



03 August 2021

Consumer Data Right Division
Treasury
Langton Cres
Parkes ACT 2600

Via email: data@treasury.gov.au

Dear Sir/Madam,

Consultation — *Consumer Data Right rules amendments (version 3)*

As a major Credit Reporting Body in the Australian credit landscape, illion (formerly Dun & Bradstreet Australia and New Zealand) welcomes the opportunity to provide this submission to the Treasury, regarding the draft Rules (Rules) for participants in the Consumer Data Right (CDR) regime and the appropriate models through which the regime can continue to grow.

illion is a strong supporter of the implementation of a CDR in Australia, illion Open Data Solutions and Credit Simple were amongst the first group of organisations to become Accredited Data Recipients and we are actively developing products and services utilising the CDR.

The CDR framework provides substantial benefit to consumers, transforming the way they interact with the financial ecosystem by providing the ability and tools to safely share data with different proprietors, other financial institutions and FinTech companies. In doing so, consumers can access the most appropriate and economical financial products to suit individual needs. Likewise, granting access to consumer data ensures that providers can offer innovative products at more competitive rates. illion believes that intermediaries, such as credit reporting bodies, will be critical to the practical expansion of the CDR in Australia.

About illion

illion is a data and analytics business, operating in Australia since 1887. Using extensive credit and commercial databases, we assist banks, other financial services providers and other businesses to make informed credit and risk management decisions, and help consumers access their personal credit information. Our data assets, combined with our end-to-end product portfolio and proprietary analytics capabilities, enable us to deliver trusted insights to our customers in the banking and finance industry and facilitate confident and accurate decision making. illion is highly invested in the Australian market with over 130 years of data history and experience.

Proposed Models

illion is a strong supporter of the Government's initiative to implement the Consumer Data Right (CDR) in Australia, and agrees that it will provide consumers with greater control over their own data and the ability to access more competitive deals and product innovation across different sectors. Furthermore, illion encourages the idea of extending the applicability of CDR beyond banking and energy, including (at an appropriate time) to additional sectors such as telecommunications, insurance and superannuation.

We do however note that the CDR does not operate in isolation. Digital Data Capture (DDC), often referred to as 'screen scraping', is the process whereby a consumer directs a trusted third-party service to retrieve their data as displayed in a web application. DDC is used widely in the financial services sector by lenders, financial management applications, personal finance dashboards, and accounting products to retrieve customer data. It is a critical mechanism to empower consumers and facilitate competition in provision of consumer credit.

illion have been providing Digital Data Capture services to our customers for over seven years, our solution illion Open Data Solutions currently processes 1.3 million connections a month. In the past seven years illion have experienced zero (0) security breaches of our service and nor are we aware of any other cases globally which have resulted in a security breach.

While CDR may in time entirely replace the need for DDC, it will only do so over time, and only if the rules and regulations are structured in a way to incentivise both consumers and providers to move toward provision of data via CDR.

illion recognises the need to increase participation in CDR, as an Accredited Data Recipient we have first-hand knowledge of the costs involved in gaining accreditation through the current process and do not believe that the current model will scale to achieve critical mass. In previous submissions we have consistently advocated for wider access to CDR data via a 'Hub and Spoke' model where Accredited ADRs control access to unaccredited entities (akin to a Consumer Bureau model).

Consequently we welcome the proposals to extend access through the different models proposed, but we do have concerns around the complexity and suitability of the proposals. We have detailed these concerns in the specific comments below.

Specific comments CDR Insights:

illion is supportive of the concept, however we would have welcomed a wider definition that allows for the market to determine insights that may be of value within a framework that defines the data that can be returned as opposed to the current restrictive set of permitted purposes.

We are also concerned about the lack of clarity on the nature and extent of the data that can be disclosed as a CDR insight. The examples given in the Explanatory Memorandum refer to low risk data and other insights which are yes/no flags. The definition in the legislation is somewhat circular and relies on consumer consent, if the insight is explained and the consumer consents then the data that is explained to them may leave the CDR system as a consented disclosure.

Section 1.10A limits the purposes for which consent can be given - identity verification, account balance verification, income verification and expense verification, but does not limit the data that forms the insight. Once the consumer consents, the insight leaves the CDR regime. The standards around that data are yet to be set – see sections 7.5A and 8.11A This creates uncertainty as there

are no clear and current guidelines to align to the Explanatory Memorandum description of “low risk”. Without sufficient clarity, the CDR insights could be misused, eroding consumer trust and confidence in the integrity of the CDR system.

Specific comments Trusted advisor:

illion strongly supports the Trusted Advisors model, provided it is confirmed that Trusted Advisors have access to all underlying data without restrictions and that they can use the data for all purposes.

In relation to trusted advisors we note that the definition of a financial adviser references section 923C of the Corporations Act in relation to a person using the title “financial adviser” or “financial planner”. In order to use such title/s the relevant person needs to be a “relevant provider” which is then defined in section 910A of the Corporations Act (which defines such a person as a financial services licensee which is, in fact, simply the holder of an AFSL for the conduct of certain activities).

Accordingly, there is no reason why a broader class of AFSL holders could not also be considered to be trusted advisors under the Act, namely, as persons providing services to consumers who are AFSL holders but outside of the traditional classification of financial adviser or financial planner.

The introduction of a “fit and proper person” test for Responsible Managers of AFSL holders in 2020 means there is now a similar obligation on those persons to obligations on accountants and others. In terms of limitations on use of data, AFSL holders are each licensed for certain activities only and can use data only for the provision of those licensed activities (which is not markedly different to the position with lawyers and accountants).

