



**Australian Government**

# **Inquiry into Future Directions for the Consumer Data Right**

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Issues Paper  
March 2020

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## Consultation process

### Request for feedback and comments

Interested parties are invited to comment on the issues raised in this paper by 23 April 2020.

While submissions may be lodged electronically or by post, electronic lodgement is preferred. For accessibility reasons, please submit responses sent via email in a Word or RTF format. An additional PDF version may also be submitted.

### Publication of submissions and confidentiality

All information (including name and address details) contained in formal submissions will be made available to the public on the Australian Treasury website, unless you indicate that you would like all or part of your submission to remain confidential. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain confidential should provide this information marked as such in a separate attachment.

Legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect the confidentiality of your submission.

### Further consultation process during the Inquiry

The Inquiry into Future Directions for the Consumer Data Right will consult broadly with representatives from industry, consumer and privacy advocates and other interested parties in developing the report and recommendations. This may involve conducting targeted roundtables with interested stakeholders on specific issues where the Inquiry requires more information or to solicit further views.

### Closing date for submissions: 23 April 2020

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# Inquiry into Future Directions for the Consumer Data Right

## Introduction

In August 2019 the Australian Parliament passed legislation creating the Consumer Data Right. This significant reform gives customers the right to safely access data held about them by businesses in the sectors where it is applied. Customers are also able to choose to direct that this data be transferred to accredited, trusted third parties of their choice.

The Consumer Data Right promotes competition, making it more convenient for customers to compare and select products. It also encourages innovation, enabling businesses to offer new products and services, including products tailored to individual customers' needs.

Initially, the Consumer Data Right is being implemented in the banking sector, where it is known as Open Banking. Major banks are already making product data available and customers will be able to direct them to securely share certain transaction data from 1 July 2020. Smaller banks will follow, and work is underway to roll out the Consumer Data Right in the energy sector.

With consumers soon being able to share their banking data, it is an opportune time to look to the future for the Consumer Data Right, and examine how it can be built upon to support a thriving digital economy with consumers at its centre.

In January the Treasurer, the Hon Josh Frydenberg MP, announced an *Inquiry into Future Directions for the Consumer Data Right* (the Inquiry), to be led by Mr Scott Farrell. The Inquiry is looking at how the Consumer Data Right could be enhanced and leveraged to boost innovation and competition, and support the development of a safe and efficient digital economy, benefiting Australians and Australia.

Under its Terms of Reference, the Inquiry is to make recommendations to the Treasurer on options to:

- expand the functionality of the Consumer Data Right
- ensure the Consumer Data Right promotes innovation in a manner that is inclusive of the needs of vulnerable consumers
- leverage Consumer Data Right infrastructure – such as the Data Standards Body and accreditation regime – to support the development of broader productivity enhancing standards and a safe and efficient digital economy
- leverage the development of the Consumer Data Right with other countries that are developing similar regimes, to enhance opportunities for Australian consumers, businesses and the Australian economy.

A key focus will be how the Consumer Data Right could be expanded beyond the current 'read' access to include 'write' access. This could enable customers to direct third parties to apply for and manage products and services on their behalf – including, for Open Banking, by making payments and changing accounts – through application programming interfaces (APIs). The Inquiry will consider potential benefits of, and barriers to, implementing write access, including regulatory compliance costs.

The Inquiry will be forward-looking, focussing on the future purpose, use and vision for the Consumer Data Right, rather than its current implementation or the sectors to which it should be next applied. Full Terms of Reference for the Inquiry can be found at [www.treasury.gov.au/review/future-directions-consumer-data-right/TOR](http://www.treasury.gov.au/review/future-directions-consumer-data-right/TOR).

**We invite interested parties to make submissions on any or all issues raised by this Issues Paper or the Terms of Reference. This includes views on potential developments and expansions in Consumer Data Right functionality, including their benefit and priority.**

## What is the Consumer Data Right?

The Consumer Data Right gives customers, including individuals and business customers, the right to safely access certain data about them held by businesses, and direct that their information be transferred to accredited, trusted third parties of their choice. It also requires data holders to provide public access to specified information about their products upon request.

