



Consumer Data Right in the telecommunications sector

CDR rules and standards design paper

Submission by the Australian Communications Consumer Action
Network to the Treasury and Data Standards Body

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About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards communications services that are trusted, inclusive and available for all.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will represent the views of its broad and diverse membership base to policy makers, government and industry to get better outcomes for all communications consumers.

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1. Executive Summary

The Australian Communications Consumer Action Network (ACCAN) thanks the Treasury and Data Standards Body for the opportunity to comment on the *Consumer Data Right rules and standards design paper for the telecommunications sector*.

ACCAN is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards communications services that are trusted, inclusive and available for all.

As we have previously submitted,^{1 2} ACCAN is supportive of the introduction of the Consumer Data Right (CDR) regime across the telecommunications sector. It is widely understood that the telecommunications sector offers a wide range of complex and competing products and services to consumers. It is also widely known that issues of information asymmetry can put consumers at a disadvantage when looking for, and when choosing appropriate services. ACCAN has argued for several years for free, trusted, and independent comparison tools to support telecommunications consumers to make more informed choices.³ ACCAN expects that a well-considered CDR regime in the telecommunications sector will mitigate some of these issues and provide consumers with greater confidence and safety when making choices and signing up for services.

However, ACCAN is keen to ensure that the development of the CDR in the telecommunications sector continues to be informed by the lived experiences of consumers, to make sure that this regime is as useful as possible for end users. Vulnerable consumers potentially have much to gain from the CDR, but to succeed the scheme will need to conduct meaningful, targeted consultation with them throughout the process. Proper consultation will ensure that the CDR scheme benefits all consumers.

ACCAN notes that this is an informal design paper and looks forward to providing further feedback as the consultation progresses. This submission will respond to select questions from the design paper where ACCAN has expertise or concerns about consumer benefits or harms.

¹ ACCAN 2022, *Consumer Data Right (CDR) Telco Sector Designation*, available: <https://accan.org.au/accans-work/submissions/1967-consumer-data-right-cdr-telco-sector-designation>

² ACCAN 2021, *Consumer Data Right telecommunications sectoral assessment*, available: <https://accan.org.au/accans-work/submissions/1915-cdr-telco-assessment>

³ ACCAN 2020, *ACCAN response to Consumer Safeguards Review Part C / Choice and Fairness*, available: <https://accan.org.au/files/Submissions/2020/ACCAN%20Submission%20to%20Consumer%20Safeguards%20Review%20Part%20C%20V.1.1.pdf>

1.1 Key Recommendations

Recommendation 1: ACCAN recommends that all CSPs be included in the CDR.

Recommendation 2: ACCAN recommends that once Treasury has drafted a document that lists classes and sub-categories of telecommunications products it should consult with stakeholders, including consumer advocacy groups, to ensure that the whole breadth of data is represented.

Recommendation 3: ACCAN recommends that all publicly offered products should be included in the CDR.

Recommendation 4: ACCAN recommends that the CDR eligibility threshold for small business be set at a maximum annual spend of \$70,000 on telecommunications goods and services.

Recommendation 5: ACCAN recommends that Treasury and Data Standards conduct a thorough discovery consultation to identify any additional data sets that may benefit consumers. This process should be reviewed regularly to take advantage of the latest market developments.

Recommendation 6: ACCAN recommends that hardship data be excluded from the CDR.

Recommendation 7: ACCAN recommends that consumers be able to access their historical data from an account whether it is closed or not.

Recommendation 8: Given risks with account sharing, ACCAN recommends careful consideration and consultation of how authorised representatives and end users interact with the CDR scheme.

2. Responses to CDR rules and standards design paper

2.1 Scope of data sharing in the telecommunications sector

1. Do you support establishing a threshold for mandatory participation in CDR for the telecommunications sector (i.e. recommending a de minimis threshold)? How should such a threshold be established (for example, should it be based on the number of customers a carrier or CSP has)?

ACCAN does not support a de minimis threshold. ACCAN's view is that all carriage service providers (CSPs) should be included in the CDR. All service providers should participate in both consumer data sharing obligations and product data sharing obligations to give consumers the most choice and best use of their data. Including all service providers in the CDR scheme ensures that smaller telecommunications providers will be discoverable in recommendation tools and that specialised services can be matched to consumers who might use them.

Recommendation 1: ACCAN recommends that all CSPs be included in the CDR.

