

12 September 2018

Via email: data@treasury.gov.au

1.0 Introduction

Common Ledger welcomes the opportunity to contribute to Treasury's consultation on the Treasury Laws Amendment (Consumer Data Right) Bill 2018 (**Bill**).

We are strongly supportive of the Consumer Data Right legislation (**CDR**) and applaud the Australian Government's decision to act on the various reports and Treasury's efforts to implement this decision in a workable manner. We see this as an ethical correction to the history book of the 21st century and a critical way to reduce consumer harm, achieve fairness in the system and allow consumers to benefit from a property asset that is owned by them and must be able to be used by them for their benefit and survival and prosperity. The Bill will also benefit Australia and its economy as a whole, including rectifying the \$60 billion lending shortfall¹ for the underserved SMEs in Australia who employ 44% of the workforce in this country².

While this submission is written and addressed to Treasury, we consider that based on the novel breakdown of roles, responsibilities and jurisdictions of Treasury implementing the CDR legislation and the ACCC implementing the specific open banking rules, some of the points in it are also relevant to the ACCC. On this basis, we will also submit a copy of this submission to the ACCC.

2.0 Summary

Throughout the submission we use Consumer Accounting Data as an example to help educate Treasury and the ACCC on this core dataset and area and because it provides a useful practical example to give colour to the submission.

Our key recommendations are:

- **Consumer Accounting Data should be explicitly included under CDR to enable consumers to better understand their current and future financial health and to act on this.** The Bill's designation and CDR rules should include 'financial services data' to Open Banking and include Consumer Accounting Data as reciprocal data. This will give consumers a more powerful method, than using bank transactions on their own. It is a natural step for the CDR Open Banking regime.
- **Rule of reciprocity is functionally provided for.** Common Ledger sees this principle as critical to the Bill and supports it being provided for in the Bill. We recommend the principle which underpins it be explicitly included and the ACCC be required to examine this in designating reciprocal datasets. Consumer Accounting Data is used as an example based on it being reciprocal data.
- **Ability to provide data to non-accredited entity data transfer mechanism should be aligned with the CDR and data standards.** We recommend the data transfer mechanism aligned with the CDR transfer mechanism and the Data Standards - and that this should be via API as recommended in the Farrell Review.

¹ <https://www.rfigroup.com/rfi-group/news/key-battleground-banks>

² https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1516/Employ

- **The ACCC's powers are broad but will bring the right focus to the CDR framework.** We support the ACCC and its strong consumer and competition lens as the appropriate body to use the powers given to it to implement the CDR rules framework.
- **Provision of data for a fee should be removed or limited to remove barriers and prevent double dipping.** Including a fee allows and incentivises businesses to build economic models to sell and monetise customer and consumer data. It is likely to perpetuate and create barriers to consumers accessing information and harnessing value from their data, contrary to the Bill's purpose.
- **The name description of a sector should not be relevant to the ACCC's designation of the CDR rules.** This is not relevant to the ACCC designating the sector or defining the scope of that sector - for example the "Banking Sector" could include other categories of financial services providers who may not fit the traditional definition of "Banking" but are included in the sector based on the ACCC's process.

3.0 Background to Common Ledger

The core beliefs that underpin our organisation and the reasons we exist are:

1. Open Data is coming - consumers and businesses own and control their data
2. Accounting Data is an untapped predictive way of understanding consumer and business health
3. An infrastructure provider will be required to move this data to unlock mission critical use-cases
4. Consumers and businesses will be served by a core trusted advisor to ensure their success

Our customers are banks, large accounting and consulting groups and small and mid-sized accounting firms in Australia. These customers use our product to access financial data from thousands of Australian consumers. They depend on us to provide secure, efficient and effective infrastructure to enable their customers - ie consumers - to permission them to access their financial data, which the consumer's accountant, advisor and banker then uses to help that consumer fulfill mission-critical use-cases. These include: staying compliant with the ATO by completing financial statements and lodging tax returns; securing access to capital to create and build their business; and accessing much-needed core-business advice from their banker or accountant.

