



## **Submission to Treasury**

# **CDR - Exposure draft legislation to enable action initiation**

**October 2022**

*This Submission Paper was prepared by FinTech Australia working with and on behalf of its Members: over 400 FinTech Startups, VCs, Accelerators and Incubators across Australia.*



## About this Submission

This document was created by FinTech Australia in consultation with its members.

In developing this submission, a roundtable was held to discuss key issues related to the draft legislation to enable action initiation.

We also acknowledge the support and contribution of K&L Gates to the topics explored in this submission.



## Summary

FinTech Australia recognises the great opportunities that the Consumer Data Right (CDR) presents. We are excited by the potential for CDR to support the rapidly developing, data-driven economy here in Australia. As an important piece of digital infrastructure for Australian consumers and businesses, we welcome the opportunity to provide a submission on the CDR exposure draft legislation to enable action initiation (Draft Legislation).

Overall, FinTech Australia supports the expansion of the CDR to enable action initiation. We are excited about the potential of action initiation - allowing consumers to do more with CDR including send instructions to make payments, updating their contact details and switching service providers. Members are also supportive of leveraging and building on the existing regulatory framework for information sharing, minimising the compliance burden for those already integrated with the CDR and focusing on the instruction layer. However, FinTech Australia also wishes to ensure that the Draft Legislation enabling action initiation is carefully drafted in a way which is flexible and able to adapt to new use cases and models over time.

We also seek greater clarity around overall timeframes for implementation and the sequencing of consultation for different action types and the interaction of payment initiation with simultaneous Treasury workstreams on a payments licensing framework and the development of a strategic plan for the payments ecosystem. The overlay of the NPP and PayTo with CDR payment initiation also remains a concern for some members. Although members understand these can be complementary in the long-term, there are concerns about duplication of key use cases and inconsistent consent flows which might inhibit uptake in the short-term.

Some key items which FinTech Australia wishes to raise in relation to the Draft Legislation include:

- the definition of accredited action initiators (AAI) being limited to accredited persons (thus not allowing other CDR participants, such as CDR Representatives, to be involved) To ensure consistency across the current CDR Rules, ADRs as well as their CDR representatives should be included in the accredited action initiator definition. It is critical that the Draft Legislation is developed in a way that promotes, rather than stifles, participation, growth and innovation in the CDR regime;
- the ability, where permitted under the CDR Rules, for action service providers (ASP) to charge fees;
- the initial focus on payments, somewhat to the exclusion of other actions which may deliver similar or even better consumer outcomes (such as product switching). The initial emphasis on payments is appropriate, given the prevalence of use cases in this area. However, FinTech Australia encourages Treasury to expand the initial roll out emphasis to other use cases, such as product switching (e.g. between bank accounts or loan products) where the CDR regime and action initiation can provide a significantly improved consumer experience as compared to what is currently available.



We set out below our comments in relation to some of the key issues arising out of the Draft Legislation.

## 1. **Accredited Action Initiator definition**

Under the Draft Legislation, a person is an accredited action initiator for a type of CDR action if: (a) the person is an accredited person; and (b) the person's accreditation authorises the person to initiate that type of CDR action.

By limiting the scope of action initiators to only accredited persons, this will severely limit the participants who can be involved. Shortly after the initial CDR roll out, it was acknowledged that greater flexibility was needed and the Act and CDR Rules were amended to contemplate participation by entities without direct accreditation. This flexibility was vital to open up CDR Access. In the same way, limiting the AAI definition to accredited persons will create a significant barrier to entry for smaller fintechs who may not have the resources to become accredited. As a direct consequence, this will stifle and discourage innovation and creativity, which will ultimately inhibit the growth and potential of the CDR regime.

Instead, we encourage the Treasury to adopt a consistent approach with the CDR Rules, by allowing CDR representatives, for example, to be action initiators as well. This will allow smaller fintech startups to participate in action initiation, without having to go through the costly and lengthy accreditation process. At the same time, consumers will continue to be protected as the CDR principal will remain liable for all the actions of the CDR representative. In this situation, it may be reasonable for the AAI Principal to undertake additional assessments on the CDR representative in relation to actions, so access to data sharing and each action would be managed separately.

