

Friday, 6 September 2024

The Hon Stephen Jones MP
Treasury
Langton Crescent
Parkes ACT 2600

By email: CDRRules@treasury.gov.au

Dear Assistant Treasurer

CDR Rules: consent and operational enhancement amendments

Chartered Accountants Australia and New Zealand, CPA Australia and the Institute of Public Accountants (we/our) together with our respective affiliate bodies represent over 350,000 professional accountants in Australia, New Zealand and around the world. Our members, professional accountants are considered trusted advisers or TA's within the CDR regime. We support the majority of the consent and operational enhancement amendments proposed in the consultation paper.

While we support the bundling of collection use and/or disclosure consents with the prohibitions noted in the consultation paper, we seek for an additional prohibition. That is, a prohibition on the bundling of consents to effect disclosure of data derived from CDR data to TA. This is in consideration of the following proposed amendment in the consultation paper, to allow data recipients to also pre-select elements of a data set including who data is being disclosed to.

We raise this request following advice received from Consumer Data Standards, see Appendix A, that data recipients:

- are not required to offer a TA disclosure service to the consumer's trusted adviser;
- can offer a TA disclosure consent to a trusted adviser they have a commercial arrangement with; and
- where a consumer has not previously nominated the TA at the time of giving a TA disclosure consent, the data recipient may take the selection of a TA during consent to be the nomination of the TA.

We are deeply concerned that allowing data recipients to pre-select and bundle consents for the purpose of a TA disclosure consent will mislead a consumer into thinking that they must use the trusted adviser nominated and pre-selected by the data recipient. While it is accurate that a consumer must use a trusted adviser in a commercial arrangement with a data recipient to transfer data through the CDR channel, it is not mandatory to use the CDR channel.

To ensure a consumer can make an informed choice, a key stone of the CDR regime, where a data recipient does not offer a TA disclosure service to the consumers trusted adviser, they must make it clear that using the CDR channel is not mandatory.

It is the consumers choice to utilise the CDR channel with a trusted adviser in a commercial relationship with a data recipient or to provide the information needed by their trusted adviser by other means.

The requested prohibition will also ensure that data recipients do not breach the intent of CDR Rule 1.10C(4)(b) which, as advised by the Data Standards Body, is 'The intention of rule 1.10C(4)(b) is to prohibit a situation where a consumer is forced to select a particular person as a TA by an ADR...'

We are particularly concerned of the potential for the data recipient to disrupt the established relationship between an accountant and their client when the client would like to use the CDR channel. This is not the purpose nor intent of the CDR regime. However, as we have indicated above, the design of the CDR Rules unnecessarily enables this to occur.

If you would like to discuss our feedback in greater detail, in the first instance, please contact Jill Muir at jill.muir@charteredaccountantsanz.com.

Sincerely

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Appendix A

On 13 June 2023, the joint accounting bodies sought clarification on when, how and if a consumer can nominate their trusted adviser (TA) to a data recipient to enable their data to be disclosed to their TA through the CDR channel.

This reflects our reading on the CDR Rules that the process to disclose data to a TA commences with their nomination.

Following several discussions with the Data Standards Body (DSB), DSB sought clarification from the CDR agencies.

On 21 August 2024 the DSB advised the following:

Thanks all for your input. We have discussed these issues with CDR agencies - see below for the response.

CR646 requests that the 'Trusted Adviser Directory' be limited to nominated TAs, and that the 'About [Trusted Adviser] screens be removed. We have discussed this issue with CDR agencies to confirm what is possible under the rules, what the policy intent is, and the correct interpretation of the relevant rules (i.e. 1.10C and 4.11).

Following those discussions, we can confirm that ADRs are not required to:

- offer a TA disclosure service;
- invite a consumer to nominate a TA if they do not offer a TA disclosure service; or
- offer a TA disclosure service for any TA of the consumer's choosing.

It is optional for an ADR to perform these activities. The rules envisage that an ADR's TA disclosure consent offerings may be based on existing and commercial arrangements with TAs, and as such the range of supported TAs may be limited on that basis.

CDR agencies are of the view that removing the 'Trusted Adviser Directory' from the CX Guidelines may misrepresent what is possible under the rules and standards. The rules do not prohibit ADRs from offering a 'marketplace' or directory service that provides consumers with a choice of potential trusted advisers. Such a directory may include TAs that the consumer already has a relationship with and may include the option to nominate another TA. This is consistent with the policy intent.

Where a consumer has not previously nominated the TA at the time of giving a TA disclosure consent, the data recipient may take the selection of a TA during consent to be the nomination of the TA. While the method of presenting nomination would be at the discretion of the ADR, and may consider their arrangements with specific TAs, the rules cover TA nomination and as such it is appropriate for the CX guidelines to demonstrate how this may occur.

The intention of rule 1.10C(4)(b) is to prohibit a situation where a consumer is forced to select a particular person as a TA by an ADR, however there may be reasonable grounds to only offer a single TA to a consumer where they have previously nominated that TA outside of CDR.

Given these positions, we are proposing that changes to this CX guidelines be limited to:

- the amendment from 'Trusted Adviser Directory' to 'Select a Trusted Adviser', for simplicity
- removal of the trust rating component in the 'About Trusted Adviser' screen
- clarify through a new CX Guideline that it is optional for an ADR to offer a TA disclosure service for any TA of the consumer's choosing
- clarify through a new CX Guideline that a consumer's selection of a TA can constitute nomination

We do not propose that new guidelines be made to state that the list of trusted advisers is limited to those a consumer has already nominated.

Given the CX guidelines will reflect current rules and policy positions, and the DSB does not manage rules and policy, we recommend that participants engage with the Treasury if they see issues with the current operation of TA disclosure consents.

Importantly, the above positions do not represent legal or compliance advice. They should be read as interpretations provided by the DSB in collaboration with CDR agencies as compliance is the responsibility of the CDR participant.

The maintenance iteration 20, which has just closed, is intending to effect the above proposed changes.