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Secretariat
Inquiry into Future Directions for the Consumer Data Right
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: data@treasury.gov.au

Dear Sir/ Madam

Inquiry into Future Directions for the Consumer Data Right: Issues Paper

CPA Australia represents the diverse interests of more than 166,000 members working in over 100 countries and regions around the world. We make this submission on behalf of our members and in the broader public interest.

This consultation considers future directions for the Consumer Data Right, currently being implemented. CPA Australia notes that the four key principles to the Consumer Data Right provide welcome guidance and should form the foundation of this review. These principles have informed our approach to this submission, which points out that while technological innovation is welcome, it should not overwhelm these principles.

Our recommendations are contained in the attachment.

If you have any queries do not hesitate to contact Jan Begg, Technology and Transformation Lead or Richard Webb, Policy Advisor Financial Planning & Superannuation at CPA Australia at jan.begg@cpaaustralia.com.au or richard.webb@cpaaustralia.com.au .

Yours sincerely

Dr Gary Pflugrath CPA

Executive General Manager, Policy and Advocacy
CPA Australia

Attachment

Response to Issues Paper

The Consumer Data Right is a significant measure. It will allow consumers to access data held by businesses in certain sectors of the economy. It will also allow consumers to direct third parties to transfer that data to other entities. However, this part of the Right is one for which CPA Australia is unable to establish whether there are any clear benefits.

We note that key parts of the Terms of Reference for this Inquiry are to essentially expand the functionality of the Consumer Data Right in such a way that it doesn't disadvantage the vulnerable and ensures that it builds on existing infrastructure. The Terms of Reference also require the Inquiry to consider how well this can be developed in line with what is being developed elsewhere in the world.

However, we note that the terms of reference do not allow for the following:

1. Investigation of alternatives to a Consumer Data Right
2. A cost-benefit analysis of the advantages and disadvantages of the Consumer Data Right
3. Consideration of fallback arrangements that can be provided to consumers if a third-party provider is unable or unwilling to offer the service to a consumer or their agent
4. Discussion of alternatives in relation to how this is to be regulated, or who the regulator of the Consumer Data Right will be. Is it appropriate that a multi-regulator model be chosen to undertake the regulatory role?

We note that work to date has only been aimed at data held in relation to relatively simple products, being consumer banking and energy sector contracts. This submission considers, amongst other things, where work can progress in relation to more complex goods and services being provided to consumers, and whether this should form part of a discussion in relation to expanding the functionality.

We note also that it may be challenging to convince Australians that technology companies are trustworthy, in an age where services are routinely provided in exchange for the loss of privacy. Accenture (2018) notes that 64% of Australian consumers are concerned about the security and privacy of their financial data, and 56% had a lack of trust in large technology companies when it came to handling that data. This is a challenge that must be addressed for this initiative to have any measurable benefits to Australian consumers.

Additionally, Deloitte (2017) notes that the Consumer Data Right will also result in considerable change, culminating in the ultimate severance of the product manufacturer from the distribution channel. Whilst this may or may not be a good change, we note several places where the law presently deems that consumers require protection, for example, consumers looking to new technology to assist them with financial decision-making. These protections should not be removed simply for the sake of technological innovation.

This submission will not address specific questions raised in the Issues Paper. However, CPA Australia offers the following observations on issues that we believe should be addressed by the Inquiry.

A solution looking for a problem

We note that the Consumer Data Right assumes that there is a benefit to consumers from ensuring that their data is available for portability. This would require both read and write access, and it is envisaged that this would be facilitated through an Application Programming Interface (API).

CPA Australia is uncertain what benefits derive from simply providing such access to one's data. We note that in relation to data of a personal or sensitive nature, the *Privacy Act 1988* already allows for consumers to access their information should they so require.

Product information is already regulated to some degree in the financial services sector, and to differing degrees in other sectors. Whilst we are aware of some of the shortcomings of templated disclosure – addressed most recently in ASIC's Report 629 (ASIC & AFM 2019) – there are demonstrable advantages in having tightly defined disclosure of material facts about a product or service.

The question we have in relation to this is: What problem is it that open banking is designed to solve?

The Productivity Commission (2017) discussed in their final report into *Data availability and use*, that consumers who owned their own data would have more control about how that data was used. Yet, the report also discussed the "right to transfer data to third parties". Australians are already acutely aware of the ability for a right, once granted, to be able to be immediately assigned away, in some cases forever. The notable example being social media, which already grants perpetual and non-renounceable rights over any content that Australians upload to those services.

Also, Accenture (2016:12) notes that there may be additional vectors for fraud, with the added disadvantage that banks may have a challenge in monitoring activity in systems which they do not even have access. One solution put forward by Accenture is to block third party access to accounts in the event that they have evidence of unauthorised or fraudulent access. This raises risks to consumers of false positives.

It is additionally possible that a third-party provider will not grant the use of a service, until a right is assigned to them. If this is the case, then a fallback arrangement needs to be provided, so that Australians who require access to their data, but are unwilling to assign their rights, are able to do so.

The need for platforms

The Issues Paper discusses trusted third parties at length. We note that for a variety of services, an API provides the ability for consumers to conduct business with a provider in a variety of different ways. This means that apps accessing a service remotely can be used by consumers in preference to use of a facility provided for direct interaction.

