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Future Directions Unit
Consumer Data and Digital Division
The Treasury
Langton Crescent, Parkes ACT 2600
data@treasury.gov.au

Westpac Place
Level 19, 275 Kent St
Sydney NSW 2000
westpac.com.au

Consumer Data Right – Exposure draft legislation to enable action initiation

Dear Sir/Madam

Thank you for the opportunity to provide our comments on the exposure draft legislation to enable action initiation in the Consumer Data Right (CDR).

Overview

Westpac Group (**Westpac**) supports the expansion of the CDR functionalities to allow for action initiation, which would empower consumers with the ability to take greater control of their data and put into action insights from data sharing. However, any expansion of the CDR should be underpinned by the following four key principles to ensure its effectiveness and success.

1. Safety and security – Data protection and security measures are critical to the CDR ecosystem and will not only need to be robust but strengthened to ensure the necessary protections for consumers and overall trust in the system.
2. Use case assessment - Banks, including Westpac, have invested heavily to uplift systems, processes, and capabilities to accommodate the CDR. Any expansion of the CDR to specific actions will need to carefully consider the costs and risks associated with the action and its overall utility to consumers. Particular attention will need to be on ensuring the action itself does not duplicate already existing functionalities offered in the market.
3. Liability under action initiation – The current CDR liability framework will need to be re-assessed and adapted to account for the heightened fraud and scams risks associated with action initiation.
4. Adequate time for implementation – Adequate time for the development of the CDR rules specific to action initiation, and the implementation of the expansion by CDR participants is required to ensure that issues and risks are identified, considered, and appropriately managed.

We note and support the positions outlined in the Australian Banking Association's submission to this consultation, and further highlight the following key considerations

1. Safety and security

Scams and fraud have risen over the years, with consumers in Australia losing around \$1.8 billion in 2021¹. Recent data breaches impacting a number of organisations in the Australian market have further exposed consumers and businesses to greater scams and fraud risk.

¹ Targeting scams – Report of the ACCC on scams activity 2021, July 2022, pg 1.

Westpac continues to invest heavily in fraud and scam prevention measures to protect consumers, including investments in new behavioural technologies. These technologies use a range of technical markers to assess the risk of transactions in real time, thereby protecting consumers from loss. These technical markers include data elements like IP address, customers' device type, and customers' historical behaviour. The expansion of action initiation to the CDR and the use of third parties by customers to deliver instructions on their behalf is complex and could impair the ability of the bank to use such tools. This materially increases the risk that these transactions cannot be adequately assessed for their validity, impeding the ability of the bank to protect its customers.

To ensure that banks are able to manage the heightened risk of scams and fraud, the CDR law should not force Action Service Providers (**ASP's**) to comply with any instruction and should allow ASP's the ability to refuse an instruction where that instruction does not meet the scam and fraud risk appetite of the institution. Without such an ability, there is a risk that the CDR could be used as a fraud and scam mechanism, which would detrimentally impact consumers and lead to an overall loss of trust in the ecosystem.

Additionally, to maintain the security and safety of the system, the CDR action initiation rules and standards should continue to ensure that ASP's are able to invest and develop sophisticated fraud and scam prevention capabilities, and apply those capabilities to all instructions received via CDR. Overall, we believe that having such provisions in the CDR laws and rules will protect consumers from fraud and scam losses at a time where they continue to rise year on year.

2. Use case assessment

The Government should be prioritising the rollout of the CDR to products of high value for retail consumers and small businesses, and this should empower banks to build on key datasets which present the highest value propositions to consumers. In this regard, and before any designation of a specific action, we encourage the Government to undertake an analysis of the regulatory and compliance costs and utility of particular use cases to identify whether the regulatory burden of building for these use cases is outweighed by the consumer benefit, with consideration of whether there are existing functionalities in the market.

One particular use case we have previously noted that we believe would significantly enhance the uptake of the CDR and offers great utility to the ecosystem is the inclusion of consumer data held by governments. For example, enabling the inclusion of taxation data in the CDR would enable a comprehensive picture of a consumer's financial position and could support a range of use cases, for example, streamlined credit applications for small business.

Payment initiation

We understand that the Government will consider designating payment initiation as an action under the CDR. It is important for payment initiation to be considered alongside the recommendations of the Review of the Australian Payment System to ensure a streamlining of regulation and the avoidance of duplicative functionalities. Any designation of payment initiation must be designed in such a way that it leverages and augments the functionalities of PayTo and should not require the development of different payment specifications, rules, and standards. Developing new specifications, rules and standards for payments would only increase friction and cost to the overall system for limited consumer benefit.

3. Liability under action initiation

As noted above, the introduction of third-party instructions into the CDR increases the risk of scams and fraud. This is particularly the case for payment initiation uses cases. The current CDR liability framework will need to be re-assessed and adapted to account for these new risks.

If it is the Government's intention for ASPs to action any instructions received by an Accredited Action Initiator (**AAI**) as if it has come directly from the customer, then the liability framework needs to be re-assessed to ensure adequate protections for CDR participants. The Government's proposal notes

participants that act in good faith and comply with the rules will be protected from liability, and it is unclear to Westpac how this will operate in practice, and who ultimately holds the liability.

4. Adequate time for consideration of the rules and implementation by CDR participants

We recognise the Government's commitment to the expansion of the CDR to the energy, telecommunication, and non-bank lending sectors and suggest these expansions be appropriately sequenced over time to ensure a successful and quality rollout ahead of any action designation.

When the Government decides to designate a specific action, it is vital that the industry is provided sufficient time to engage on the documentation of the requirements, the development of the rules, standards and guidelines, and the build and implementation of the enhanced functionalities to ensure effective management of risks and quality solutions for consumers.

To date, our experience with the rollout of the CDR has been that the performance of the CDR ecosystem for consumers is not well served when sufficient time and consultation on these activities is not allowed for. This view was further reinforced in the Final Report to the Statutory Review of the CDR, which noted that the Government should consider appropriate timing for releasing rules and standards to provide CDR participants with the maximum allowable time to undertake the required changes and reduce the risk that deadlines are missed, or that solutions are poorly developed, i.e. with defects and data gaps, which will ultimately negatively impact the overall experience of the ecosystem ².

While we support the overall expansion of the functionalities of the CDR to include action initiation, we note that its introduction is complex and brings with it new risks to the ecosystem as outlined above. A hasty implementation of action initiation could lead to consumer harm, and a loss of overall trust in the CDR. We encourage the Government to consider allowing the CDR to further mature before designating any action, as outlined in the ABA's submission to this consultation, to ensure the overall long-term effectiveness and success of the CDR. This is even more critical at a time where there is inherent nervousness with the sharing of data following the uptake in scams and the recent cyber-attacks on the telecommunication and private health insurance sectors.

Thank you for the opportunity to provide comments on this consultation. Should you have any further questions on this issue, please contact [REDACTED].

Yours sincerely,

Richard Collyer
Director, Government Affairs, WIB and Reputation Strategy

² Final Report, Statutory Review of the Consumer Data Right, 29 September 2022, pg 25.