair
Senate Standing Committees on Economics
Parliament House
CANBERRA ACT 2600

Dear Chair,

Review of the Treasury Laws Amendment (Consumer Data Right) Bill 2019.

Thank you for the opportunity to provide feedback to the Senate Standing Committees on Economics in its review of the Treasury Laws Amendment (Consumer Data Right) Bill 2019.

About the AIIA

The Australian Information Industry Association (AIIA) is Australia's peak member body for the digital industry. AIIA is a not-for-profit organisation that has, since 1978, pursued activities to stimulate and grow the digital ecosystem, to create a favourable business environment and drive Australia's social and economic prosperity.

AIIA does this by providing a strong voice on its members' policy priorities, creating a sense of community through events and education, fostering collaboration between industry and government and curating compelling content and relevant information.

AIIA's National Board and its State Councils embody the diversity of the Australian digital economy, including large Australian companies, multinationals and small and medium sized businesses.

AIIA's members range from start-ups and the incubators that house them, to small and medium-sized businesses including many 'scale-ups' and large Australian and global organisations. They include organisations such as Apple, Adobe, Cisco, Deloitte, DXC, Gartner, Google, IBM, Infosys, KPMG, Lenovo, Microsoft, Oracle, Optus, Qlik, Salesforce and Telstra, national companies such as Australian Data Centres, Canberra Data Centre, Data#3, KTM Capital, Information Professionals, Technology One, and SMEs including Silverstone Edge, SME Gateway and Zen Enterprise and start-ups such as OKRDY.

While AIIA's members represent around two-thirds of the technology revenues in Australia, more than 90% of our members are SMEs.

Recommendations

1. AIIA members support the establishment of a Consumer Data Right (CDR) regulatory framework that protects consumer data while fostering innovation in the telecommunications sector.
2. Government should cultivate consumer and business trust in government regulatory initiatives such as CDR through co-design between government, industry and consumers. Inadequate stakeholder engagement and rushed implementation which results in an ambiguous and complex CDR regulatory framework will create an unnecessary and onerous compliance burden for the different industry sectors.

3. Given the substantial extension of competition policy and powers of competition policy-makers which the proposed CDR Bill enables, the CDR Bill needs to ensure that these powers are only to be exercised after transparent and genuine consultative processes that ensure due consideration of the particular circumstances of each industry sector¹.
4. The AIIA recommends that the implementation of the CDR regulatory framework should include iterative review points. Data collected and lessons learnt from the review points should be incorporated into the regulatory frameworks for the energy and telecommunications sectors of the economy². This should include consideration of technological advancements and the adequacy of existing regulatory frameworks that already apply to the telecommunication sector.
5. Government needs to recognise the differences in the sectors that are in scope of the application of the proposed CDR Bill. The telecommunications sector, does not support the imposition of a CDR 'template', developed to suit the characteristics of the banking and energy sectors³.
6. AIIA urges Government not to rush the application of the CDR legislation to the telecommunications sector in the pursuit of deadlines and to further engage with all relevant stakeholders⁴.

Key Issues

AIIA has made two recent joint submissions on the Consumer Data Right (CDR) Framework (the Framework) and the Consumer Data Right Bill (the Bill) in the last six months.

The first joint submission on the Bill was made to The Treasury on September 2018 (Attachment A). The second joint submission on both the Bill and the Framework was made to the Treasury and Australian Consumer and Competition Commission on October 2018 (Attachment B).

The issues raised in the joint submissions by AIIA and Communications Alliance members remain current. Key concerns raised in the October 2018 submission are reiterated below.

A. CDR Implementation Complexity and its application to the Telecommunications Sector

AIIA believes that the CDR legislation and rules framework is overly complex.

Successful implementation of this framework is essential to securely connect established large businesses 'data holders', with individual consumer and small business 'data recipients' via the new CDR ecosystem.

AIIA members have sought clarification over fundamental CDR concepts. For example, two specific areas of concern include the definitional boundaries of 'derived' CDR consumer data, and the obligations created for an accredited data recipient under the principle of 'reciprocity'. Both these concepts are mandated legislative attributes of an operational CDR ecosystem. However, there is no available guidance to inform practical implementation.