A significant economic reform, the Consumer Data Right is being rolled out on a sector-by-sector basis to create an economy-wide framework. The implementation of the Consumer Data Right has been guided by four key principles. These are that the Consumer Data Right should:

- **Be consumer focussed.** It should be for the consumer, about the consumer, and seen from the consumer’s perspective.
- **Encourage competition.** It should seek to increase competition for products and services available to consumers so that they can make better choices.
- **Create opportunities.** It should provide a framework from which new ideas and business can emerge and grow, establishing a vibrant and creative data sector that supports better services enhanced by personalised data.
- **Be efficient and fair.** It should be implemented with safety, security and privacy in mind, so that it is sustainable and fair, without being more complex or costly than needed.

The Consumer Data Right is underpinned by the legislative framework set out in Part VID of the *Competition and Consumer Act 2010*, and Consumer Data Right Rules made by the Australian Competition and Consumer Commission. The Rules set out the circumstances in which data holders are required to disclose data, and to whom, in response to a valid customer request. They also set out consent requirements, how data may be used and privacy safeguards. Information on the progress of the implementation of the Consumer Data Right in banking and energy can be found at <https://treasury.gov.au/consumer-data-right>. The Inquiry is not focussing on the current progress of the Consumer Data Right in these sectors or its expansions to specific new sectors.

While the Rules currently apply only to particular types of banking products and data holders, it is intended that they will progressively apply to a broader range of data holders and products throughout the Australian economy. With this in mind, the Inquiry is interested in receiving submissions from all sectors of the economy, not just those focussed on banking.

## Future role and outcomes of the Consumer Data Right

The economy is becoming increasingly digitised, with Australian consumers sharing information with businesses that provide them products and services.

As articulated in the Australian Government’s Digital Economy Strategy, a challenge for government is to ensure that the digitised economy delivers Australians “an enhanced quality of life and [allows them to] share in the opportunities of a growing, globally competitive modern economy, enabled by technology.”<sup>1</sup>

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<sup>1</sup> Australian Government (2018) ‘Australia’s Tech Future: Delivering a strong, safe and inclusive digital economy’, page 6.

Consumers reap enormous benefits from digital products and services, but hidden costs and uncertainty regarding how their information is being used can erode their trust in both digital services and their own capacity to effectively navigate them.

By giving consumers more control over this information, the Consumer Data Right has the potential to improve outcomes for consumers including the choice, convenience and the confidence consumers have in dealing with their data and the digital economy and in a manner which is inclusive of the needs of all consumers. For consumers, this can be conceptualised as a safer track to engage with the changing world of the digital economy.

By establishing a framework that introduces standardisation, systems which support trust between participants, clear liability and providing access to the data necessary to create innovative products and services, the Consumer Data Right has the potential to create the conditions for an Australian digitised ecosystem to grow. Within this ecosystem, a wide range of products and services that either support consumers or facilitate specialisation of businesses that service consumers, should be enabled to flourish.

The benefits of the Consumer Data Right are potentially wide ranging. Detailed and personalised comparisons drawing upon insights from real customer data, third parties who consumers engage to create new accounts and close old accounts on their behalf, and new technologies that are both informed by, and inform, consumer behaviour could all be made possible through the expansion of the Consumer Data Right.

**Reducing time spent on life admin, so Australians can spend their time on what really matters to them**

As one example, in future the Consumer Data Right could make it possible for a consumer to choose to share their data with a trusted third party that helps people organise their 'life admin'. By bringing together the consumer's data from their service providers across a number of sectors (including banking, energy and telecommunications), this business could give the consumer a single up-to-date dashboard of all of their products, contracts, and plans, including the cost and time remaining on each, account balances and bill due dates, and alert them in real time when better deals become available. The business could also apply for new products and cancel old accounts on the consumer's behalf, with their consent.

This is one hypothetical example of how the Consumer Data Right could deliver convenience and other benefits to consumers and, as the digital industry grows through the increase in consumer participation, the number of ways in which it can be used could be expected to rise. Of course, achieving this convenience and these benefits for consumers also requires care to assess and manage additional risks which can arise from a broader and deeper use of data.

The Consumer Data Right offers new ways of innovating, where businesses could use the information to compete more effectively, understand their customers better, develop new and improved products and services and assist their customers. With features designed to provide flexibility for, and fairness between, businesses, the Consumer Data Right should provide businesses with the clarity, certainty and consistency needed for them to invest in their technology, people and customers.

Though the potential benefits of consumer directed data portability are great, there are also potential risks to privacy and security from the sharing of personal data, and these should be kept in mind in further developing the Consumer Data Right.

