



Consumer Data Right (CDR) Telecommunications Sectoral Assessment

Submission by the Australian Communications Consumer Action
Network to the Australian Government Department of The Treasury

19 August 2021

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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Sectoral Assessments

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The Treasury

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RE: Consumer Data Right (CDR) Telecommunications Sectoral Assessment

Introduction

ACCAN thanks The Treasury for the opportunity to respond to the Consumer Data Right (CDR) Telecommunications Sectoral Assessment.

In principle ACCAN is supportive of the introduction of the Consumer Data Rights 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 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 asserts that there are a number of fundamental inclusions to a CDR regime that will ensure consumer benefits while promoting a competitive market. Firstly, consumers must have free access when requesting their data be shared between service providers and with accredited data recipients of their choice. Secondly, it is essential that a thorough discovery process be undertaken with the telecommunications industry to ensure that all appropriate data sets are identified for inclusion in the regime in order that all possible consumer, competition, and innovation benefits are maximised. Additionally, it is essential that the protection and safety of consumer data is paramount for the regime to be confidently adopted by consumers.

ACCAN's responses to the discussion paper questions which are within our area of expertise are below.

Q1. What is 'telecommunications data' and the 'telecommunications sector' for the purposes of the CDR?

ACCAN considers that in the context of the CDR all telecommunications retail service providers will make up the Telecommunications Sector. While secondary data holders will be necessary participants in any Telecommunications CDR regime, it is the telecommunication's businesses that consumers have a direct relationship with that must be included.

ACCAN is of the opinion that the 'Telecommunications Data' which will underpin the CDR will include the data sets that have been outlined in the discussion paper, both consumer data and product data. However, as noted above, ACCAN considers that a thorough discovery consultation with the telecommunications industry must be undertaken to identify additional data sets that can be included in the CDR.

In fact, it is unclear to ACCAN how this current sectoral evaluation can capture all the necessary input from stakeholders with such a short timeframe. Without a full and complete evaluation of all aspects of appropriate telecommunications data, any CDR regime will likely not achieve the stated objectives of the discussion paper.

Q2. In what ways can applying the CDR to the telecommunications sector assist consumers and businesses in acquiring and using telecommunications services; and benefit more broadly by being able to access and share data across multiple sectors? Please provide examples of potential use cases, if applicable.

ACCAN has been a long-term advocate in favour of a comparison tool which can remedy the information asymmetry that currently exists between consumers and telecommunications providers.

ACCAN agrees that use of CDR consumer data in a comparison tool – either a website or app - to provide tailored advice to consumers on the most affordable and appropriate telecommunication service available to them in terms of network coverage and speed has the potential to offer considerable consumer benefits.

However, the consumer benefits that the CDR system delivers will ultimately be determined by how many consumers use the CDR to access, transfer and utilise their data to make better, more cost-effective decisions. The proposed use cases in the consultation paper will only deliver additional benefits if they are readily accessible and affordable to all consumers. There are many consumers where such a regime may not provide the desired outcomes.

For example, consumers with low literacy, CALD and non-English speaking consumers, consumers with disability as well as low-income consumers. ACCAN recommends 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.

Q3. Are there particular cohorts of consumers that would benefit most from having access to their consumer data? Please provide examples, if applicable.

In ACCAN's September 2018 submission in response to the Treasury Laws Amendment (Consumer Data Right) Bill 2018 Consultation,¹ ACCAN submitted that the CDR framework had the potential to deliver consumer benefits by using consumer data to find the most affordable services tailored to the specific needs of individual consumers. We noted that in the telecommunications marketplace, this could provide significant relief to consumers on low incomes.

ACCAN submits that any raw data that is mandated to be included in the CDR must be made available to consumers free of charge when requesting that their data be shared with other providers or accredited data recipients. Additionally, 'mandatory' data should include, at a minimum, the data sets that the consultation outlines under 'Consumer Data' and 'Product Data'. Specifically:

- 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.

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

Q4. If telecommunications are designated, which services, products and consumer datasets should be included? What benefits would arise to consumers and how could this encourage competition and data-driven innovation? Please provide examples of potential use cases.