The proposed inclusion of derived data may deter investment in data analytics with flow on effects on skills development and innovation in the sectors that will be affected by the proposed Bill.

¹ P5. Joint CDR Submission by Communications Alliance and Australian Information Industry Association September 2018

² P4. Joint CDR Submission by Communications Alliance and Australian Information Industry Association October 2018

³ P5. Joint CDR Submission by Communications Alliance and Australian Information Industry Association September 2018

⁴ P15. Joint CDR Submission by Communications Alliance and Australian Information Industry Association October 2018

In this context, government, consumers and the telecommunication industry need to work together to create a clear and trusted regulatory framework.

B. Policy Rationale for sector rollouts

The CDR legislation and the Rules Framework are being developed with a banking focus although the legislation and Framework will apply to all sectors of the economy. This creates a real risk that those later sectors will be required to operate within a legislative and regulatory framework that has a distinct ‘banking flavour’ but lacks detailed consideration of the particularities of the respective sector⁵.

Additionally, AIIA remains concerned at the lack of evidence for a sound policy rationale for the application of the CDR to the telecommunications sector. Detailed and transparent assessments against published and agreed criteria are required to determine whether the application of CDR to the telecommunication sector would significantly enhance both consumer welfare and competition within the sector.

AIIA considers that a comprehensive Long Form Regulation Impact Statement (RIS) must be prepared and published for the telecommunications sector to inform the scope and approach the CDR implementations.

AIIA believe that the rational for the proposed CDR Bill applying to the telecommunication sector needs to be re-evaluated from both a cost benefit perspective and include analysis of alternative options that could also achieve the objectives of the CDR regime.

C. Consumer Data Privacy and Protection

The current CDR privacy and consumer protection model makes understanding and implementation of consumer protection overly complicated both for industry and consumers.

Substantial work needs to be undertaken by both the ACCC and Office of the Australian Information Commissioner (OAIC) to provide clarity for industry and consumers on the parallel operation of the Australian Privacy Principles (APP’s), the proposed Privacy Safeguards under the CDR Bill and any other international obligations such as the EU’s General Data Protection Regulation (GDPR).

The relationship between the APPs and the Privacy Safeguards and the way in which they work together requires further clarification to avoid creating uncertainties for organisations (data holders) required to participate in the regime and for the consumers (data owners) using the system.

The Department of the Treasury conducted its own in-house CDR Privacy Impact Assessment (PIA) in late 2018, acknowledging that it lacked the skills and experience to undertake such an assessment.

AIIA note that the findings of this PIA were met with opposition from the banking sector⁶, arguing that it significantly underestimated the risks associated with the CDR, including the risk of ‘hacking’ of the CDR ecosystem by criminal actors. This does not bode well for the telecommunications sector.

⁵ P5. Joint CDR Submission by Communications Alliance and Australian Information Industry Association October 2018

⁶ See https://www.ausbanking.org.au/images/uploads/PIA_CDR.pdf

AllIA recommends that a detailed CDR Privacy Impact Assessment be undertaken on the impact of the CDR on the telecommunications sector by an independent, qualified and experienced practitioner/s and that the Government include the required risk mitigation strategies into a revised, technically more robust and regulatory simplified, CDR consumer data protection framework.

Your sincerely,

Kishwar Rahman
GM Policy and Advocacy
Australian Information and Industry Association

Attachments:

A: *Submission to the Department of Treasury on the Treasury Laws Amendment (Consumer Data Right) Bill 2018*. Joint submission by the **Communications Alliance, Digital Industry Group (DIGI)** and **Australian Information Industry Association (AIIA)**. 13 September 2018

B: *Submission to the Australian Consumer and Competition Commission on the Consumer Data Right Rules Framework and the Department of the Treasury on the Treasury Laws Amendment (Consumer Data Right) Bill 2018*. Joint submission by the **Communications Alliance** and the **Australian Information Industry Association (AIIA)**. 12 October 2018