The Consumer Data Right also provides opportunities for Australia to participate at the forefront of digital innovation. And by leveraging the work being done for the Consumer Data Right, there are also opportunities to provide benefits beyond the Consumer Data Right system itself. By creating

benchmarks, an infrastructure, and an ecosystem for safe, efficient and fair information sharing, the Consumer Data Right could provide a framework to help connect different parts of Australia’s digital economy. The Consumer Data Right could help provide a sustainable foundation for Australian consumers to be in control of their digital future, and for Australian businesses to grow in the digital economy here and overseas.

**The Inquiry invites submissions on the future roles that could be performed by the Consumer Data Right, the future outcomes which could be achieved, and what is needed for this to happen.**

## International context

Consumer-controlled data portability regimes similar to the Consumer Data Right are progressing in a range of international jurisdictions, although differing approaches have been taken to implementation, in terms of scope, compulsion and standards-setting.

The United Kingdom was the first to develop Open Banking, with the system commencing operations in January 2018 and having over one million users by January 2020. The UK has announced that its ‘Smart Data’ model will be extended to the energy and pension markets, and has set out a strategy for further extension.

In the European Union, Payment Services Directive 2 (PSD2) is the framework which provides for data portability in the manner which is the most similar to Open Banking in the United Kingdom. PSD2 requires European banks to give authorised third-party payment initiation and account information service providers access to customers’ accounts. Aspects of PSD2 have taken effect but others remain subject to a transitional period.

In 2018 the Canadian Government announced that they would review the merits of open banking and, in January 2020, released an advisory committee report which recommended enabling ‘consumer-directed finance’, through a framework involving both industry and government. The report recommended that the role for Government would include connecting consumer-directed finance to discussion about the broader application of data sharing across all sectors and to government efforts on enabling a data-driven economy.

Singapore and Hong Kong are encouraging banks to adopt APIs. The Hong Kong Monetary Authority published its *Open API Framework for the Hong Kong Banking Sector* in July 2018. The framework applies in phases, commencing with product information, then customer on boarding, then account information and payment information services. Singapore has encouraged banks to adopt open banking, by providing guidelines, including an ‘API playbook’ with more than 400 recommended APIs.

**The Inquiry invites submissions on how the Consumer Data Right can be leveraged with international developments of the kinds described above to enhance opportunities for Australian consumers, Australian businesses and the Australian economy.**

## Switching

Evidence suggests that many Australian consumers and businesses could be getting a better deal on banking and other regulated services. Many customers tend to remain with the same banking services or electricity provider for extended periods, even in the presence of more competitive offerings elsewhere. A persistent theme in findings of poor customer outcomes is the role played by a lack of meaningful information.

The Consumer Data Right seeks to reduce those barriers. Requiring banks to grant access to data on their product terms and conditions while giving customers the ability to direct their bank or other

service provider to securely share their data with whom they choose should lead to the development of comparison and more sophisticated advisory services better able to provide tailored product recommendations. Also the addition of write access (as described below) should lead to the development of services which enable customers to change their service provider more easily.

**The Inquiry invites submissions on how the Consumer Data Right could be used to overcome behavioural and regulatory barriers to safe, convenient and efficient switching between products and providers, whether those barriers are sector-specific or common across industries.**

## Read access

The Consumer Data Right currently provides for ‘read’ access, that is, the transfer of data about a customer to them or a trusted third party at the customer’s direction and with their consent. A trusted third party can read the customer’s data, but they cannot modify it.

The Inquiry will look at the scope of current ‘read’ access functionality and consider options to expand it. This could include looking at:

- the potential to develop a ‘consent taxonomy’, using standardised language for consents across providers and sectors
- how best to enable consumers to keep track of, and manage, their various consents
- the promotion of industry cooperation on standards for ‘voluntary’ data sets
- how the creation of a safe and efficient ecosystem of participants and service providers could be accelerated, and
- the scope for use of tiered accreditation to promote broader access without increasing risk.

**The Inquiry welcomes input from interested parties on these topics – including their benefits and costs – as well as any other ‘read’ access functionality that the Inquiry should consider.**

## Write access

Under the Terms of Reference, the Inquiry is to examine how the Consumer Data Right could be expanded to include ‘write’ access, that is enabling a trusted third party to change or add to data about a customer at the customer’s direction and with their consent. Write access could allow consumers to authorise trusted third parties to apply for, manage and change products on their behalf through APIs.