4. How can we best describe the core classes or types of phone, internet and broadband products across carriers and CSPs to support meaningful product comparison and other use cases, and to ensure products are adequately described for the purposes of consumer engagement and consent?
14. How may usage data differ across products (for example, unlimited compared to limited products)?

Broadly, these questions are asking how telecommunications products are classified, marketed and used. ACCAN recommends that once Treasury has drafted a document that lists classes and sub-categories of telecommunications products it should consult with stakeholders, including consumer advocacy groups, to ensure that the whole breadth of data is represented. Product classes and sub-categories should be broad enough to allow quick and easy comparison while having enough depth to provide consumers with as granular a comparison as possible.

An example where product classes need to be broad but flexible is the difference between wireless broadband (e.g. 4G and 5G) and fixed broadband (e.g. NBN FTTP). While there are meaningful differences between the delivery modes, there are indications that service providers may position wireless broadband as a competitor to fixed broadband. Therefore, it would be beneficial for consumers to be able to directly compare them.

Subcategories also require careful consideration and consultation. For example, a tool would need to not just separate pre and post-paid mobile services but for many customers should also factor in whether the service offers free calls to 1300 and 1800 numbers. These numbers may be fundamental to access government and support services.

Another example of metering and peak and off-peak shaping making an enormous difference to consumers is NBN's Sky Muster Plus service. Sky Muster Plus provides unmetered internet access to

certain classes of activities at select times. NBN Co recently announced changes to these times.⁴ It is important that peak and off-peak periods are clear and easy to understand. Comparison tools would therefore need to account for what activities are metered and peak and off-peak shaping of internet speeds.

These are only a few examples of the need for consideration and consultation to develop useful classes and sub-categories to offer consumers flexible, useful comparison and choice. ACCAN expects that further examples will arise during consultations with consumers.

Recommendation 2: ACCAN recommends that once Treasury has drafted a document that lists classes and sub-categories of telecommunications products it should consult with stakeholders, including consumer advocacy groups, to ensure that the whole breadth of data is represented.

- 5. Do you support excluding products offered to enterprise customers from product reference data sharing? Should this exclusion be limited to products that are not publicly available and are highly negotiated?
- 6. Are there any sectoral considerations in relation to limiting product data sharing to publicly offered products that we should be aware of?
- 29. Should the definition of eligible consumer for the telecommunications sector exclude some or all types of enterprise customers? If some enterprise customers should be excluded, how should the rules distinguish between eligible and ineligible enterprise customers?

Broadly these questions are asking about the inclusion of larger business customers and enterprise products.

Recommendation 3: ACCAN recommends that all publicly offered products should be included in the CDR.

ACCAN recommends that the CDR eligibility threshold be set at a maximum annual spend of \$70,000 on telecommunications goods and services to reflect the needs of small businesses operating in the digital economy. ACCAN understands that the eligibility of small business consumers to participate in the CDR may be influenced by the definition of consumer in the *Telecommunications Consumer Protections (TCP) Code*. The TCP Code⁵ defines a consumer as:

- a) an individual who acquires or may acquire a Telecommunications Product for the primary purpose of personal or domestic use and not for resale; or
- b) a business or non-profit organisation which acquires or may acquire one or more Telecommunications Products which are not for resale and, at the time it enters into the Customer Contract, it:

⁴ BIRRR 2022, *BIRRR MEDIA RELEASE 22nd March 2022 WIN FOR BUSH ADVOCACY – nbn TO MAKE TRANSFORMATIVE CHANGES TO BUSH BROADBAND*, <https://birrraus.com/2022/03/22/birrr-media-release-22nd-march-2022-win-for-bush-advocacy-nbn-to-make-transformative-changes-to-bush-broadband/>

⁵ Communications Alliance 2019, *C628:2019 Telecommunications Consumer Protections (TCP) Code*, available: <https://www.commsalliance.com.au/Documents/all/codes/c628>

(i) does not have a genuine and reasonable opportunity to negotiate the terms of the Customer Contract; and

(ii) has or will have an annual spend with the Supplier which is, or is estimated on reasonable grounds by the Supplier to be, no greater than \$40,000, or, in the 5 months following Code commencement, an annual spend of \$20,000.

