

Supplementary analysis – Inquiry into the Future Directions for the Consumer Data Right

This analysis is intended to supplement the analysis in the *Inquiry into the Future Directions for the Consumer Data Right* (the Inquiry) for the purpose of consistency with the *Australian Government Guide to Regulatory Impact Analysis* (the Guide).

Specifically, it addresses the Guide by setting out the reasons for the Government’s proposed disagree response to Recommendations 6.9 to 6.11 of the Inquiry.

Background

Reciprocity in the CDR

Reciprocity in the CDR follows the principle that those benefiting from receiving data through the CDR should be obliged to also make equivalent data available to other CDR participants at the consumer’s direction.

Under the current CDR data-sharing regime, if an accredited data recipient (ADR) collects data through the CDR, a reciprocity obligation may arise in relation to any data it holds. This obligation would require the ADR to in turn disclose this data if requested to do so by the consumer.

While the CDR legislation limits the potential application of reciprocity to data covered by any CDR designation instrument,¹ the rules further limit its application to data of the same types that data holders are required to disclose under those rules.

The reciprocity recommendations

Recommendations 6.9 to 6.11 of the Inquiry (the ‘reciprocity recommendations’) recommended the broadening of the scope of reciprocal data sharing requirements under the Consumer Data Right (CDR), as follows:

- **6.9 – Cross-sector application of reciprocity:** The Consumer Data Right principle of reciprocal obligations of an accredited data recipient to respond to a consumer’s data sharing request should not be limited by the scope of sectoral designations at the time of accreditation. Accredited data recipients should be obliged to comply with a consumer’s request to share data which is the subject of a sectoral designation as well as equivalent data held by them in relation to sectors which are not yet designated.
- **6.10 – Identifying equivalent data:** Equivalent data should exclude materially enhanced data and voluntary data sets. Equivalent data applicable to a person seeking accreditation as an accredited data recipient should be identified by the accreditator during the accreditation process. Identification of equivalent data should be subject to the same principles which apply to the selection of data sets through the formal sectoral assessment and designation process. Guidelines on the identification of equivalent data should be published by the regulator.

¹ Reciprocity is not triggered only in relation to data covered by the designation instrument covering the data you have received – once triggered it can apply to any data within the scope of any current designation instruments.

- **6.11 – Exclusion from reciprocal data sharing obligations:** Accredited data recipients should be excluded from reciprocal data sharing obligations if they are below a defined minimum size.

Per the Inquiry, the reciprocity recommendations are directed at seeking to ensure a level playing field in terms of access to data and to assist in growing the coverage of the CDR.²

As is set out in Recommendation 6.9, the Inquiry recommended that these reciprocity obligations be expanded to oblige the sharing of ‘equivalent data’, even when not covered by a designation instrument. The Inquiry notes that the idea of reciprocity based on ‘equivalent data’ was previously incorporated into the *Review into Open Banking in Australia*, prior to the implementation of the current CDR legislation.

Issues

During industry consultation undertaken by Treasury, stakeholders have indicated that that reciprocity requirements in their current form under the CDR are a potential disincentive to firms entering the CDR regime as Authorised Data Recipients (ADRs).

Additional concerns that have been raised regarding the recommended expansion of reciprocity in line with the Inquiry include the following:

- Cross-sector reciprocity could not occur automatically. Assessments of the privacy and other risks associated with any equivalent data would need to be undertaken, and potentially additional mechanisms put in place to address these risks. Additionally, appropriate data standards may not be readily implementable.
- There are different views on what ‘equivalent data’ is. Processes to identify equivalent data may therefore introduce complexity and uncertainty.
- The current scope of CDR is limited to data sets for which rules and standards have already been developed. A broader scope may require diversions of rule-making and standard-setting resources to bring new datasets into the system. Modifications to the conformance testing suite and register may also be required.
 - In addition to increasing costs for the program, this may conflict with strategic decisions to prioritise bringing in high value data sets into the regime.
 - Concerns have also been raised by some stakeholders that their sectors would have to engage with CDR design work for sectoral datasets well in advance of their whole sectors being brought within the CDR.
- The costs for ADRs to build data holder information technology systems and the commercial impacts of having to provide access to data holdings may act as a disincentive against their joining the CDR as an ADR.

These concerns are potentially mitigated by the following factors:

- The proposal for a minimum threshold below which the obligation would not apply to an ADR; and the exclusion of materially value-added data sets.
- The expectation that:

² Complementing strategically directed growth through sectoral assessment and designation processes.

- these concerns may lessen as more high priority datasets are brought within the system and as processes for doing so become more streamlined (and agencies can increasingly rely upon previously developed artefacts).
- Conflicts between prioritising organic growth of coverage (through reciprocity) and strategic growth (through sectoral assessments and designations) would decrease as more of the high value datasets are brought within the system.
- Consideration could be given to adjusting transitional provisions to ensure that ADRs have a reasonable period in which to build support for reciprocity.

Reasons for disagreement with the reciprocity recommendations

There are a range of possible ways that CDR data could be transferred to address the issue of growing the CDR ecosystem. The Government's response to the Inquiry has agreed to a number of other Inquiry recommendations that are directed at resolving this issue.

Noting the issues and mitigating factors above, the preferred alternative to address the growth of participation in the CDR ecosystem is through the sectoral designation process. The sectoral designation process remains the most viable means of expanding the scope of CDR in a targeted, strategic manner, which balances industry concerns about creating barriers to CDR participation. The following points are particularly relevant to this conclusion:

- Stakeholders have raised concerns that reciprocity requirements in their current form act as a disincentive to some firms entering the CDR regime as ADRs.
- Presently, these requirements mandate reciprocal sharing by ADRs only with respect to data that is within the scope of a CDR designation instrument.
- Broadening the scope of these requirements to also apply to undesignated 'equivalent data' would exacerbate this issue, while creating additional complexity and resourcing pressures at the accreditation stage. Concerns raised by stakeholders are particularly acute with CDR currently being in its infancy as an economy-wide data sharing regime, and would act as a deterrent for ecosystem growth.

If future issues arise about data holding entities entering the CDR as ADRs and whether they should be required to share equivalent data, interventions can be effectively implemented through revisions to the rules where a strong policy rationale for this exists.