Common Ledger has actively participated in the policy and consultation processes to-date by:

- Engaging in the Review into Open Banking in Australia (**Farrell Review**)
- Submitting on the Treasury's consultation on The Farrell Review³
- Hosting industry events focussed on increasing awareness and promoting discussion of the proposed CDR and Open Banking regime in Australia - including assisting the Australian Treasury to ask questions and obtain views from industry on the policy and proposed legislation⁴
- Participating in Treasury Roundtables on the CDR Amendment Consultation in Sydney
- Making this submission to Treasury

Common Ledger is one of the smallest, and most resource-constrained, organisations participating to this level in the consultation processes. We have prioritised doing so because we believe the legislation is critically important to Australian consumers and the economy.

³ Common Ledger Submission, Review Into Open Banking in Australia, 9 April 2018, <https://treasury.gov.au/consultation/c2018-t247313/>

⁴ Open Financial Data event, hosted by Common Ledger, 11 July 2018. The panelists were: Scott Farrell from KWM, Wayne Lipschitz from Macquarie Bank, Julie Mckay from Equifax and Thomas Paule from Findex. Attendees included representatives from all the major banks and Kathryn Wardell from Treasury.

4.0 Submission

4.1 Areas we support

Common Ledger supports the following parts of the Bill:

- (a) **Rule of Reciprocity is functionally provided for.** Common Ledger sees this rule as critical to a functioning CDR regime and Open Banking and is pleased it has been provided for in the legislation. The Bill gives the ACCC the power to implement it in the rules for each identified sector which then define how it is applied to the relevant identified sector - in this case banking - and what reciprocal data is.

Because submissions on the Bill were due before the ACCC's consultation on the proposed Rules Framework began, we provide a relevant and important example of how we anticipate the ACCC would interpret and implement the Rule of Reciprocity - to draw attention to this for Treasury and the ACCC's benefit.

Example: Coded bank transactions, or 'Consumer Accounting Data'. Bank transactions coded by a consumer is data relating to its core business - for a consumer, trust, small business or a larger business this makes up their 'persona'. Bank transactions as well as debits, credits, profits, tax, assets and liabilities - all represented in the ledger where the consumer codes this information into accounts - make up Consumer 'Accounting Data' and is the consumer's core intellectual property.

We note that Consumer Accounting Data is not the same as financial reports - for example Annual Financial Statements - prepared by a Consumer's accountant. While the core underlying data is bank transactions and Consumer Accounting Data the accountant may rightfully claim ownership or a lien over the valuable reports they have created until the consumer pays for their services.

Imagine, this common use-case - a consumer directs their bank (Data Holder) to share their bank transactions with an accounting software provider who's ledger they are using (Data Recipient). If that same consumer then directed their ledger or accounting software provider, to share their Consumer Accounting Data with an alternate lender (Data Recipient) to assess a loan would this be reciprocal data under the Bill and CDR rules?

The ledger and method of updating it has taken different forms over time but has always been controlled and completed by the consumer. Historically, consumers have used a paper ledger and pencil, later using a spreadsheet and keyboard, desktop accounting system and better keyboard and today a cloud accounting system and mobile phone to do this work. While the ledger or record is displayed on a different surface and the coding happens using a different device - the process, while more automated and quicker and easier, is exactly the same. The consumer is the person completing this activity with their unique domain knowledge about their affairs or their business, not the person who happens to provide the ledger. To illustrate this, it would be ridiculous if the paper provider or Microsoft as the Excel provider claimed this data was 'enriched' data and they should be paid for providing it to another provider at the consumers direction.

The ledger and the data represented in it is core to the consumer's business and it seems almost certain to be reciprocal data under the CDR Rules for Open Banking.

While this example is a more obvious case of what the ACCC's rules should define as 'Reciprocal Data' and other obvious ones exist - a consumer's credit score derived directly from bank transaction data by a credit scoring agency is another - others will be less clear. A large technology company like Facebook's data on user behaviour may not as obviously be Reciprocal Data despite this being used for the same purpose - assessing a consumer's credit score to evaluate whether and how much finance to lend to them.

We encourage the ACCC to clearly identify the low-hanging fruit categories of reciprocal data and make these clear in the Rules Framework - coded bank transactions or 'Accounting Data' should fall in this category. The ACCC should then turn its focus to address less obvious categories.