ACCAN’s small business members have recommended that the figure for the annual spend on telecommunications services be increased to \$70,000.⁶ This figure better reflects the Australian Government’s Digital Economy Strategy goals of 95% of SME’s using e-commerce tools and all new businesses being “born” digital.⁷

In past submissions⁸ ACCAN has also questioned the wording of *consumer* in the TCP Code,⁹ relating to the “opportunity to negotiate the terms of the consumer contract” (p.9). We suggest that “reasonable opportunity” be changed to *reasonable capacity*, as this more accurately reflects the reality that most small businesses do not have access to in-house legal advice and cannot afford external legal advice to negotiate a contract.

Recommendation 4: ACCAN recommends that the CDR eligibility threshold for small business be set at a maximum annual spend of \$70,000 on telecommunications goods and services.

- 8. Are there any considerations specific to the telecommunications sector that we should be aware of in relation to customer datasets as outlined in this paper?
- 9. Should information about whether a customer’s account is associated with a hardship program be excluded?
- 15. To what extent can insights be drawn about a consumer based on their usage data? Is usage data of interest to ADRs to support use cases (even with respect to plans with unlimited usage)?
- 20. If accessibility data were to be included as required product data, what types of accessibility data could be shared?

Broadly, these questions relate to opportunities and risks of including certain kinds of consumer data in the CDR.

ACCAN supports the inclusion of consumer data and product data that can empower communications consumers. As noted in our previous submissions, the CDR should only benefit consumers and not erode their existing position. ACCAN’s response to the CDR Telecommunications Sectoral

⁶ ACCAN 2018, *Telecommunications (Consumer Complaints Handling) Industry Standard 2018*, available: https://accan.org.au/ACMA%20Complaints%20Handling%20Standard_ACCAN%20submission%20180418.pdf

⁷ For more information, see: <https://digitaleconomy.pmc.gov.au/sites/default/files/2021-05/digital-economy-strategy-on-a-page.pdf>

⁸ ACCAN 2018, *Telecommunications (Consumer Complaints Handling) Industry Standard 2018*, available: https://accan.org.au/ACMA%20Complaints%20Handling%20Standard_ACCAN%20submission%20180418.pdf

⁹ Communications Alliance 2019, *C628:2019 Telecommunications Consumer Protections (TCP) Code*, available: <https://www.commsalliance.com.au/Documents/all/codes/c628>

Assessment¹⁰ in 2021 outlined that mandatory data should at minimum include the following data sets:

- Customer contact information
- Service information
- Rate plan
- Fees and charges
- Contract information
- Hardware
- Usage information
- Network information
- Technology information
- Internet speeds
- Fault information
- Service details
- Internet speed
- Contract information
- Charges and fees
- Network coverage
- Service quality.

In addition, ACCAN recommended the following data sets be included in the CDR scheme to ensure individualised recommendations drive real consumer choice and inclusive competition.

- Low-income products
- Complaints data
- Discounts available
- Bundled options
- Reliability
- Special services i.e., Priority Assistance, Disability Equipment Programs

The datasets listed above should be taken as a minimum. ACCAN recommends a thorough discovery consultation with the telecommunications industry to identify any additional data sets that may benefit consumers if included in the CDR. Given the dynamic nature of the telecommunications industry, ACCAN recommends that the included sets be reviewed regularly as products and services evolve. This will ensure that consumers can benefit from the latest developments in the market.

Recommendation 5: ACCAN recommends that Treasury and Data Standards conduct a thorough discovery consultation to identify any additional data sets that may benefit consumers. This process should be reviewed regularly to take advantage of the latest market developments.

Regarding question nine; should information about whether a customer’s account is associated with a hardship program be excluded. ACCAN recommends that hardship data be excluded from the CDR.

¹⁰ ACCAN 2021, *Consumer Data Right (CDR) Telecommunications Sectoral Assessment*, available: <https://accan.org.au/files/Submissions/2021/ACCAN%20CDR%20telco%20assessment%20SUBMISSIONAugust%202021.pdf>

ACCAN has previously submitted that one of the key potential benefits of the CDR “is the ability to provide low-income consumers with independent and reliable advice on how to reduce their telecommunications expenses”.¹¹ However, ACCAN is concerned that including information about a customer's access to hardship could be used against them and limit their access to services. ACCAN reiterates that this data should only be used where it would benefit the consumer with choice and access to specialised services. As ACCAN has previously recommended, the CDR should be accompanied by “an extensive consumer education campaign to ensure that those consumer cohorts understand how they can benefit from the CDR and how their privacy and security will be protected”.⁸

Recommendation 6: ACCAN recommends that hardship data be excluded from the CDR.

