



21 October 2019

Maddocks
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Via email: cdripia@maddocks.com.au

Attention: Katherine Armytage, Caroline Atkins

The Australian Communications Consumer Action Network (ACCAN) thanks Maddocks for the opportunity to contribute to its draft privacy impact assessment (PIA) report to the Department of the Treasury regarding the initial implementation of the Consumer Data Right (CDR) regime.

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. ACCAN has made previous submissions to the Treasury and the Australian Competition and Consumer Commission (ACCC) regarding the CDR regime, and will continue to monitor its implementation across different sectors, with a particular focus on the telecommunications sector.

Although we acknowledge that this PIA has been conducted as a 'point in time' analysis, and that CDR frameworks and documentation continue to evolve, ACCAN directs Maddocks to our submission to the *Treasury Laws Amendment (Consumer Data Right) Bill 2018* consultation,¹ in which we outlined a number of our concerns. Revisions to the CDR legislation have since addressed some of our initial concerns; however we remain keen to ensure that the CDR regime offers sufficient privacy safeguards to prevent consumers from being exposed to risks of harm. Our specific concerns remain:

- The extent to which the legislation addresses entrenched information asymmetries;
- The potential for consumer data to be used for anti-competitive conduct; and
- The scope of consumer privacy protections, specifically in relation to third parties.

We acknowledge that the scope of this draft PIA prevents consideration of the issue of price discrimination and other such concerns, such as exclusive access to goods and services. Generally speaking, however, ACCAN concurs with the recommendations made in the PIA report, and offers our feedback on each of these in turn.

¹ Available: <https://accan.org.au/our-work/submissions/1536-consumer-data-right-submission>

Australian Communications Consumer Action Network (ACCAN)

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Recommendation 1: Further updates to this PIA

ACCAN agrees that the PIA should be treated as a 'living document' that will continue to be updated as the legislative framework of the CDR is updated, and that the criteria for further privacy impact assessment should be clearly defined. Furthermore, we strongly agree that the PIA should be reconsidered prior to the CDR regime being applied to different sectors. ACCAN is particularly keen to ensure that the PIA is reconsidered in light of any changes to the CDR regime to facilitate its application to the telecommunications sector. ACCAN is equally concerned to ensure that further consideration be given to the privacy impact of any changes to the application of the Privacy Safeguards and/or Australian Privacy Principles (APPs) in different sectors.

Recommendation 2: Further guidance on operation of the CDR regime

ACCAN agrees with the need for further guidance on the operation of the CDR regime, especially given the complexity of the CDR legislative framework. We believe it is likely that CDR Consumers and other entities within the CDR regime may not always understand the application of the APPs and the Privacy Safeguards, the obligations at play, when CDR data is governed by which protections, and how the APPs and the Privacy Safeguards interact. We therefore strongly agree with recommendation 2. Further clarity and guidance is urgently required to ensure that Data Holders, Accredited Data Recipients, outsourced service providers and CDR Consumers all clearly understand the rights and obligations of each actor involved within the CDR regime.

It is vital that all information – not just the information relating to their specific rights and responsibilities – is made clear and accessible to CDR Consumers. This would ideally include simple information about what the CDR is, what constitutes CDR data, what rights CDR Consumers have, what protections apply to what data, and how the process works. In addition, ACCAN seconds the suggestions made by Maddocks in regards to the provision of further guidance to Data Holders and Accredited Data Recipients to outline measures they can take to ensure that their APP Privacy Policy and CDR Policy are accessible and easy for CDR Consumers to understand. We would argue that these measures should in fact be mandatory to ensure CDR Consumers can easily compare the policies of various Data Holders and Accredited Data Recipients.

While we understand that consumer education alone will not be sufficient to mitigate against privacy risks for all 'vulnerable CDR Consumers', as outlined in this recommendation, ACCAN nonetheless recommends that all information and guidance regarding the CDR be provided in plain English, and be accompanied by informative and accessible images, graphics or videos. Information about the CDR regime (including the APP Privacy Policies and CDR Policies provided to CDR Consumers) must be clear, user friendly and easy to read and understand. This is especially important in relation to information about the privacy protections available to CDR Consumers (and particularly concerning the protections afforded in relation to third parties), as well as information about complaints processes.

However, ACCAN agrees that consumer information, regardless of accessibility, is not a substitute for robust privacy protections within the architecture of the CDR regime. The complexity of the CDR regime will present many challenges for consumers, and trust and consumer take up of CDR will be eroded without appropriate privacy safeguards.

Recommendation 3: Further consideration of the Draft Rules

ACCAN agrees with the suggestion that the ACCC further amend the Draft Rules prior to their finalisation to address each of the points raised by Maddocks in recommendation 3. As we have previously commented in regards to the CDR Rules Framework,² privacy is important to consumers and ACCAN continues to be concerned that the CDR regime does not appropriately ensure consumer privacy, nor adequately protect consumer data.

