



Sectorial Assessments
Consumer Data Right Division
Department of Treasury
Langton Crescent
Parkes ACT 2600
By email: data@treasury.gov.au

Dear Sir/Madam,

RE: Submission regarding Consumer Data Right (CDR) consultation

Thank you for the opportunity to provide feedback with respect to the Consumer Data Right (CDR) regarding expansion of the rules and other operational enhancements. The Council of Small Business Organisations Australia (COSBOA) welcomes your consultation process and appreciates your efforts to encourage competition and innovation through changes to the CDR rules, while ensuring small businesses are not disproportionately and adversely affected by the complexities involved.

The Council of Small Business Organisations Australia (COSBOA)

COSBOA is the national peak body representing the interests of small business. Collectively, COSBOA's members represent an estimated 1.3 million of the 2.5 million small and family businesses that operate in Australia.

As a collaboration of peak organisations across a wide range of industries, COSBOA acknowledges small and medium sized enterprises (SMEs) are major contributors to the Australian economy. SMEs employ 68% of Australia's workforce. In GDP terms, SMEs together contribute 56% of value added. Small and medium businesses are therefore key partners in rebuilding Australia's economy as Australia emerges from the COVID-19 pandemic.

Competition and innovation

Small businesses are the backbone of the Australian economy. They provide employment and training opportunities, contribute richly to the diversity and culture of our local communities, and ensure the Australian economy continues to grow. A healthy, competitive environment in which small businesses are supported by Government to thrive with greater opportunities for improved productivity in the digital economy is essential.

COSBOA acknowledges there has been much discussion about the CDR in terms of creating competition and innovation benefits. These benefits must also be balanced with ensuring the utility of the CDR rules does not hinder the progress of small businesses.

Small businesses often have limited staffing capacity and must comply with the same laws that govern big businesses. They often rely on agile software solutions and their efficiency is dependent on the smooth transfer of critical business data. Careful consideration of the intersection between the CDR rules and the relationships between software, telecommunications, bookkeeping and accounting service providers is required. COSBOA is pleased to include the perspectives of our industry members in this submission, including the Digital Solution Providers Australia and New Zealand (DSPANZ), CPA Australia, and the Australian Communications Consumer Action Network (ACCAN).

Complexity of the rules

COSBOA notes there is a tension between the right to protect data, and the need of small businesses to share their data. This tension must be resolved in a practical way so that small businesses can continue to operate in the digital world while complying with the CDR rules. Small businesses should be considered as having the same rights to utilise and share their data to improve aspects of their business such as business efficiency.

The regulation of data sharing that has been utilised for many years in the small business sector may have consequences that we believe still need to be better understood by the Government. Through software, small business people have for years successfully shared their own financial data with their trusted advisors because they choose to do so to improve their business. This has occurred through a robust system of compliance checks for advisors as professionals, engagement letters, software protections and relationships built over time. Small businesses need to retain their capability of sharing data for efficiencies and to meet government regulations, and on occasion, their needs can change. For example, JobKeeper payments relied on the use of single touch payroll and businesses submitting tax information on time. Those who failed to do so were excluded from the subsidies. Many small businesses use software to meet their record keeping obligations. In cases of urgency, it is not only financial advisors but also other trusted advisers who assist small business owners, and small business owners of data must retain control over determining who they trust with their information.

Small business people have for many years successfully managed who accesses their data, what level of access is granted and for how long, in partnership with other service providers. While we appreciate the sound intentions of the CDR and that the combination of banking, energy and telecommunications data in the CDR will generate cross-sectoral use cases and enable the development of new products and services, the CDR rules are complex and far reaching. From a small business perspective, many small business owners are time poor and have varying levels of education and literacy. Overly complex implementation requirements and costs could impact the utility of the CDR rules and have a disproportionate impact upon small businesses and their clients.

Case studies

There are numerous examples of sectors of the small business economy who rely heavily on the visibility of bank feed data in their financial software, not only for reconciling in real time, but also for secondary software which is crucial to running their business.

For example, a naturopath owns a small business clinic that employs 10 people and sees dozens of clients each day. The clinic utilises Cliniko for their practice management software, for customer relationships and enquiries, marketing, booking appointments, sending invoices, and closing invoices. The business owner relies heavily on the software and could not function if the system suddenly became unavailable or had a reduction in utility. Cliniko has a proportion of its functionality linked to the bank feed data in the small business owner's primary financial software Xero. Xero collects the bank feed and Cliniko has open API visibility over this bank feed data for closing invoices as well as other utilities.

In the case of Dext, formerly known as ReceiptBank, there are over 55,000 small business users in APAC where it relies on visibility of the bank feed data for its core functionality of processing receipts. NextMinute, an emerging project management software platform designed for tradespeople, has clients for whom the platform on which they run their business would be rendered useless due to the reliance of interoperability with bank feed data.

These are just three examples. There are hundreds of software platforms which small businesses use for managing finances, client account management, project management and running many facets of their business.

It is important to recognise that small business owners own their data from the moment it is created, and they should have the ability to share that data with whomever they choose. The CDR regime should not be impeding the utility of small businesses to continue what they have already been doing successfully for years, and to further increase their productivity.

Small businesses are aware of the responsibilities they already have with respect to their own and their customers' data, and they are working towards managing any new and increased risks associated with operating in the digital economy. The CDR rules should not adversely impact upon the digitisation journey of small businesses who need to be able to continuously develop and grow.

Business purpose disclosure consent

The introduction of the business purpose disclosure consent and proposal to give business consumers the ability to consent to disclosure of their CDR data for up to 7 years means increased time-efficiencies, productivity and digitisation will be able to continue for small businesses. COSBOA welcomes this introduction, however in talking with our members CPA Australia, we understand further information is required about how such a duration interacts with record-keeping obligations of consumers that are also directors of an entity. For example, if consent is withdrawn within 7 years, and the deletion requirements of the CDR are invoked.