16. Do you support the time frame of requiring carriers and CSPs to disclose consumer data for up to the past 2 years, subject to the earliest holding day of 1 January 2022?

17. Are there any considerations specific to the telecommunications sector that we should be aware of in relation to historical data?

ACCAN supports the requirement for data holders to keep and disclose consumer data for two years. As the design paper notes, the telecommunications sector is already required to hold certain data for two years by the *Telecommunications (Interception and Access) Act 1979* (Cth) (TIA Act) and the *Telecommunications (Consumer Complaints) Record-Keeping Rules 2018*.

18. Do you support the inclusion of closed account data for customers with an open account?

19. Do you have any comments on the approach to sharing closed account data – for example, when a request could be made and how much data on a closed account could be shared?

ACCAN supports all avenues for consumers to access and make use of their historical data including closed accounts. Given that the design paper suggests a two-year data retention period, consumers should be able to access any available data from an account which has been closed within the last two years. This historical data should be made available at no cost to the consumer.

Recommendation 7: ACCAN recommends that consumers be able to access their historical data from an account whether it is closed or not.

2.2 Eligible CDR consumers in the telecommunications sector

24. What kinds of ‘secondary users’ (users with account privileges, other than the account holder) exist in telecommunications? You may wish to comment generally on account structures and/or the prevalence of additional users with account privileges, and whether this is product or customer-type specific. Are user accounts

¹¹ ACCAN 2021, *Consumer Data Right (CDR) Telecommunications Sectoral Assessment*, available: <https://accan.org.au/files/Submissions/2021/ACCAN%20CDR%20telco%20assessment%20SUBMISSIONAugust%202021.pdf>

structured the same across different product types? If so, does this affect how secondary or other users should be defined?

27. Where account holders may be able to access consumer data about third party users of the account (for example where an employer is an account holder for an employee's product or service), should data not be shared in these circumstances? If not, how can these types of accounts be excluded?

31. What are the existing types of permissions for joint accounts or services and how are they managed over time?

Broadly these questions refer to account structures in telecommunications and the opportunities and risks of incorporating those structures into the CDR.

According to the *Telecommunications Numbering Plan 2015* only one person, the Customer, can be issued a phone number.¹² However, the Customer can designate an "authorised representative" who can make changes or incur charges on their behalf on that account. In other cases, a Customer may give a mobile phone to another person to use; for example a parent may give a phone to a child. In these instances, while the child is the end user of the phone, the parent would remain the Customer.

As noted in the Communications Alliance *Assisting Customers Experiencing Domestic And Family Violence* Industry Guideline, such "legal distinctions can be exploited by perpetrators" of domestic and family violence (DFV).¹³ The Guideline provides several initial considerations to illustrate the kinds of issues the CDR scheme must consider in relation to telecommunications account structures.

Section nine of the Guideline in particular outlines the steps carriers can take to facilitate a DFV survivor who is not the Customer to keep a phone number when leaving a perpetrator of DFV. This section notes that the survivor may not be the Customer but is the end user of a number. When this process is completed, the number is then transferred to a new account with the original end user as the Customer.

It should also be noted that perpetrators of DFV may also be authorised representatives and use that status to control the person experiencing DFV, or to commit financial abuse.

Using the example above, ACCAN recommends careful consideration and consultation of how authorised representatives and end users interact with the CDR scheme. As ACCAN argues throughout this submission, CDR should only benefit consumers and as such, the data made available through this regime must not place them at greater risk of DFV.

Recommendation 8: Given risks with account sharing, ACCAN recommends careful consideration and consultation of how authorised representatives and end users interact with the CDR scheme.

¹² For more information, see: <https://www.legislation.gov.au/Details/F2015L00319>

¹³ Communications Alliance 2018, *Industry Guideline G660:2018 Assisting Customers Experiencing Domestic and Family Violence*, available: https://www.commsalliance.com.au/__data/assets/pdf_file/0003/61527/Communications-Guideline-G660-Assisting-Customers-Experiencing-Domestic-and-Family-Violence.pdf

28. Should 'offline customers' (i.e. customers who do not have online access to the relevant account) be considered eligible CDR consumers?

ACCAN fully supports all consumers having access to the benefits of CDR. ACCAN notes that consumers who are offline may be those who are able to benefit most from the comparison tools that the CDR may provide. We note that telecommunications services may be sold in-store or over the phone. Not all telecommunications services, such as fixed voice services, provide consumers with internet access.