In Open Banking, a possible use of write access is to enable third parties to initiate payments on behalf of customers, with the customers’ consent. However, the concept of write access is not limited to payment initiation and extends beyond banking. For example, in the energy context, write access could enable a consumer to open a new account, and make changes to or close an existing account, quickly and easily through a third party. This could enable the development of convenient and efficient switching services which not only offer to find customers a better deal, but also to switch them.

In addition to considering potential uses and benefits of write access across sectors, the Inquiry will consider barriers to enabling write access, including possible regulatory barriers, compliance costs and risks involved. This includes issues such as who should bear responsibility for payments made, and for



changes made to data, and whether write access should extend to the ability to change details which identify a customer (and if so, how any associated security risks could be minimised).

**The Inquiry is interested in interested parties' views on these issues. In the context of Open Banking, the Inquiry is particularly interested in interested parties' views on how the Consumer Data Right could best enable payment initiation.**

## Linkages and interoperability with existing frameworks and infrastructure

Businesses operating in the digital economy rely upon a range of frameworks and infrastructure to operate efficiently and provide products and services to customers. The Consumer Data Right regime seeks to build upon and complement the arrangements businesses use, and not to displace them when they are used for future data-driven services.

The Inquiry will look at potential linkages and interoperability between the Consumer Data Right and existing and future frameworks and infrastructure. Some frameworks and infrastructure will be common across many or all sectors; others relate only to particular sectors.

The Inquiry will consider, for example, how customer authentication requirements for the Consumer Data Right relate, or could link, to other digital identification and verification processes.

In the context of Open Banking, the Inquiry will consider how the Consumer Data Right, were it expanded to enable write access, could relate to or interact with existing and future payments systems and infrastructure, such as the New Payments Platform (NPP), Bulk Electronic Clearing System, and EFTPOS.

**The Inquiry welcomes input from interested parties on the above, including potential linkages and interoperability with other consumer-directed domestic and international data portability regimes, and accreditation frameworks that focus on data risk management.**

## Leveraging Consumer Data Right infrastructure

The Inquiry will look at how legal, infrastructure or organisational arrangements that have been developed for the Consumer Data Right could play a broader role in the digital economy.

The Consumer Data Right has established solutions to problems that may also exist elsewhere in the digital economy – in particular, in relation to data portability and custodianship of data. For example:

- it has established a Data Standards Body to develop common standards for data portability in collaboration with industry - to overcome coordination problems that prevent industry naturally developing and consistently adopting these.
- it establishes information security standards with the aim of ensuring that customer data is held safely from internal and external threats.
- it provides systems of assurance and verification relating to compliance with these security standards (e.g. accreditation and the associated register).

There are a range of existing regulatory frameworks that seek to address similar problems – often in potentially inconsistent or industry-specific ways which are not compatible or interoperable with each other.

The Inquiry will examine whether arrangements, such as the Data Standards Body and accreditation regime, could be leveraged to support the development of productivity-enhancing initiatives within the digital economy more broadly.

The Data Standards Body is responsible for setting technical standards for the Consumer Data Right. We invite submissions on the remit of the Data Standards Body, including whether there may be a role for it beyond setting standards required to facilitate the Consumer Data Right.

In order for a data recipient to be able to request and receive data from a data holder under the Consumer Data Right, the data recipient must first be accredited by the Australian Competition and Consumer Commission. The Inquiry will consider whether there is potential to leverage this accreditation regime (or elements of the regime – such as the information security standards) in other contexts in developing a safe and efficient digital economy.

**The Inquiry welcomes views on the above as well as any broader role that other aspects of the Consumer Data Right regime could play in supporting productivity and data security in the digital economy.**

## Consumer protection

By giving customers more control over their data, the Consumer Data Right has the potential to positively impact customers in a wide variety of ways, from cheaper products and services, to helping customers to choose more suitable products and services, to providing real time convenience in obtaining and managing products and services.

However the Inquiry recognises that data-based reforms need to be developed in a manner that takes into account the potentially diverse needs of customers including the vulnerable, both in terms of access to relevant technologies, and the impact that data-based reforms may have on them.

The Inquiry will also consider potential privacy impacts of expanding the functionality of the Consumer Data Right in the ways described in this Issues Paper, and how any privacy risks may be mitigated.

**The Inquiry invites submissions from interested parties on how to ensure that, as the Consumer Data Right develops, it does so in a manner that is ethical and fair, as well as inclusive of the needs and choices of all consumers. This includes ways to encourage socially beneficial uses for the Consumer Data Right.**