FinTech Australia

SUBMISSION PAPER:

Submission to Economics Legislations Committee on Treasury Laws Amendment (Consumer Data Right) Bill 2019

February 2019

This Submission Paper was prepared by FinTech Australia working with and on behalf of its Members; over 300 FinTech Startups, VCs, Accelerators and Incubators across Australia.

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About this Submission

This document was created by FinTech Australia in consultation with its Open Data Working Group, which consists of over 120 company representatives. In particular, the submission has been compiled with the support of our Working Group Co-leads:

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This Submission has also been endorsed by FinTech Australia members:

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- Emma Weston, AgriDigital
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- Julian Hedt, Banjo Loans
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- Shaun Lorder, Volt
- Jonny Wilkinson, Equitise
- Tim Dean, Credi
- Nathan Walsh, Athena Home Loans

Submission Process

In developing this submission, our Open Data Working Group held a series of teleconferences to discuss key issues relating to the Treasury Laws Amendment (Consumer Data Right) Bill 2019.

We also particularly acknowledge the support and contribution of DLA Piper and K&L Gates to the topics explored in this submission.

Context: Open Banking in Australia

FinTech Australia has been a consistent advocate for policy reform to drive the implementation of an Open Financial Data framework in Australia before the end of 2019. We have made numerous submissions to Federal Treasury, the Productivity Commission, the Open Banking Inquiry and Data 61 on the need for an Open Financial Data framework and on the details of that framework.

FinTech Australia will continue to engage on these broader issues, including by liaising with the Australian Competition and Consumer Commission (**ACCC**) in relation to the development of the Rules Framework, Data61 on the Consumer Data Standards and Treasury in relation to laws and privacy impacts.

While it is beyond the scope of this consultation, Fintech Australia notes with concern the recent delays to the commencement of the Open Financial Data regime. Specifically, many of our members were disappointed at the announcement of a pilot program from July this year and FinTech Australia is keen to ensure that the delayed state date of 1 February 2020 (at the latest) does not inhibit the great progress already being made across the industry. Furthermore, FinTech Australia encourages all parties to use the beta testing period to ensure consumers can have full confidence in the disclosure, use, accuracy, storage and security of CDR data they own.

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Treasury Laws Amendment (Consumer Data Right) Bill 2019

FinTech Australia welcomes the opportunity to put forward its position on behalf of members in relation to Treasury Laws Amendment (Consumer Data Right) Bill 2019 (**Bill**).

We have highlighted below a selection of key issues which we believe are important as the Economics Legislation Committee considers the Bill.

1. Legislation

FinTech Australia and its members have welcomed progress on the Bill and praise the Government's current timeline of passing the bill through the Senate in April. The Bill will lay the framework for the introduction of Open Banking reform in Australia, which will enable greater competition and innovation in the financial services sector. The Bill has been prepared over a significant period with numerous consultation across industry.

The Bill is critical to the key role that Australia's fintech industry will play in pioneering innovation. With the proposed framework Australian fintechs will be in a position to compete not only in Australia, but also globally. In addition, the Bill includes a globally leading proposition of a Consumer Data Right (**CDR**) which encompasses other industries, and will propel Australia as an international market and aid our companies' export opportunities.

Furthermore, there has been a significant reference to the CDR in the Royal Commission report by Hayne and more recently in the Senate report on credit and financial services targeted at Australians at risk of financial hardship. The reason for the acknowledgement is the Bill is the underlying purpose is to drive market competition ensuring benefits to consumers including better prices and services. Therefore any delay to the Bill is counterintuitive to the government's view of potential benefits.

We're seeing a vibrant and innovative fintech sector particularly in the UK and Europe where the reforms are keeping up with technology including PSD2. If we continue to delay the Bill, it will drive our fintech ecosystem into other markets and hinder the competitive advantage we have over other jurisdictions that are yet to develop an Open Banking regime. Furthermore, other markets such as the UK and EU are progressing their open banking regime reducing the competitive advantage of the Australian market thus delaying the Bill delays the progress of the CDR proliferation into other industries. This again will delay potential customer benefits and increased transparency and competition in other segments such as utilities.

With a delay, there is a bigger risk that consumers will lose trust and we, as a result, suffer from an adoption problem similar to the UK. There is a growing use of banking data for a range of use cases, consumers are getting more comfortable with these services and indeed this imposes more of a risk as unsanctioned and unscrupulous parties come in and take advantage of this growing acceptance. This is exactly why we cannot have a delay to the Bill as a delay proposes a greater risk and will create a negative environment making it a more difficult for the CDR regime to be successfully implemented and adopted by consumers. The progress of the Bill is an important legislative step to change the economic and cultural landscape for generations to come.

