



30 July 2021

Consumer Data Right Division
Treasury
Langton Cres
Parkes ACT 2600

Classification: Public

Via email to data@treasury.gov.au

Re: Cuscal response to the Consumer Data Right rules amendments (version 3)

Cuscal Limited (Cuscal) appreciates the opportunity to respond to the above consultation paper issued by the Treasury.

Background to Cuscal

For over 40 years, Cuscal has leveraged our assets, licensing, and connectivity to provide intermediary and principal outsourcing activities on behalf of our clients. We are an end-to-end payments specialist that services more than 100 established and challenger brand clients within Australia's financial system, including the majority of the mutual banking sector, and a growing number of FinTech and 'PayTech' enterprises. We enable their market connectivity so they may provide innovative products, business models, and drive improved customer outcomes.

We are an Authorised Deposit-taking Institution (ADI), the holder of an Australian Financial Services Licence, and an Australian Credit Licence for Securitisation purposes. Cuscal has Board representation with eftpos, NPPA, Australian Payments Network and participates in numerous industry committees. We are also the founder of 86400 (www.86400.com.au), a fully licenced mobile-led digitized bank, recently acquired by National Australia Bank.

The services that we provide to our client institutions include card scheme sponsorship for issuing and acquiring, payment card issuing, card production services, digital banking applications, and access to domestic payment services using direct entry, BPAY and the New Payments Platform (NPP). We also act as settlement agent for many of our clients through our Exchange Settlement Account with the Reserve Bank of Australia (RBA).

As a fully PCI-DSS accredited ADI, Cuscal is uniquely placed to provide secure and robust capabilities that facilitate access to markets that would otherwise be beyond the reach of some organisations.





Cuscal Role in Open Banking

To help our clients benefit from the CDR, while minimising their cost and risks, Cuscal is investing in a Collaborative Data Exchange. This technology platform will position Cuscal as a CDR Intermediary that helps each of the three CDR participants obtain the most out of the CDR:

- ❑ Data Holders can manage compliance effectively.
- ❑ Consumers can share their banking data with best-practice simplicity, while remaining in control over the data they consent to share via their bank.
- ❑ Data Recipients can create better digital services, enabled by the data that consumers consent to share, but minimising the time, cost, and risk of doing it themselves.

Cuscal will be attaining the accredited data recipient role in future, to enable a broad range of services for our CDR participants. For further information on Cuscal and our services please refer to our website at www.cuscalpayments.com.au.

We have set out our key comments below regarding the Exposure draft:

1. Introducing new pathways to data sharing using tiered accreditation models:

Cuscal supports the three accredited tiering models that has been proposed and believe it will increase competition and innovation in the CDR eco-system. The different tiers allow for a wide range of prospects for businesses to consider and engage with CDR regime reducing the overall cost and time to implement. From a consumer perspective the expansion of the CDR participant model will support innovation and introduction of value-added products and services.

We have detailed certain sections within the proposed rules that requires further considerations to support a strong and trusted CDR regime.

Sponsored Accreditation: -

- ❑ We suggest that the rule (1.10D) should consider data deletion requirements applied to affiliates similarly as it applies to accredited data recipients i.e., sponsors. Currently the rules do not consider data management when the sponsorship arrangement expires at maturity or is terminated. From a privacy perspective it is important to identify the accountability of the CDR data assets where an affiliate may disclose data to an outsourced service provider under a CDR outsourcing arrangement.
- ❑ Currently the CDR rule 1.10D is silent on scenarios where the customer has explicitly requested for data to be deleted and the accredited person has reporting and record keeping requirements.
- ❑ It is important under a sponsorship arrangement that the affiliate is not able to enter a CDR outsourcing arrangement to collect CDR data. Creating such guardrails would allow Sponsors to administer the consumer data and minimize their risk exposure where such provisions are allowed. The explanatory memorandum suggests an affiliate “**may not enter**” in such an arrangement however it needs to be explicit, and state “must not enter.”
- ❑ To establish rigour in the self-attestation process for the affiliate we recommend the Accreditation registrar also seeks a written statement from affiliate on meeting the fit and proper person criteria under Part 1, Div 1.3 (1.9).

CDR representative model: -

- ❑ Notification to DRA - Schedule 1: Part 2, clause 2.3)- This rule applies to an accredited person that is, or proposes to become, the CDR principal to inform DRA within 30 business days of entering the CDR representative arrangement – We recommend making the rules clear by removing the instance of ‘Propose’ as the CDR representative arrangement must be in place for this rule to trigger.
- ❑ Notification to DRA -There should be a requirement for the principal to notify DRA when a CDR representative arrangement expires or is terminated to maintain the data integrity of the register.
- ❑ CDR policy – Rule 7.2(4) (aa)(ab)&(ac)- requirement on the accredited person to include the various CDR arrangements and nature of services in the CDR policy. We contend that for transparency of the CDR data this is important, however maintaining a list of CDR participants and the nature of services





in a policy document can be onerous. The information can be made available to consumers on the accredited persons website and a link to such information included in a policy document to meet the underlying legislative intentions.