One new entrant into the banking market describes the potential functionality (Brookes & Bennett 2019):

> *Currently 86 400 customers can connect all their accounts (from over 150 financial institutions) into one place, giving them full visibility of their finance. With access to this data the app can serve up information about spending, saving and bills.*
>
> *To achieve this feature 86 400 built an interim solution using an established account aggregation partner to provide customers access to some of their data held by their other banks in a secure way.*

However, in many situations this does not come about as a result of open data. For example, a Twitter user who can access the service through their browser portal does not require open data access to use a third-party Twitter client such as Tweetbot. Twitter retains the rights to their data as per the Terms of Service. Older social media clients such as Tweetdeck once enabled read and write access to a variety of social media platforms' APIs, with even the ability to make changes to Twitter, Facebook and Tumblr simultaneously. Notably, this additional functionality was lost once Tweetdeck was acquired by Twitter. Is this a risk which the Inquiry is considering?

The ownership of data by a client is an issue that is likely to result in the proliferation of middle-office providers who service businesses. A valuable business proposition for financial product advisers, for example, might see the

promise of an app which, with the press of a button, allows all existing superannuation products to be transferred to a new provider with no requirement for forms to be completed. However, such a service will not be provided for free, and it is consumers who would most likely need to foot the bill.

It is also arguable whether this provides additional benefits to the single touch rollover facility presently available through MyGov and administered by the ATO. We wonder whether it might be possible that other services could be provided to improve functionality?

The need for FinTech investment

CPA Australia supports investments to improve Australia's financial technology ("FinTech") infrastructure. We agree that there is a need to provide benefits which ultimately drive down costs and improve financial returns for consumers of financial products in Australia. However, this must not come at the expense of the consumer. If the only measurable outcome for consumers is that they have a new service provider "clipping the ticket", then this situation has arguably disadvantaged consumers.

There are concerns in the banking sector that the use of legacy systems will mean that it is not possible to achieve the goal of extraction of relevant customer data in the time needed to satisfy requirements. Andrew Stevens, chair of the Data Standards Body noted that (Bennett 2020):

> *So in the banking context, that transfer has to occur within the normal realm of your internet banking response time, which is two seconds. No one has architected this systems* (sic) *to do that.*

An additional item of interest is the issue that API standards appear to be intended to be prescribed in Australia and not as part of an international consensus process. Additionally, it is likely that the globally fragmented approach to implementation (see Accenture 2018a:5 for an example) means that differing priorities may make global integration of services something which cannot occur immediately. Accenture noted (2019) that Hong Kong, for example, is allowing their banks to ease into the Open Banking era, unlike the regulatory regimes in the EU and UK. Will this lessen the ability of FinTechs to export their platforms, products or services?

We note that the Australian Competition and Consumer Commission (ACCC) announced last year that 10 organisations had been selected to participate in testing the Consumer Data Right ecosystem, with a further 100 entities selected within a year (Bennett 2019). We believe that it is vital to this Inquiry that the results of this trial form the basis of recommendations.

Who is the regulator?

In the final report of the *Review into Open Banking in Australia* (the "Farrell Review", Farrell 2017), the regulatory framework suggested by Scott Farrell was to have a multi-regulator approach, where the ACCC together with the Office of the Australian Information Commissioner (OAIC) would look after the regulation, with support from the RBA, ASIC and APRA providing advice as required.

Under this model the ACCC would look after standard setting, competition and consumer issues, whereas the OAIC would look after privacy matters.

The then Treasurer, Scott Morrison MP, announced in May 2018 (Morrison 2018) that the CSIRO's Data61 body would be appointed to perform the role of setting technical standards. The *Consumer Data Right Overview*, issued by Treasury in 2018 explained in more detail the role that the proposed Data Standards Body would assume, noting that it would be the regulator for standard setting in preference to the ACCC, making a total of three regulators. The ACCC (2020) clarifies that it will fill the role of the lead regulator.

However, CPA Australia notes that the Farrell Review recommended a multi-regulator approach with minimal discussion of alternative arrangements in the final report. The reason given was to minimise disruption to business. Whilst this is an admirable objective, we consider that alternative frameworks may have warranted some discussion in the report. One alternative could have been to identify a single regulator for the Consumer Data Right, as this would have the advantage of ensuring that there was harmonisation of the different constituent parts, particularly during the implementation phase.

CPA Australia recommends that consideration be given to regulatory arrangements, including alternatives, going forward as part of this Inquiry.

Can standardised disclosure and definitions be gamed?

One of the advantages being discussed as part of the Consumer Data Right is the ability for consumers to transfer their business from one provider to another with minimal disruption. For relatively simple products such as bank accounts this may be quite straightforward, since the dataset will necessarily include things with easily understood definitions, for example, into which bank account one's interest is to be paid.

For other products this may have far reaching impacts. For example, comprehensive car insurance. If one provider has an option of "glass damage" covering all windows, and the new provider has "windscreen damage" covering windscreens only, what happens then? Does this mismatch create an error?

What advantages might this provide to the holder of a retirement income stream which is non-commutable?

We urge the Inquiry to consider the extent to which definitions and disclosure can be gamed, as well as the appropriateness of the products to which this Right will be available.

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