2. Privacy and Security

It has been commented in the media and in parliament that there is a broad concern in relation to privacy and security. FinTech Australia and its members submit that there has been significant consultation across Data61 - Consumer Data Standards and the Privacy Impact Statement to ensure the safety of personal data.

We more broadly submit that Australian fintech businesses are aligned to the needs of the customer and thus privacy and security are core operating principles. Therefore, as previously submitted we broadly support the Privacy Impact Statement (PIA) and the privacy and security measures contemplated in the Data61 consultation; however, the Bill must pass for additional pilots and consultation to occur. In that way, delaying the Bill on the basis of privacy concerns is misguided; it actually undermines the delivery of certainty required to alleviate the privacy concerns shared by all parties.

FinTech Australia's broad areas of concern on the Bill are the nature of the consent mechanism (because of its potential to hinder consumer uptake), the scope and conflict issues with the Privacy Safeguards and the subsequent impact on privacy. These and others have been set out in our recent PIA submission to Treasury.

FinTech Australia's concern in relation to the approach to privacy and, more broadly, security issues, is that there is still a risk of some confusion between the application, and interplay of, the two privacy regimes. It is critical to identify the boundaries of the CDR scheme, and to ensure that all organisations are clear about when the Privacy Safeguards apply, and when the Privacy Act (and the APPs) apply, so as to avoid overlap. In addition, the proposed regime results in a requirement for all data recipients (**ADRs**) including SMEs to differentiate and ring-fence internally between (at least) two data sets - CDR data and non-CDR data - with alternate regimes applicable to each. The divergence between the two regimes makes operational remedies to counteract this issue inefficient. This may act as a deterrent for new entrants from engaging in the system - which would result in a stifling of future innovation.

There is a need for compliance processes associated with the CDR regime to be able to adequately balance both the need to properly assess data and security risks and safeguard the consumer, whilst allowing innovative new entrants and start-ups to participate and thrive.

There have been some concerns raised in the media with regard to third parties' access to CDR data. FinTech Australia and its members do not believe this is a serious concern as the transfer of data out of the CDR system will be possible, but highly restricted. While FinTech Australia does not agree with the level of concern expressed by some in the industry, we agree that there is some work to be completed in relation to the Rules Framework. This has not, to date, properly articulated the process around 'non-CDR recipients' and what 'out of the CDR system" means, either in form or practice.

Furthermore, in developed markets such as the UK and EU which have operating open banking legislation, there have been no significant privacy concerns. Given the precedent set in other jurisdictions, FinTech Australia and members do not consider the privacy and security concerns as a reasonable reason to delay the Bill.

3. Chargeable Data Sets

While we recognise that where intellectual property is included and/or as otherwise set out in a designated instrument, reasonable costs may be charged, we remain concerned that this incentivises data holders to monetise otherwise free CDR data. Whilst fees must be reasonably set by relevant persons and the ACCC has a right to intervene where fees are unreasonable, the ability for data holders to impose even discretionary fees - payable by a consumer - for the transfer of its data remains an impediment to the 'open' nature of this regime and risks its ultimate success. The CDR right should be consumer focussed, efficient and fair, not reliant on fees.

4. Continuous Review

It is also extremely important to ensure that the Bill, ACCC rules and Consumer Data Standards initially established through the roll-out of the CDR regime are continuously reviewed and updated over time to ensure they are in line with global best practice, and are interoperable, with rules being developed for other designated industry sectors. We are pleased to see a post-Open Banking implementation review will be undertaken with lessons learned to be applied to future designated sectors. Nonetheless, as set out in previous submissions, an annual formal review process for at least the first 5 years should be undertaken by the ACCC and DSB (for the banking sector) around key areas such as the Rules design, Accreditation process, and minimum security standards.

Conclusion

FinTech Australia thanks the Economics Legislation Committee for the opportunity to provide inputs and recommendations on the Bill. We will continue to engage on the broader issues in relation to Open Banking and Consumer Data Rights more generally.

About FinTech Australia

FinTech Australia is the peak industry body for the Australian fintech Industry, representing over 300 fintech Startups, Hubs, Accelerators and Venture Capital Funds across the nation.

Our vision is to make Australia one of the world's leading markets for fintech innovation and investment. This submission has been compiled by FinTech Australia and its members in an effort to drive cultural, policy and regulatory change toward realising this vision.

FinTech Australia would like to recognise the support of our Policy Partners, who provide guidance and advice to the association and its members in the development of our submissions.