- (b) **Ability to provide data to non-accredited entity⁵.** We are supportive of the ability for consumers to direct that their data can be provided to a non-accredited entity. We specifically support the use-case provided in the Exposure Draft Explanatory Memorandum - where a consumer wishes to transfer financial reports that have been derived from CDR data to an accountant who is a non-accredited entity. We note that the categories of these non-accredited entities is left open and able to be addressed by the ACCC in the CDR Rules provides a level of flexibility and the ability to evolve. The legislation correctly anticipates that CDR data and the data which is derived from it will be broad and will expand over time as data is used by more non-accredited parties, more frequently, for a wider range of purposes and in different ways.
- (c) **Process and powers of the ACCC are broad but will bring the right frame to the CDR framework.** We are conscious of the powers of extensive rule making powers of the ACCC to designate sectors, define what constitutes reciprocal data and conduct consultations to inform designation of a sector and on the CDR rules that will apply to that sector. It is important to the CDR's integrity that these powers are used carefully and intelligently. The ACCC's consumer and competition purpose and lense aligns well with the overall policy intentions of the CDR framework and the first designated sector of banking. It is the right entity to perform the CDR rule-making functions.

4.2 Recommended changes

We recommend the following changes to the Bill.

- (a) **Consumer Accounting Data should be explicitly included under CDR to enable consumers to better understand current and future financial health and to act on this.** Portable banking data alone will go some way to providing consumers better access to capital to ensure their survival, growth and prosperity. However, the ACCC CDR rules should be extended to explicitly include 'financial services data' to reflect current the industry convergence that proves the equivalency of bank transaction data and Consumer Accounting Data.

Consumer Accounting Data is core business data derived from bank transactions, but dramatically more valuable than raw bank transactions in helping consumers and their advisors understand their current and future financial health and act on this. Applying for credit with Australian banks requires the assessment and transmission of Consumer Accounting Data. Today, this is a painful, laborious process involving manual data exports, paper forms and unreasonably long wait times - it can take up to 24 working days for a Consumer to receive a lending decision and 40 days to receive the loan amount, when applying for lending large Australian banks

If Consumer Accounting Data is not included as Reciprocal data under the regime, there is a risk of creating a power asymmetry towards accounting software providers that the Consumer Data Right is trying to correct, as well as

⁵ Treasury Laws Amendment (Consumer Data Right) Bill 2018, Schedule 1, item 1, sections 56BB and 56BC.

undermining and running counter to the clear market-led convergence of bank transaction data and Consumer Accounting Data, that is well underway. Examples of this include:

- Commonwealth Bank's recent launch of accounting software package Wiise⁶;
- NAB providing a borrowing function button within a Consumer's ledger in Xero's accounting software⁷; and
- RBS's acquisition of cloud accounting software company Free Agent⁸.

Put simply, bank transaction data and Consumer Accounting Data' are being treated as one and the same by global industry players for the consumer's benefit, and the Consumer Data Right and ACCC rules should reflect the equivalency of these two forms of core business data.

- (b) **Rule of Reciprocity should be explicitly included in the legislation.** The Bill does not explicitly include the Rule of Reciprocity, or the elements which originate and justify it. The Farrell Review states:

*"it would seem unfair if banks were required to provide their customers' data to data recipients [...] but those data recipients were not required to reciprocate in any way, merely because they were not banks and therefore did not hold 'banking' data. An Open Banking system in which all eligible entities participate fully — both as data holders and data recipients — is likely to be more vibrant and dynamic than one in which non-ADI participants are solely recipients of data, and ADIs are exclusively transmitters of data."*⁹

In other words, the principle of reciprocity has three elements:

- the system should be fair to data holders and recipients;
- those who take data out of the system should also put data back into the system; and
- this will promote and achieve an overall vibrant and dynamic [CDR] system.

Including these elements in the Bill will ensure that in making the rules the ACCC is bound to explicitly achieve the principle. Practically this would mean that in assessing data sets covered by the Rule of Reciprocity the ACCC would be required to step through each element to evaluate whether the dataset in question should be defined as derived data. These elements would provide a tool to the ACCC to assess these questions.