From an accounting services provider perspective, there are still some problems with time-limited consent such as lapsed consent and potential deletion of data within an accounting service provider subscription. A data deletion event would likely be catastrophic for business customers who rely on cloud accounting for short and long term record keeping. In circumstances where hard copy records are not kept, deletion of these subscription records would mean affected businesses were non-compliant and unable to meet the requirements of an audit or dispute resolution process. A possible solution to this problem would be to have the option of an ongoing use consent for business consumers. This would ensure business consumers have certainty that their data is secure within the software.

It is important to clarify for consumers who rely solely on digital records hosted by an ADR and built of CDR data, how the CDR rules interact with record keeping requirements such as s286 of the *Corporations Act 2001* (Cwth) and s262A of the *Income Tax Assessment Act 1936* (Cwth). Our members, CPA Australia, recommend a clause be added to the CDR rules that states where a conflict arises, record keeping requirements under Commonwealth legislation take precedence.

It is also recommended that rule 1.10A(7) be amended to reflect a 'business purpose statement' rather than a 'business consumer statement', as this more accurately reflects the aim of CDR data for a business purpose. It is recommended that rule 1.10A(v) also be amended to reflect 'to a specified person in accordance with a business purpose disclosure consent' and that the CDR rules include a definition of a 'business purpose' such as "a good or service provided under a commercial contract" to ensure protections under the Australian Consumer Law are invoked.

It is recommended that requirements be placed on ADRs to verify the individual's authority to provide consent to provide a 'business purpose statement' and to retain a record of the statement.

Definition of large-scale commercial account

In talking with our member, the Australian Communications Consumer Action Network (ACCAN), we understand it is important to change the definition of large-scale commercial accounts to require a minimum \$70,000 annual spend to reflect the needs of modern small business.

Part 2 2.1(2) of the exposure draft rules defines a large-scale commercial account, an account excluded from the CDR, if the account is such that the account holder had a genuine or reasonable opportunity to negotiate its terms; or for an account that has been in existence for 12 months or more—the spend associated with the account was more than \$40,000 in the last 12 months; or for an account that has been in existence for less than 12 months—the estimated annual spend for the account is more than \$40,000.

These terms have been replicated from the *Telecommunications Consumer Protections (TCP) Code*. This definition, in the TCP Code and in this exposure draft, should be revised to better reflect the Australian Government's Digital Economy Strategy goals of 95% of SME's using e-commerce tools and all new businesses being integrating digital technology.

In past consultations with ACCAN's small business members, they have recommended that the figure for the annual spend on telecommunications services be increased to \$70,000 per year. It should be noted that this

figure was discussed in 2018, before COVID-19 increased the need for digital services for business and recent rises in inflation. The figure would likely be higher than \$70,000 per year now and demonstrates that the \$40,000 cut off in the proposed rules risks excluding small businesses that could benefit from the scheme.

We note the wording of consumer in the TCP Code, relating to the “opportunity to negotiate the terms of the consumer contract.” It is suggested that “reasonable opportunity” be changed to “reasonable capacity,” as this more accurately reflects the reality that most small businesses do not have access to in-house legal advice and cannot afford external legal advice to negotiate a contract. These changes would ensure that the CDR can benefit as many consumers as possible, including small business owners.

Privacy and cyber security reforms

COSBOA notes the Government’s commitment to Privacy Act reforms and welcomes the improvement of privacy protections to ensure an effective privacy regime which also allows for digital innovation and growth of the economy. We believe that an enhanced Privacy Act which protects small businesses from privacy risks and harms while preserving flexibility may also encourage greater voluntary participation in the CDR.

It is clear the Government’s Digital Economy strategy aims for all businesses to be digital businesses by 2030. COSBOA supports the increased opportunities provided for small business in a digital economy, while also being mindful of the increased cyber security risks. COSBOA is proud to have developed a Cyber Wardens pilot program which aims to become Australia’s first cyber safety workplace certification or micro-credential for the small business sector. The program is designed by small business for small business, and aims to upskill the nation’s small business workforce to give owners and employees the knowledge and tools they need to safely engage in the digital economy.

COSBOA notes the current low participation levels of business consumers in the CDR as compared with the UK regime. We recommend greater small business consultation, education, training, public awareness campaigns, and possible financial incentives such as tax offsets, as strategies which may assist with voluntary participation of small businesses in the CDR.

Summary

COSBOA welcomes the proposed changes to the CDR rules and the associated benefits to competition and innovation. However, we remain concerned that small businesses may be impacted by the utility of complex rules. We advocate for continued small business stakeholder consultation in relation to the CDR reforms to ensure small businesses are not adversely and disproportionately impacted by the complexities of the CDR.

On behalf of our members, I sincerely thank you for the opportunity to participate in this consultation process.

Yours sincerely,



Alexi Boyd
Chief Executive Officer
Council of Small Business Organisations Australia (COSBOA)

21 October 2022

About COSBOA

Small business in Australia is the backbone of the economy. We harness its diversity and provide its people with a voice, distinct from big business.

Established in 1979, the Council of Small Business Organisations of Australia (COSBOA) is a member-based not for profit organisation exclusively representing the interests of small businesses.

The capability, representation and reach of COSBOA is defined by a mix of over 40 national and state-based association members. COSBOA's strength is its capacity to harness its members views and to advance consensus, across policy areas that are common to many. Our member organisations work behind the COSBOA secretariat, to assist us with policy development and to guide our advocacy - not just for small business but also for the benefit of the Australians they employ.

In this capacity, COSBOA makes submissions and representations to Government including its agencies, on issues that affect small business and in pursuit of good.