



Mr. Mark Fitt

Economics Legislation Committee

## **Topic: Submission to Inquiry into Treasury Laws Amendment (Consumer Data Right) Bill 2019**

Further to our more detailed response to the initial Exposure Draft provided on 7 September 2018 and then to the Designation Instrument for Open Banking on 12 October 2019, Experian continues to support the approach in keeping the legislative framework broad, with the intent that the revised legislation is not only fit for purpose for the Open Banking regime, but is also future proofed for further adoption of Consumer Data Right (CDR) across other industries and sectors. We would like to take this opportunity to re-confirm our position on some core areas with a focus on ensuring that the spirit of the proposed legislation is maintained and drives the greatest value to consumers.

### **The concept of “equivalent” data exchange**

Experian fully supports the need for the legislative framework to provide a mechanism for ensuring that organisations are compelled to provide information, however we recommend that this is clearly decoupled from a standard ‘Reciprocity’ framework, as has been adopted for other data exchange models such as Comprehensive Credit Reporting (CCR).

As the CDR is focused on the consumer being able to have full digital portability of their information at their request, the consumer should not be penalised for the inability of another organisation not being fully compliant with the new CDR.

### **The role of derived data in the CDR**

Experian supports the intent of the CDR legislation in relation to the role of value added customer data and aggregated data in so far as we believe third party intermediaries or other third parties such as Credit Reporting Bodies (CRBs) can add significant value to consumers and to ADIs through the creation of analytic or other tools to help share and interpret the data. However, we believe that these entities should not be compelled to transfer this data to other third parties or competitors.

Therefore, we have recommended that the rules move away from using the term derived data, and instead position standard transformation / aggregation of consumers disclosed data as being acceptable for exchange (i.e. adding up debits and credits, calculating balances etc.), but that



anything else is a more complex derivation of data and should be excluded, and would advocate that the related legislation also adopts a similar approach to enable this activity.

### **Interaction with the Privacy Act**

Whilst the CDR legislation considered the interaction between existing legislation (including the Australian Privacy Principles) and the new CDR regime at a high level, we remain concerned about the lack of clarity in the rules framework of the interaction with Part IIIA of the Privacy Act and the impact on CRBs.

Given the breadth of the definition of “credit reporting business” in section 6P of the Privacy Act there is the real possibility that certain accredited recipients (particularly intermediaries) may unintentionally fall within the definition.

A credit reporting business “is a business or undertaking that involves collecting, holding, using or disclosing personal information about individuals for the purpose of, or for purposes including the purpose of, providing an entity with information about the credit worthiness of an individual.”

Having regard to the definition of credit worthiness in the Privacy Act, the information exchanged in the proposed Open Banking regime is likely to be classified as information about the credit worthiness of an individual.

We therefore recommend that a regulation is made under section 6P(4) excluding any business of an accredited recipient who collects, holds, uses or discloses personal information about individuals in accordance with the Open Banking regime as not conducting a credit reporting business.

Additionally, so that there is a clear demarcation between the CDR regime and the credit reporting regime in Part IIIA of the Privacy Act, we also recommend that CRBs should not be permitted to be accredited recipients. However, this would not prevent a related body corporate of a CRB, which is itself not a CRB, from being accredited.

Experian supports the requirement that all accredited data recipients be subject to the Privacy Act. There needs to be a level playing field for all data recipients and the implementation of this recommendation will promote greater confidence in the new regime, give customers comfort that their personal information will be protected, and provide remedies if there is a privacy breach.

### **The Importance of Consumer Education**

What Experian has witnessed in other markets is the importance of consumer education, transparency, and control. The success of a CDR regime is ultimately dependent on consumer adoption for the services to deliver value back to them. A solid understanding about who accesses the data, and how, is imperative to build and maintain trust in the system. In the UK, the focus on consumer education commenced just months before the go live date which resulted in low adoption and a portion of the population opposing to the new data sharing services available to them.

A clear consent regime for consumers is also important, as is an understanding how the environment will be managed, particularly what the legal framework is around misrepresentation and misuse of

information. All this education is imperative to avoid an outcome where consumers are reluctant to participate or fearful of what more data sharing might mean for them.

### **In summary**

As custodians of customer data, and a firm believer in the benefits that an Open Data environment can bring to consumers, Experian is fully supportive of the move to an Open Data environment and committed to providing products and services to assist individuals and corporations.

Experian welcomes the intent of the CDR legislation to enable intermediaries to play an active role in assisting organisations in achieving the objectives set out, and believes that the global experience that we have gained in this area over the last few years can assist in a swift and effective transition.

Through global experience and local market expertise Experian can offer a consultative approach with all stakeholders to help operationalise CDR in the Australian market. We look forward to supporting industry and the Government with this body of work. For further information on this submission, please contact me at

Yours sincerely,

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### **About Experian**

Experian Australia Credit Services Pty Ltd is part of Experian, the world's leading global information services company. During life's big moments – from buying a home or a car, to sending a child to college, to growing a business by connecting with new customers – we empower consumers and our clients to manage their data with confidence. We help individuals to take financial control and access financial services, businesses to make smarter decisions and thrive, lenders to lend more responsibly, and organisations to prevent identity fraud and crime.

We have 16,500 people operating across 39 countries and every day we're investing in new technologies, talented people and innovation to help all our clients maximise every opportunity. We are listed on the London Stock Exchange (EXPN) and are a constituent of the FTSE 100 Index.

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