A useful example to work through is Consumer Accounting Data - these are the questions the ACCC would ask:

- Is a 'fair system to data holders and recipients one where an accounting software provider who takes bank transaction data out and is required to put Consumer Accounting Data back into the system?
- Does ensuring accounting software providers put Consumer Accounting Data back into the system, when directed by a consumer, help meet achieve a system those who take out also put back in?
- Does this Consumer Accounting Data being subject to reciprocity promote and achieve an overall vibrant and dynamic [CDR] system?

Recommendation: We recommend adding a new subsection to 56BC - 56BC(h) - clearly articulating that all of section 56BC is subject to these principles. In particular 56BC(a), 56BC(b) and 56BC(c) should be subject to this new subsection.

⁶ <https://www.afr.com/business/banking-and-finance/financial-services/cba-microsoft-kpmg-form-wiise-to-take-on-cloud-accounting-20180511-h0zxmz>

⁷ <https://www.smh.com.au/business/banking-and-finance/nab-joins-with-xero-to-speed-up-business-loan-approvals-20151018-gkbtjx.html>

⁸ <https://www.ft.com/content/96c5bd4a-31b7-11e8-ac48-10c6fdc22f03>

⁹ Review into Open Banking in Australia: Customers Choice, Convenience, Confidence, Australian Government - Treasury, December 2017

- (c) **Provision of data for a fee should be removed or limited to remove barriers and prevent double dipping.** Including a fee allows and incentivises businesses to build economic models to sell and monetise customer data - which is not aligned with intent of the Bill. It is also likely to create barriers to consumers accessing information and harnessing their data.

Common Ledger is particularly concerned by this issue in relation to Small Businesses who are consumers under the Bill. The Farrell Review drew specific attention to the acute existing information asymmetries which prevents them accessing information on data-related services, or services that require bank data or Consumer Accounting Data:

Others argued that banks already make data available to small business customers through accounting software providers. In consultation, the Review was advised that large accounting software providers are placing restrictions on the ability of small businesses to access their own data as a way to derive commercial benefit from the data they hold on them.¹⁰

This example illustrates a 'Mexican standoff' between banks and accounting software providers on sharing their mutual customers' data, even when directed by the customer to do so. The consumer stands by, powerless and prevented from harnessing the value of their data. They are forced to watch and starved of value from their data while the bank and accounting software hold guns to one another's heads, with no willingness or strategy to allow either party, or most importantly the consumer to achieve victory.

We are not concerned that no ability to charge fees for providing consumer data will remove the incentive on data holders and recipients to collect this data in the first place. Organisations have extensive existing incentives to collect and store customer data already. A data holding bank or a recipient like a credit scoring organisation or accounting software provider derives value from collecting data and using this to create, enhance and promote (market) products to customers. There are also operational benefits from collecting CDR data.

In many sectors, and as the CDR regime also contemplates, consumer data is valuable 'currency'. Large technology companies Google and Facebook have pioneered economic models where products are provided in exchange for consumer data, which can then be utilised by them. Another example is Wave, a Canadian accounting software application which has tens of thousand of customers in Australia¹¹ and is provided at no financial cost to the consumer¹² in exchange for monetising other features, including invoicing, and being able to use customer data.

Ultimately, if the provider is charging customers a fee to use their product - whether it is a current account, a credit score or an accounting software tool - that provider should not be able to 'double dip' by charging a fee when directed by a consumer to share their data.

Recommendation:

- remove the ability to allow the CDR rules to provide that a fee may be charged for any data that is value-added or where the provision of data for free would impact on the incentives for data holders to collect data;

¹⁰ Review into Open Banking in Australia: Customers Choice, Convenience, Confidence, Australian Government - Treasury, December 2017, Page 41.

¹¹ <https://www.afr.com/technology/nab-jumps-on-wave-in-cloud-accounting-data-deal-20170516-gw6a6e>

¹² Wave Pricing Page: <https://www.waveapps.com/pricing/>

OR

- if the fees are to be included under the legislation then the fee-setting power under section 56BC(d) should be amended to limit fees on a cost recovery only basis in line with the ACCC's standard methodology for cost-recovery.