ACCAN considers that the data sets outlined in the consultation paper as ‘Consumer Data’ and ‘Product Data’ are a minimum list of potential data to be included as consumer datasets within the CDR regime (see Attachment 1). Specifically:

- 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

However, ACCAN submits that, to provide an optimal CDR for consumers that delivers individualised product and service recommendations and drives competition within the telco sector, the following additional datasets must be included in this list:

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

Acknowledging the dynamic nature of the telecommunications sector, ACCAN expects that new data sets will need to be included in the regime as products and services evolve.

Q5. Are there limitations on datasets, either in terms of availability or cost of making it available under the CDR? Please provide evidence, if applicable.

As flagged above, ACCAN expects that any CDR regime introduced in the telecommunications sector will provide free access to a consumers data held by their service provider. All included raw data sets must remain freely available when consumers request that their data be shared with another provider or any third-party accredited data recipient.

One of the key potential consumer benefits of the CDR is the ability to provide low-income consumers with independent and reliable advice on how to reduce their telecommunications expenses. Charging consumers to have access to their own data undermines this basic precept of a consumer-focused CDR regime.

ACCAN notes that under the legislation the Minister has the power to create a 'chargeable data set', and that any agreement on the price of access will be overseen by the ACCC. While ACCAN concedes that for any value-added service that makes use of CDR data to provide comparative, individualised recommendations to be viable, it may be necessary to charge consumers a reasonable fee to access comparative advisory information, subscribe to a comparison app or use an online comparison tool. However, costs should not create a barrier to all consumers having access to this information.

Consequently, ACCAN expects that any charge consumers incur to use comparative advisory information must not be prohibitively expensive, as this will limit the number of consumers who will reap benefit from this tool. If consumers are charged excessively for this service, the value of the CDR in assisting people on low incomes will be lost.

Q6. Are there other datasets across other sectors that should be considered for designation to provide a greater 'wrap-around' value proposition for the consumer? Please provide examples.

ACCAN is aware of several service providers with product offerings which cross different sectors. For example, several energy providers are now also providing telecommunications services such as mobile and broadband services. Consequently, it may prove to be of value to telecommunications consumers to be able to share data with these cross-sector providers. This convergence, along with the dynamic nature of telecommunications will require any CDR regime to continuously review and update the data sets that consumers have access to.

Q7. How is applying the CDR to telecommunications likely to encourage competition in the sector? Please provide examples or evidence, if applicable.

One of the key drivers of the introduction of the CDR in the telco sector is to stimulate competition between providers.

It is widely acknowledged that the telecommunications sector is highly concentrated. On a wholesale level, NBN is the dominant monopoly provider, and the Statutory Infrastructure Provider regime ensures that other fixed networks are monopoly providers for the areas they

serve. Telstra is the dominant fixed service retailer with 47% of the nbn fixed market, followed by TPGT at 22%². The mobile market is dominated by Telstra (42%), Optus 26% and Vodafone/TPGT 17%, with MVNOs at 15% of the market.³

In regional, rural and remote areas, Telstra is the ubiquitous mobile provider. In this environment, there is evidence of weak competition reducing incentives to invest in dimensions of quality which some consumers may value, such as reliability and customer service, resulting in higher prices and/or poorer quality services.

In this market it is difficult for consumers to find competitive and easy to understand offers to facilitate switching to more suitable plans. Existing comparator websites are commercially funded, and do not represent the full range of products available on the market. The CDR in telecommunications has the potential to greatly assist consumers find the best offers for their needs and incentivise service providers to offer more competitive services and products. However, it is essential that the user experience is simple and seamless to encourage wide adoption amongst telecommunications consumers.

Q9. Is there potential for data sharing under the CDR to make the telecommunications markets more efficient? In what ways? Please provide examples and/or evidence, if applicable.

ACCAN considers that data sharing under the CDR has the potential to drive efficiencies in the market by reducing the information asymmetry that currently exists between consumers and retail providers to assist in reducing barriers to switching.

When consumers do not have all the relevant information or technical knowledge they need when choosing products, or if there are asymmetries between the information available to consumers and network providers or RSPs, they might not choose the best course of action.

Consumer detriment resulting from imperfect information includes consumers failing to participate in the market at all, consumers paying too much, consumers not buying the product or service that best meets their needs, and consumer disappointment due to unexpected levels of quality.⁴

Comparative tools that use CDR data to inform consumers about the full scope of products and services available, and make individualised recommendations, have the potential to address information asymmetry and reduce barriers to switching providers, facilitating improvement to market efficiency.