- ❑ *Ref to Page 10, Para4 of the explanatory memorandum stating 'CDR representatives may offer goods or services on behalf of their principal ADR, or they may offer goods or services on their own behalf. In either event, the collection, use and disclosure of CDR data is an input to the provision of the goods or services to the consumer and the liability structure under the CDR regime remains the same.'* We seek clarification on what is meant by liability structure under the CDR regime remains the same. The accreditation levels bring a shift in liability structure based on type of arrangements. We therefore propose any liability requirements are clear within the rules with respect to tiered models to avoid any misinterpretations.
- ❑ To ensure consumer protection is maintained we think an entities financial stability and certainty should be well-considered during the accreditation process. This is quite critical in establishing trust as the accredited persons are at the centre of the liability framework. We also hope the expansion and creation of new pathways will enable participants to consider alternate channels to participate in the CDR regime. Thereby removing the need to be accredited themselves.

Unaccredited Outsourced Service Providers: -

- ❑ Rule 1.14 - Consumer dashboard accredited person – The rule currently does not acknowledge the various arrangements an ADR may establish. We propose to include the ability of an ADR to delegate the requirement of a consumer dashboard to an Outsourced service provider under a CDR outsourcing arrangement.

2. Schedule 3 – Trusted Advisers: - Allowing consumers to share their data with trusted professional advisers.

Cuscal welcomes the extension of the CDR data sharing with trusted advisers to grow and expand the CDR regime. To improve the ability of ADRs to comply with the rules we propose the following:

- ❑ The accredited persons are held to account for any inappropriate use of the CDR data in the various proposed tiering arrangements. In the case of Trusted advisers and reliance on other regulatory frameworks we propose where the CDR data is shared with a Trusted adviser the responsibility of the shared data and its use is managed by the Trusted adviser. The rules should recognize under a TA disclosure consent data is leaving the CDR environment and as such not bound by CDR regulations.
- ❑ The trusted adviser list may include other licensed brokers covered under Corporations Act section 923B.

3. Schedule 3 – CDR Insights: allowing participants to share CDR insights with consumer consent for specific purposes

- ❑ We support the proposed inclusion of CDR insights and consider it significant for consumer benefit and growth of the CDR regime. The proposed response type under the rule is to disclose Yes/No. However, we think the rules should consider a Boolean type of response to cater for different use cases. For example, a person's income and expenses can be categorized in the form of greater and less than value.
- ❑ There are currently unstructured and informal ways of data sharing to validate a customer's data for goods and services. The sharing of CDR insights is a data validation process to help improve the accuracy, credibility, and security of the existing data sharing practises. The following should be considered as part of the data validation process,
 - ❑ The information can be aggregated across multiple eligible accounts.
 - ❑ Service could verify eligible account list.





- ❑ The data validation process for expenses is defined for a specific period i.e., includes a start date and finish date.
- ❑ Other use cases can include whether a consumer has lived at the address for a specified period etc.
- ❑ The CDR rules positions value added data assets as derived data and CDR insights. We presume derived data can be shared by accredited persons upon receipt of an explicit consumer consent within the CDR ecosystem having regard to security and privacy considerations guarded by CDR legislation. The CDR insights in comparison can be shared with anyone as they are deemed low risk and do not carry privacy safeguard due to the nature of the information shared. We recommend the use of “designated insights” instead of the general terms of CDR insights.

4. Schedule 4 – Joint accounts: - Creating a single consent data sharing model for joint accounts.

Cuscal welcomes the default pre-approval option for Joint accounts and believe it will reduce friction in the use of Joint accounts within the CDR ecosystem.

- ❑ We believe the flexibility available to Data holders for providing a co-approval option currently is useful to meet the regulatory timelines and CDR uptake. However, we do see value with the co-approval model for complex accounts structures such as Corporate and business accounts in the scenario where default is pre-approval. We foresee consumers holding such complex accounts having a need for such flexible options to manage their bank accounts.
- ❑ In relation to 4A.7(3) & 4A.8 & 4A12((2) 4A16(2) 4A16(3)(a) – rules referring to obligations to send notifications to account holder via ‘ordinary means of communication’. We expect that new channels introduced by CDR such as consumer dashboard and disclosure management option service are also considered as ordinary means of communication for Data holders.
- ❑ Rule 4A.8(2)(f) & 4A.12(2)(f) – Requirement for Data holders to provide a specified time to Joint account holders for approving/declining the data sharing request. We expect the specified timeframe will be included in the technical standards providing sufficient information to accredited persons for managing the request lifecycle and consumer expectations.
- ❑ The proposed timeline for compliance with Joint accounts data sharing is 1 April 2022. It is difficult for industry to commit to a timeline without defined rules and CX standards as it impacts technical implementation plans. Hence Cuscal suggests that the approach should provide a 6-month timeframe from the date technical rules and CX standards are released to industry participants.

In closing, we trust that our above responses help Treasury in formulating a holistic review of the proposed rules and enable the growth of CDR regime to develop customer centric products and services.

If we can be of any further assistance in the interim, please feel free to contact me at kmckenna@cuscal.com.au or (02) 8299 9000.

Yours sincerely,

Kieran McKenna
Chief Risk Officer