We are particularly concerned to ensure that CDR Consumers are aware of the limited protections that are currently available should CDR Data be provided to a third party. While CDR Consumer awareness could be partially addressed through the provision of accessible and easy to understand information (as recommended above), ACCAN believes that these privacy risks to consumers should also be addressed through more comprehensive privacy protections. This must include clear obligations for third party recipients of CDR data. As we have previously commented:

‘In the absence of comprehensive privacy protections there is a material risk that malicious parties will seek to obtain CDR data from that part of the system with the weakest protections – third party recipients. For consumers this has the potential to result in significant loss of privacy, theft, loss or misuse of their data.’³

Once data leaves the CDR system, CDR Consumers lose the additional protections that they have been provided through the CDR regime. This is concerning, and ACCAN believes that the privacy protections and obligations that the CDR regime establishes, including the Privacy Safeguards, should be extended to apply to third party data recipients.

In addition to stringent privacy obligations for third party data recipients, ACCAN is keen to ensure that Data Holders are tested to ensure their compliance with the Draft Data Standards. Data Holders must be required to meet specific security standards, and this obligation to maintain minimum security standards must be incorporated into the Draft Rules.

Recommendation 4: CDR Consumer right to access CDR Data held by the Accredited Data Recipient

ACCAN believes that CDR Consumers should have the right to access their CDR Data while it is being held by an Accredited Data Recipient.

Recommendation 5: Draft Data Standards

ACCAN concurs with all efforts to make information about the CDR regime and the varied obligations it entails easier for CDR Consumers and CDR entities to understand. As recommended above in relation to other information, the Draft Data Standards should ideally be provided in plain English and must clearly identify which parts of the Draft Data Standards are legal requirements.

We note that since the distribution of the draft PIA, the Consumer Experience (CX) Guideline has been updated and CX Standards have been created. Importantly, the CX Standards are

² Available: <https://accan.org.au/our-work/submissions/1549-cdr-rules-framework>

³ Ibid p2.

binding data standards under the CDR Draft Rules and legislation. ACCAN is pleased at the inclusion of accessibility standards within the CX Standards, including specific references to the Web Content Accessibility Guidelines (WCAG) in relation to the Consent Model. However, the CX Standards do not explicitly state the level of WCAG compliance that is required (A [lowest level], AA, or AAA [highest level]), and it is not clear what accessibility standards apply outside of the Consent Model. These obligations must be clarified within the CX Standard or other CDR documentation. Unfortunately, references to screen-reader accessibility remain solely within the CX Guideline, and remain suggestions rather than mandatory issues to address. Broad and inclusive accessibility standards must be incorporated within the CX Standard and other CDR documentation, and must hold all CDR entities to the highest possible standard to ensure that CDR processes are as accessible as possible for those requiring accessibility supports.

Recommendation 6: Joint account holders in the banking sector

The privacy and safety of joint account holders experiencing domestic or family violence must be upheld to ensure that their CDR Data cannot be exploited or misused by people who use violence. It is particularly vital that CDR Data that provides location information be handled carefully to ensure the safety of those experiencing domestic or family violence. This will be a particularly relevant consideration when developing the CDR regime for the telecommunications sector, due to the significant amount of location information held by telecommunications providers.

ACCAN agrees that a balance must be struck between protecting the privacy of joint account holders and facilitating access to information by people experiencing domestic or family violence. Further to the recommendation made by Maddocks in relation to this, we recommend that continued conversations occur between those involved in the CDR regime and domestic and family violence specialists.

Recommendation 7: CDR Data which includes personal information about third parties

ACCAN has concerns about the provision of third party information to Accredited Data Recipients and CDR Consumers, while acknowledging that this is likely to be specific to the banking sector and less relevant in telecommunications. However, we would appreciate further information about how the rights of CDR Consumers and third party individuals (who are neither associates nor joint account holders of the CDR Consumer) will be balanced in order to understand the implications more broadly. We therefore agree with the recommendation that the Treasury consider publishing information to provide additional details regarding these circumstances.

Recommendation 8: Seeking CDR Consumer agreement for an Accredited Data Recipient to become a Data Holder of CDR

ACCAN agrees that the ACCC should consider whether the Draft Rules need to include additional protections to manage the transition of an entity from an Accredited Data Recipient to a Data Holder. It will be challenging for CDR Consumers to understand the different levels of privacy protections available within the CDR regime, in addition to the protections that are lost when CDR Data leaves the CDR regime. It is therefore vital that the overarching privacy protections within the CDR regime are reassessed and made more

comprehensive to ensure that the privacy of CDR Consumers is appropriately protected in all scenarios.

Recommendation 9: Adequate ACCC and OAIC resourcing

ACCAN agrees that the ACCC and OAIC, as regulators of the CDR regime, should be adequately resourced to ensure that any privacy risks are appropriately addressed. We understand that such resourcing would cover the creation of guidance material and the development and implementation of educational activities. As such we recommend that the level of resourcing appropriately reflect the need for consumer input into, and testing of, these resources and educational activities. This could involve, for instance, working alongside different people with disability to ensure that all CDR information and education is accessible, user friendly and easy to understand.

Additionally, the OAIC and external dispute resolution schemes in the relevant industry sectors, including the Telecommunications Industry Ombudsman, must be adequately resourced to handle and investigate complaints into breaches of CDR regime rules.

Recommendation 10: Consistent complaints processes

ACCAN agrees with the recommendation that complaint processes must be consistent across different entities. This would help to ensure that CDR Consumers know what to expect when engaging with different agencies about CDR concerns, and promote awareness of how their complaint will be handled.

Please do not hesitate to contact us should you require clarification or additional information on any of the issues raised in our submission.

Yours sincerely,

Meredith Lea
Policy Adviser