Some members also suggested Trusted Advisors should be allowed to send instructions on a consumer's behalf with the consumer's consent to further increase the value of their service to consumers. Limiting the AAI definition so only unrestricted ADRs can send action instructions will significantly limit the use cases, innovation and the value to consumers that would otherwise be possible.

Members raised a query about a potential situation where a consumer could instruct the ASP directly who would then instruct the AAI (e.g. in a payment situation it could be that a consumer instructs their retail merchant to request a payment in return for goods/services). We also query whether practically an ADR can be different to an AAI such that the former have a contract with the latter to perform each function.



## 2. The regulation of fee charging

FinTech Australia's members are concerned with the lack of clarity or framework as to how fee charging will be regulated. FinTech Australia notes the difficulty of commenting on this point, as the draft Rules which will be needed to provide greater clarity over how fees will be regulated have not yet been prepared. We look forward to receiving more detail around fee charging for different action types as implementation progresses. With limited detail, FinTech Australia member views varied significantly but all members supported a competitive environment which allows small fintechs to participate.

Some FinTech Australia members encourage the Treasury to either restrict charging fees by ASPs for receiving instructions through the CDR or ensuring that a more robust framework around fee charging is in place. The anti-discrimination principles in the Draft Legislation will be of limited value if ASPs are able to charge unlimited fees in respect of receiving instructions. It will have the same effect as differential implementation pricing.

Currently, there is no regulation of the fees that can be charged by ASPs for just receiving instructions. As such, this may result in price discrimination. For instance, if an ASP charges a fee to an AAI, CDR action initiation may not be a price competitive option for consumers and they may not choose to use action initiation through CDR as a result.

Some members suggested a framework to standardise how fees can be charged by an ASP with consideration given to the fees for a CDR action relative to other channels. Similarly, some members also supported AAIs having more certainty about consistent fees applying across all AAIs for specific actions. Without some degree of standardisation in pricing to provide certainty, it was said it would be difficult for some prospective AAIs and their clients to invest in integrating with action initiation under the CDR.

Other members supported a more flexible approach which allows the market to apply competitive pressure and ensure the CDR can deliver sustainable commercial returns to ASPs. Given the rigid and prescriptive nature of the broader CDR, it was suggested the competitive dynamic created by fee charging would encourage more participants and greater buy-in from ASPs. However, they also noted the approach might vary and there might be some need for standardisation once action types are rolled out and use cases are better understood.

FinTech Australia acknowledges that the ACCC may have powers to regulate certain fee charging practices under existing consumer protection legislation. However, these powers have their limitations and, in the context of a highly regulated sector, a more tailored approach is warranted.



In addition to the potential discriminatory implications of having an unregulated fee charging framework, each AAI may have to establish and manage multiple separate fee agreements with many different ASPs (i.e. bilateral arrangements may still be needed to avoid discriminatory CDR pricing). Consumers will suffer as a result of the increased administrative costs which this would involve. This complexity will also disproportionately disadvantage smaller providers with less resources.

Further, in relation to payments, some members raised concerns that the cost of bringing in CDR instructions may not be easily rationalised in an already highly competitive and complex payments market. Commercialisation and uptake may be more successful in relation to actions that provide services that are not already being performed.

### **3. Prioritisation of use cases for action initiation**

FinTech Australia understands that it is likely that the Treasury will be prioritising payments as the first action initiation use case. This is understandable given the prevalence of consumers making payments every day.

However, FinTech Australia encourages Treasury to apply a broader lens to the banking sector and to broaden the focus to other initial use cases, including product switching (e.g. bank accounts, loan products). This is an area which could provide a materially different consumer outcome than is currently available and may, in itself, be a key driver for consumer interest in CDR. Less complex action types and use cases may also provide learnings and reveal pain points to support the implementation of more complex actions like payments.

To that note, however, there appears to be a lot of complexity around product switching which do not seem to be accounted for in the Draft Legislation or other materials. For instance, if consumers want to switch bank accounts, there will likely be AML/KYC checks before a consumer can switch to a new bank account, and so the CDR framework would need to either include mechanisms for sharing this data or provide for an "outside CDR" pathway for this to occur.