While the current category of trusted advisors looks at one-to-one individual relationships, it disadvantages FinTechs and other non-traditional providers who utilise different models while operating within the AFSL licensing regime.

Consequently illion’s view is that the Trusted Advisor model should be expanded to 'nominated recipients' allowing non-ADI lenders to access CDR data via a fully accredited ADR. In our view expanding the scope of the Trusted Advisor model in this way creates a hub-and-spoke framework that illion have been advocating and supports the continuation of rigorous compliance obligations for any entity seeking to attain ADR status.

Finally, further clarity is also required around the use of CDR data that has been passed to a Trusted Advisor. We understand that when the data is passed to a Trusted Advisor it falls outside of the CDR regime, given this the following scenarios need to be considered and possibly clarified:

- The Trusted Advisor will have requirements to keep records. Given the CDR data falls outside the CDR regime when the trusted advisor receives it we take this to mean there are no restrictions on how the Trusted Advisor stores this data, for example in a document storage system provided a software service provider.
- In the case of Mortgage Brokers the trusted advisor is working as part of a lending workflow. The data provided to the Trusted Advisor, of which CDR data is one component, may then be passed back to a lender as part of a mortgage application. Where the lender is an ADR or ADH does the data then come back within the CDR regime and if so by what mechanism can the consumers right to control access to the CDR data be exercised?

Specific comments Outsourced Service Providers

Illion have concerns that this model creates possible weaknesses in the overall integrity of the CDR regime. While an OSP is acting on behalf of an ADR and the ADR carries liability for the OSP, as the OSP themselves requires no accreditation a weakness has been created in the ecosystem. The OSP is in a privileged position, with access to all of the CDR data that flows over their solution, consequently the impact of a breach in an OSP would be felt across the CDR ecosystem.

Specific comments CDR Representative

We understand that the intent of the CDR Representative model is to provide a mechanism for non-Accredited entities to access CDR data enabling growth in the CDR ecosystem. Illion's position is that extending the Trusted Advisor model to enable wider access through Accredited Data Recipients in a hub and spoke model would achieve the same goal, with lower risks to the CDR ecosystem, and with a far less complex model than the CDR representative and Sponsorship proposals.

The CDR representative model as proposed would significantly weaken the CDR ecosystem by creating unregulated access with little deterrent for bad actors to act as representatives and exploit the CDR ecosystem.

As currently drafted there is no deterrent on the CDR Representative from breaching any of its obligations under the Act other than contractual or civil actions by either the affected consumer or the Principal. This arrangement is likely to be problematic, costly and time consuming for many Principals due to the cost and difficulty of commencing proceedings in order to enforce contractual claims. This is particularly the case where there are material breaches (which could have significant financial and other impacts on the Principal) and/or the representative becomes insolvent or goes into liquidation leaving the Principal with minimal options for financial or other recourse.

As a matter of public policy, it would seem that joint liability as between the Principal and the CDR Representative should apply for any breach by the CDR Representative of its obligations under the CDR arrangement. In addition, there should be, as a public policy issue, a civil penalty for the CDR Representative (as sole liability) for a wilful or reckless breach by the CDR Representative of its obligations under the relevant provisions.

It is noted that section 116A is in the sub division for obligations of accredited persons – however, with the addition of a sub division, obligations of CDR Representative could be inserted and impose an obligation on the CDR Representative in similar terms for breach of obligations. This would satisfy a public policy and consumer protection standpoint and deter bad actors. While this could be seen as reducing the differences between the CDR Representative and Sponsorship models, we believe this will reduce some of the more significant risks associated with bad actors and operate to facilitate consumer trust and confidence in the CDR system.

Illion strongly believe that CDR obligations must be shared by the Representative and the Principle and a breach of these obligations must result in commensurate penalties for the Representative.

Specific comments Sponsorship model

As with the CDR Representative model Illion's position is that extending the Trusted Advisor model provides a simpler and more robust mechanism to expand access to CDR data.

We note that unlike the Representative model the Sponsorship model requires a level of accreditation, with responsibilities shared between the Sponsor and the Affiliate. We see this as welcome as it reduces the risk to the CDR Ecosystem.

However, we are unclear whether ADRs will be willing to accept the burden of and cost Sponsorship while for Affiliates we are not clear that the possible reduced cost from accreditation will be attractive given the reduction in access to CDR for Affiliates coupled with the reliance on a Sponsor.

Joint Account Holders

Illion are supportive of the need to modify the current Joint Account holder rules as the current approval process is overly complex for the consumer. The proposed default pre-approval option addresses these short-comings and we strongly support this option.

Illion are however concerned over the other options when we consider the responsible lending use case. Where a lender is looking to confirm a consumer obligations and the consumer holds a joint account, if the default option is not selected then an application could proceed where the lender and the consumer believe that all account information has been provided, but as the joint account has not been disclosed or permission granted by the other joint account holder(s) the lender has no knowledge that a joint account even exists.

Hence a responsible lending decision may be made on the belief that the consumer has provided all of their accounts but the existence of the joint account is masked from the lender. Consideration is required on how to inform the lender of the presence of a joint account (without providing the details of the account) where accounts are not disclosed as permissions have not been granted to ensure lenders are able to lend responsibly on the basis of all available information.

Conclusion

Illion welcomes the opportunity to comment on the further expansion of the existing CDR regime and we welcome the recent greater collaboration between industry and Treasury as the CDR regime expands to other sectors.

We have general concerns around the complexity of the proposals and specific concerns as detailed above. We welcome the opportunity to discuss further any questions or concerns arising from this submission, please feel free to contact me at any time at richard.atkinson@illion.com.au.

Yours sincerely,



Richard Atkinson

General Manager, Consumer Bureau