(d) **Ability to provide data to non-accredited entity data transfer mechanism should be aligned with the CDR and data standards.** We propose that the Bill should promote and the CDR rules should prescribe a consistent data transfer method for data provided to a non-accredited entity to promote the CDR.

The Bill's Exposure Draft Explanatory Memorandum states:

1.19 "The data must be provided in a format which complies with the standards. While the standards may apply differently across sectors, it is important that the manner and form of the data coming into the CDR system be consistent within and between designated sectors, as far as is practicable. This will promote interoperability, reduce costs of accessing data and lower barriers to entry by data driven service providers – promoting competition and innovation."

The same logic should be extended to non-accredited entities who will generally provide services in the same or related sectors.

There are a number of use-cases in which accountants, and other non-accredited entities, require core business financial data to be transferred to them:

- completing financial statements utilising CDR data;
- ensuring the consumer remains compliant by completing tax returns or other information required for audit and filing these with the ATO;
- submitting financial statements and/or tax returns with a financial services product provider, for example a lender or insurer to help the business owner apply for and receive that service; and
- providing much-needed business advice

There are economic and competition gains to the consumer from this which align with the CDR regime's goals:

- accountants (and other non-accredited entities) provide more efficient services to their clients;
- consumers benefit in securing better and more competitive services wider than banking and credit under the regime; and
- familiar technology and data transfer methods are implemented to replace existing unsecure and inefficient processes.

The method of transfer should be API-based, and not manual file exports

- the capability is already built (APIs) by accounting software providers, so offering an automated method is simple with very low technological burden; and
- the way that non-accredited entities access and use this information is increasingly digital and there is an ever-increasing appetite for efficient, digital-first service offerings.

Recommendation:

- Add a requirement that the data transfer mechanism be aligned with the CDR transfer mechanism under the CDR for Open Banking and the Data Standards - almost certainly via API as recommended in the Farrell Review;

OR

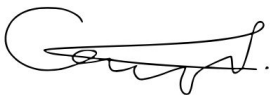
- add a legislative requirement for the ACCC to specify the mechanism with reference to the relevant specified sector.

(e) **The name description of a sector should not be relevant to the ACCC's designation of the CDR rules.** There is a risk of confusion from this which is not helpful to the practical implementation of the regime.

For example the "Banking Sector" could include other categories of financial services providers who may not fit the traditional definition of "Banking" but are included in the sector. A relevant example of this is an accounting software provider who decides to begin to offer lending products to its customers who use accounting software¹³. While not a traditional bank or participant in the banking sector they are performing one of the core functions of a bank and should clearly be included in the sector definition and subject to the relevant rules.

Section 56AC should be updated to clarify that the identified and designated sector of the economy is not relevant to the ACCC designating the sector or the scope of that sector.

Yours sincerely



Carlos Chambers | CEO | Director

carlos@commonledger.com

+64 27 376 1714

Common Ledger is a fast growing fintech company providing Open Accounting Data Plumbing to Australian financial services firms. Common Ledger believes that data is most valuable when it can be used by multiple parties for a range of purposes. Assuming privacy, safety and security, data wants to be free!

Common Ledger will be successful as a company because we identified the 'open data' trend for business accounting data before anyone else, and have built the infrastructure first. We will be the global domain experts in both accounting data and its transmission between systems and parties across a range of mission-critical use cases. Common Ledger will win business because it is trusted by customers and the market alike - preserving neutrality in the ecosystem ("The Switzerland Model").

Common Ledger's head office is in Wellington, New Zealand, with an Australian office in Melbourne, and is powered by a team of 20 Open Accounting Data and financial services experts. It has raised early stage capital from some of Australasia's top fintech investors, proved out its core thesis that the world needs Open Accounting Data Plumbing, and is now growing strongly in New Zealand and Australia and looking to the UK, Canada and the USA.

¹³ Intuit the leading global accounting software provider who has a significant Australian office and over 100,000 Australian businesses using its product Quickbooks Online has offered loans to its US accounting software users from 2017: <https://quickbooks.intuit.com/capital/>