

12 September 2018

Our ref: KB-C+C

Consumer Data Right
The Treasury
Langton Crescent
PARKES ACT 2600By email: data@treasury.gov.au

Dear Consumer Data Right

Treasury Laws Amendment (Consumer Data Right) Bill 2018 – Exposure draft

Thank you for the opportunity to provide comments on the Treasury Laws Amendment (Consumer Data Right) Bill 2018 – Exposure draft (the **draft bill**). The Queensland Law Society (**QLS**) appreciates being consulted on this important piece of legislation.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled by the QLS Competition and Consumer Law Committee whose members have substantial expertise in this area.

We note that these reforms follow considerable reviews including by the Productivity Commission and in the Harper Review. QLS supports the objects of these reforms to allow for greater access for consumers to their data. However, in the time available for review, we have not been able to undertake an exhaustive review of the exposure draft. Therefore, there may be unintended consequences in the drafting which we have not identified.

We are pleased that the draft bill includes the opportunity to review decisions made by the ACCC and the OAIC in this process. We also note that the clauses in the draft bill outline how the rules, which will govern this process, should be drafted. As the majority of detail about the consumer data right (**CDR**), and how this right is to be exercised, is to be left to the rules, we request that there be reasonable consultation on the rules before they are published. We note that the ACCC has announced that it is seeking views on the rules framework, which we support.

We note that there are significant privacy implications arising from these reforms and that the information privacy principles and other privacy laws have been taken into account in the drafting of this bill and the explanatory materials. We urge that this issue be continually monitored when these reforms are commenced.

Treasury Laws Amendment (Consumer Data Right) Bill 2018 – Exposure draft

One issue we do wish to raise with the drafting of the bill concerns the proposed offence under section 56BM, which imposes a penalty of five years imprisonment for misleading or deceptive conduct in respect of obtaining CDR data. We note that subsection 2 of this section imposes a civil penalty of 1,000 penalty units, which we consider to be more appropriate in the circumstances. Custodial sentences are serious and should only be imposed where necessary. We do not consider that adequate justification has been provided to demonstrate that such a sentence is necessary here, as there are already existing offences under the criminal law which can deal with instances of this conduct, including more serious cases such as fraud. There is also the civil penalty under subsection 2 which could be applied.

We repeat these comments with respect to proposed section 56CG. Again, there does not appear to be any adequate justification for the imposition of a penalty which carries a term of imprisonment of five years. Such behaviour can be adequately dealt with then using the penalty under subsection 2.

As to the privacy safeguards, we note that these are comprehensive so as to ensure that CDR data is protected. However, we have some queries with respect to privacy safeguard 10 which imposes a civil penalty of up to 2,000 penalty units if data is not up to date and complete when disclosed. We query whether this goes beyond the scope of protecting privacy, for example, beyond IPP 7, and thus whether it should be included as a safeguard or at least whether the penalty attached should be so significant. However, we consider that data holders should ensure information is accurate.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Senior Policy Solicitor, Kate Brodnik by phone on (07) 3842 5851 or by email to k.brodnik@qls.com.au.

Yours faithfully



Ken Taylor
President