30. Are the existing verification and authentication mechanisms in the telecommunications sector strong enough to protect primary and secondary users for CDR data sharing purposes?

ACCAN generally supports the existing verification and authentication mechanisms in the telecommunications sector with qualifications that we have raised previously elsewhere.

In a recent submission regarding the ACMA Customer ID Determination, ACCAN observed that "telecommunications consumers have been placed at significant risk as a result of fraudulent activity conducted, without their knowledge or approval, on accounts they hold with telecommunications and other service providers".¹⁴ The submission notes that verification must be implemented carefully because vulnerable consumers are most at risk of fraud but are also more likely to face barriers from additional security mechanisms. It argues that authentication schemes must be simple to use and flexible because some people, owing to disability, homelessness, cultural and linguistic barriers or financial difficulty, conduct their telecommunications business by use of a third-party such as a legal representative or financial counsellor. This flexibility must extend to sources of identification, and consideration needs to be paid to people without drivers' licences, birth certificates or fixed addresses.

However as mentioned previously regarding account structures, the CDR scheme must be careful to pay due consideration to the abuse potential of verification and authentication mechanisms, as noted in the Communications Alliance *Assisting Customers Experiencing Domestic and Family Violence Industry Guideline*. ACCAN continues to strongly encourage those developing authentication mechanisms to undertake targeted consultation with DFV experts to understand the possible impact of the CDR on DFV survivors.¹¹ It may be appropriate that the CDR process sets out separate authentication channels for consumers who self-identify as experiencing DFV.

32. Do you have any feedback or further considerations specific to the telecommunications sector in relation to consumer dashboards?

ACCAN notes that consumer dashboards must be accessible for all consumers and easy to use. All signatories to the *Telecommunications Consumer Protections (TCP) Code* must already "communicate with a Consumer in a way that is appropriate to the Consumer's communications needs, including Consumers with a disability".¹⁵ The TCP Code also states that suppliers must have regard to "Web Content Accessibility Guidelines, developed by the World Wide Web Consortium (W3C)" for web resources. ACCAN recommends that the CDR extend the same accessibility mandates outlined in the TCP Code.

¹⁴ ACCAN 2021, ACMA Customer ID Determination, available: <https://accan.org.au/accans-work/submissions/1966-acma-customer-id-determination>

¹⁵ Communications Alliance 2019, *C628:2019 Telecommunications Consumer Protections (TCP) Code*, available: <https://www.commsalliance.com.au/Documents/all/codes/c628>

2.3 Other design issues for the telecommunications sector

33. Does the cross-sectoral approach to white labelling as outlined in this paper suit the telecommunications sector? Why/why not?

34. If all brand owners are carriers or CSPs who have the contractual relationship with the consumer, are white labelling rules required for the telecommunications sector?

ACCAN supports the existing arrangement that the CSP that has the contractual relationship with the consumer is considered responsible for providing product and consumer data. However, ACCAN requests further clarification about provisions where data holders may enter agreements with customers to shift the obligation of providing product or consumer information to the white label data holder. ACCAN has concerns that these arrangements might be used to obfuscate who is responsible for discharging CDR obligations on behalf of a customer.

35. For internal dispute resolution, should existing sector-specific IDR provisions (such as the Complaints Handling Standard) be leveraged for data holders who become ADRs sharing telecommunications data?

ACCAN supports the application of the *Telecommunications (Consumer Complaints Handling) Industry Standard 2018* and the *Telecommunications (Consumer Complaints) Record-Keeping Rules 2018* to accredited data holders (ADRs) as a starting point to ensure that complaint handling and resolution is fast and simple to use for consumers. As ACCAN has previously submitted, there is room for improvement with the existing complaints handling processes to reflect the needs and expectations of today's consumers.¹⁶

38. Would you support a phased approach to the application of CDR obligations for the telecommunications sector? Why/why not? If you support a phased approach, how should it be phased?

ACCAN recommends that both product and consumer data CDR obligations be applied to all CSPs simultaneously. As discussed earlier in relation to question one, ACCAN believes that including the greatest number of providers in the scheme will help consumers find services that best meet their needs. Excluding smaller providers risks not just reducing choice for consumers but also providing discoverability advantages to larger players that are included in comparison tools.

¹⁶ ACCAN 2018, *Telecommunications (Consumer Complaints Handling) Industry Standard 2018*, available: https://accan.org.au/ACMA%20Complaints%20Handling%20Standard_ACCAN%20submission%20180418.pdf