

21 October 2022

Consumer Data and Digital Division
Treasury
Langdon Cres
Parkes ACT 2600

By email to data@treasury.gov.au

Dear Treasury

Submission on the Consumer Data Right (CDR) Action Initiation amendments

Thank you for the opportunity to comment on Treasury's exposure draft for the *Treasury Laws Amendment (Measures for Consultation Bill) 2022: Consumer Data Right – Implementing Action Initiation (the CDR Action Initiation amendments)*.

We offer the following observations on the proposed amendments, based on our experience as an OAIC accredited External Dispute Resolution (EDR) scheme and the EDR scheme for the telecommunications sector.

1. Ministerial declarations about actions should include sector-specific parameters

We broadly support the proposed framework to enable the Minister to declare new action types. However, where possible, we recommend ensuring these declarations are made with sector-specific differences in mind. For example, in the telecommunications sector (and unlike the banking sector), consumers do not have 'joint' accounts, and so any declared action types involving account holders should be written with this in mind.

One way to achieve this would be to include a requirement for the Ministerial declarations to specify when actions or definitions within declarations exclude particular sectors, in addition to the requirements to specify Action Service Providers (ASPs).

2. We would welcome further guidance about EDR complaint pathways about AAIs and ASPs

The CDR Action Initiation amendments propose Accredited Action Initiators (AAIs) and ASPs to be included in the existing CDR requirements to join an EDR scheme. While we support these amendments in principle, we would welcome additional guidance about how this would operate in practice, as situations may arise where it is unclear which EDR scheme should handle a complaint about an AAI or ASP.

For example, if the Minister declares 'cancelling a service' as an action type under the proposed rules, a consumer may ask their AAI to cancel their telecommunications service. If

their service is not subsequently cancelled, the consumer could potentially raise an EDR complaint against their AAI through the Australian Financial Complaints Authority (AFCA), their ASP (through our scheme), or both. This presents complications for a scenario that would traditionally be handled by our scheme.

Given the complexity of these rules, a consumer is unlikely to understand which party or stage of the process led to their complaint (for example, the consumer cannot know whether the AAI failed to initiate an action, or the ASP failed to comply with that action). This means consumers are likely to experience confusion about which EDR scheme can handle their complaint.

There may also be situations where a consumer has a complaint involving two or more AAls or ASPs. Depending on the nature of the complaint, resolving it expediently may require extensive co-ordination between the AFCA and the TIO. Your guidance on the EDR scheme membership requirements and the practical operation of the obligations of AAI and ASPs will be key to ensuring a timely and positive complaint handling process for the impacted consumer.

We continue to support a 'no wrong door' approach to dispute resolution. As CDR is expanded to the telecommunications sector, we will work with AFCA to ensure consumers are not unfairly burdened by the structure of the CDR EDR arrangements.

3. It may be beneficial for consumer representatives to participate in action initiation

In our complaint handling experience, accessibility is improved when the regulatory framework explicitly allows consumers to appoint authorised representatives to act on their behalf. This particularly applies to consumers with vulnerabilities, as they may not have the capacity or confidence to discuss their services with their services providers. These consumers may prefer to have a trusted family member or advocate (e.g. a financial counsellor) manage their affairs.

It is not clear whether the CDR regime and CDR rules in their current form allow consumer representatives to participate in action initiation on a consumer's behalf. This is because the current definitions applicable to consumers under the CDR regime do not appear to address consumer representatives.

Where representatives could be catered for without significantly increasing complexity, we would support changes to CDR Action Initiation to address this. As the explanatory materials indicate, the actions taken by ASPs are not intended to be regulated by the CDR regime, so it may be possible to reconsider catering for representatives dealing with AAls.

4. We support a simplified approach to privacy protections

We encourage Treasury to maintain strong privacy protections for consumers as the CDR expands, including the action initiation mechanism.

We understand that not all CDR data will be considered personal information, but that some CDR data will be considered both personal information and CDR data.

It is my view that when an ASP is handling CDR data that is also considered personal information, privacy safeguards should apply. This approach may also make it less burdensome for ASPs and AAls to comply with additional obligations under the CDR regime.

We look forward to seeing the final form of the CDR Action Initiation mechanism, and to commenting on any future developments in this space.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Cynthia Gebert', with a long, sweeping horizontal flourish extending to the right.

Cynthia Gebert
Telecommunications Industry Ombudsman