If payment initiation is progressed as a priority, FinTech Australia supports a considered consultation process on the specifications before an action type declaration is made. CDR payment initiation will undoubtedly be a key driver for consumer uptake and understanding of the CDR in the long-term. However, some members remain concerned about how it will interact with the NPP and PayTo.

PayTo is still nascent and many use cases will not be understood until it is more widely embedded and operational across ADIs. However, it is likely there will be overlap and duplication across many use cases. PayTo already allows for similar payment initiation functionality and covers similar use cases (e.g. making fast payments and moving funds between institutions). Without consistency of consent flows and user



experience across both, it is possible the rollout of PayTo will inhibit the uptake of CDR payment initiation.

Although CDR payment initiation is intended to be payment system agnostic, the NPP will be the only suitable rails in the near term. Consideration should be given to how CDR action initiation can augment and boost consumer engagement with the existing NPP infrastructure. For example, the NPPA has [previously suggested](#) expanding CDR data sets to include PayTo mandates. Some members also suggest making the existing NPP consent frameworks interchangeable with analogous CDR consents.

FinTech Australia encourages the Government to continue to work closely with payment service providers and ADRs to ensure these forms of payment initiation are both successful, complementary, and create a seamless consumer experience.

Significant reform of payments is also progressing alongside CDR action initiation, with consultation soon expected on a payments licensing framework and the strategic plan for the payments ecosystem. FinTech Australia hopes CDR payment initiation will be considered through these processes to provide certainty to the many payments service providers which will likely be licensed under that framework as well as an AAI under the CDR framework. There is a significant risk of unnecessary complexity and duplication in the payments ecosystem if service providers must engage with ASIC for a payments licence and the ACCC for CDR accreditation.

Some members noted that the implementation and adoption rates of PIS in the UK is not necessarily analogous when considering the context of the existing payment systems in the UK and the investment in industry-wide frameworks like the NPP in Australia.

#### **4. ASPs should be required to provide standardised action initiation outcome responses to AAls**

FinTech Australia and its members believe that ASPs should be required to notify AAls with the required details of the outcome of each instruction. This is particularly important for AAls as they are the consumer facing entities through which consumers request actions to be completed on their behalf. As such, AAls require detailed outcomes of each action initiation from ASPs in order to provide a smooth customer experience. Without this information, AAls (and therefore consumers) will not know if a particular action failed or succeeded (or how and when it failed or succeeded).

Beyond just requiring ASPs to report to AAls of action initiation outcomes, these responses should be standardised and, where possible, consistent with existing practices around response codes and messages relevant to particular actions. This will ensure that consumers' experiences are consistent across platforms, and this approach will be more efficient and effective compared to establishing new CDR-specific code standards.



Separately, some members raised concerns about performance discrimination and proposed that ASPs should be required to act on an action instruction in the most efficient way possible. For example, if a bank is real-time payments enabled, a payment instruction should be actioned through this capability rather than a non-real-time alternative.

## **5. Privacy safeguards and consent mechanism**

In relation to the proposed privacy safeguards, members are supportive of the approach to create a clear delineation between the regulatory obligations at the CDR specific instruction layer and the action layer. FinTech Australia supports the point made in the Privacy Impact Assessment about developing a targeted education and guidance to support compliance and assist participants with different levels of privacy maturity, resourcing and ability to meet the increased obligations being introduced for action initiation. Some members also called for privacy safeguards to reflect the risks associated with the data flows unique to each action type or action use case. For example, if an AAI makes a simple action request which does not require CDR data in excess of what is needed to perform the action, more streamlined safeguards could apply.

FinTech Australia also agrees that under action initiation consumers will face additional decision-points and it will be more difficult to understand the consequences of an authorisation. User testing could be considered to ensure the current consent mechanisms remain effective and do not result in consumers disengaging and using alternative channels, particularly for payments, with more streamlined and user-friendly consent mechanisms.





## About FinTech Australia

FinTech Australia is the peak industry body for the Australian fintech industry, representing over 400 fintech Startups, Hubs, Accelerators and Venture Capital Funds across the nation. Our vision is to make Australia one of the world's leading markets for fintech innovation and investment.

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