²<https://www.accc.gov.au/publications/accc-telecommunications-report/accc-communications-market-report-2019-20>

³ ibid

⁴ OECD, "Enhancing Competition in Telecommunications: Protecting and Empowering Consumers" (Seoul, Korea: OECD Ministerial Meeting on the Future of the Internet Economy, 2008), <http://www.oecd.org/digital/consumer/40679279.pdf>.

However, while ACCAN supports the introduction of a CDR, we note that it is not a ‘silver bullet’ to improve telecommunications market efficiency and satisfy consumer needs. Even if the CDR is rolled out in the telecommunications sector, there will remain additional external barriers to consumer choice and telecommunications market competition at a retail level, created by the economic and non-economic costs to consumers in switching providers.

Switching costs incurred by consumers include the need to purchase complementary goods (such as modems), evaluation costs (search and analysis needed to switch), and setup costs (installing a new modem). Additional factors which may also increase the cost of switching providers include:⁵

- Greater perceived product complexity
- Greater perceived retailer heterogeneity
- Greater breadth of provider use (i.e.: bundling - receiving multiple products with the service, such as a video streaming services or gas and electricity)^{6 7}
- Limited experience with alternative providers
- Limited switching experience

Despite the introduction of the CDR, these costs will continue to create barriers to consumers switching providers and perpetuate reduced competitive pressure. Even if competition for new customers is effective, the inability of consumers to switch to the offerings best suited to their needs may leave households and individuals paying higher prices and result in lost consumer surplus.⁸

Q11. What privacy issues should be considered when considering the designation of the telecommunications sector to the CDR regime?

Telecommunications consumers already suffer serious consequences resulting from breaches of data privacy, and a primary goal of the introduction of the CDR to the telecommunications sector must remain robust protection of consumer data in transit and at rest.

During consultation with Treasury and consumer groups, a recurring issue of concern has been the ability of Australia’s current privacy regulatory framework to offer an adequate safety net for consumers in the event of CDR data breaches.

⁵ Burnham, Frels, and Mahajan.

⁶ T Burnett, “The Impact of Service Bundling on Consumer Switching Behaviour: Evidence from UK Communication Markets,” *Centre for Market and Public Organisation Working Paper No.14/321* (2014), <http://www.bristol.ac.uk/media-library/sites/cmipo/migrated/documents/wp321.pdf>.

⁷ J Prince and J Greenstein, “Does Service Bundling Reduce Churn?,” *Journal of Economics and Management Strategy* 23, no. 4 (2013). Note the effect was only shown when demand for the services was decreasing.

⁸ Peter D. Lunn and Sean Lyons, “Consumer Switching Intentions for Telecoms Services: Evidence from Ireland,” *Heliyon* 4, no. 5 (May 4, 2018), <https://doi.org/10.1016/j.heliyon.2018.e00618>.

As the sectoral framework for telecommunications is developed further, it is fundamentally important to ensure the privacy protections within the CDR are maintained and customised to the specifics of the telecommunications environment, without any reduction in the level of protection.

Q13. Is the proposed peer-to-peer model for data sharing suitable for the telecommunications sector? If so, what sector-specific issues or modifications would need to be considered? Please provide evidence to support your view.

ACCAN, in principle, supports the adoption of a peer-to-peer model for a telecommunications CDR regime. A key benefit for consumers from a CDR is the simplification of access to consumer data as a tool to provide independent decision-making information. As mentioned in the introduction, most consumers find the current telecommunications marketplace confusing and overly complicated. Implementing a peer-to-peer model would eliminate much of the complexity for consumers, providing them with a single contact entity when requesting access to and sharing of their data.

Q14. Are there any reasons why specific participants in the sector should be excluded from data holder responsibilities? Please provide evidence to support your view.

Telecommunications micro-providers who lack the technical capacity to be data holders may need to be excluded from data holder responsibilities to enable them to compete against larger telco providers as part of the CDR system. Excluding smaller providers from the CDR on the basis that they are not data holders could result in provision of inaccurate comparative advice to consumers, and undermine the intention of the CDR.

If more affordable telecommunications services are available from micro-providers, but micro-providers are not included in comparative analysis by comparative tools because they are not data holders, such advice would be inaccurate and detrimental to consumer interests.

Q15. In what ways should the extension of the CDR consider existing regulation in the telecommunications sector? Please explain your view.

ACCAN, as mentioned above, in-principle supports the introduction of a CDR regime in the telecommunications sector. ACCAN believes that a CDR regime will enhance the current consumer protection regulation in the sector. As such, ACCAN does not support any diminution of current consumer protections because of any CDR regime being adopted across the telecommunications sector.

Q17. Have the main sources of costs associated with implementing and complying with the CDR regime been identified? Are there any additional costs that should be considered?

ACCAN notes that the roles and responsibilities for implementation of the Consumer Data Right have been allocated to existing agencies and regulators. Specifically:

- Minister for the Digital Economy – rules, sectoral designation
- Data Standards Chair and the DSB – Technical and CX standards
- ACCCC – registration and accreditation platform; accreditation decisions; enforcement and compliance
- Information Commissioner – Privacy Safeguard guidance; compliance and enforcement; complaints handling

In terms of implementing and complying with the CDR regime, regulation and enforcement are particularly important areas for ensuring consumers are protected and compensated for any data breaches.

ACCAN submits that adequate additional resources and funding need to be provided to the ACCC and OAIC on an ongoing basis to enable them to perform these new functions under the CDR regime. The capacity of the ACCC and OAIC to implement registration and accreditation, enforcement and compliance and complaints handling will be crucial to ensuring the CDR succeeds in its underlying goal to provide a safe and secure network for consumers to exchange personal information.

Sincerely

Wayne Hawkins

Director of Inclusion

ACCAN

Attachment 1

Consumer data	Description of data
<i>Customer contact information</i>	<ul style="list-style-type: none"> • Including name (including business name if applicable) and contact details (telephone number, email address, physical address)
<i>Service information</i>	<ul style="list-style-type: none"> • Details about the customer's service, including the type of service and included allowances (such as data allowances and international call minutes) • Whether the service forms part of a bundle, and what other services are included in the bundle
<i>Rate plan</i>	<ul style="list-style-type: none"> • Monthly cost of the service (including prepaid for mobile and fixed wireless) • Additional charges, such as extra data fees for usage beyond included data allowance and international call charges for usage beyond included call minutes • Any applicable equipment fees (such as the monthly cost of handset or tablet)
<i>Fees and charges</i>	<p>All fees and charges for a service, including minimum and total costs:</p> <ul style="list-style-type: none"> ○ Recurring periodic fees ○ Non-recurring fees ○ Sign-up / account registration fees ○ Installation fees ○ Equipment fees (e.g. for handsets, portable devices, modems) ○ Technician attendance fees ○ Excess usage fees (e.g. for data or international calls) ○ Late payment fees ○ Contract exit fees ○ Discounts or other variations to fees and charges tailored to individual consumers
<i>Contract information</i>	<ul style="list-style-type: none"> • The duration of any applicable contracts • Any bundled contracts (such as contract for mobile handsets) • Information about the minimum and maximum charges • Applicable contract break fees or early termination fees
<i>Hardware</i>	<ul style="list-style-type: none"> • Type of handset or other hardware product included in the plan (e.g. mobile phones, modems or NBN batteries)
<i>Usage information</i>	<ul style="list-style-type: none"> • Total data usage per period (e.g. monthly), number of calls and voice minutes used, and number of messages sent
<i>Network information</i>	<ul style="list-style-type: none"> • The wholesale network providing the service

<i>Technology information</i>	<ul style="list-style-type: none"> The type of mobile or broadband technology available under the consumer's service plan (e.g. 4G/5G, NBN Fibre to the Premises/Fibre to the Node/Satellite)
<i>Internet speeds</i>	<ul style="list-style-type: none"> Contracted speed for NBN plans Maximum speed for the existing line at the customer's address (if available)
<i>Fault information</i>	<ul style="list-style-type: none"> How many faults have been lodged in relation to the customer's service, the nature of the faults and time taken to resolve each fault
Product data	Description of data
<i>Service details</i>	<ul style="list-style-type: none"> Name or other identifier of service provider Information about the service Included allowances, including international call minutes and data including any peak and off-peak allowances The network providing the service
<i>Internet speed</i>	<ul style="list-style-type: none"> Information about the typical speed performance of a service (e.g. proportion of busy hours where advertised speed was achieved) Where applicable, NBN speed tier Speed data from sampling or testing, including high frequency data collected from speed data collection boxes provided to consumers
<i>Contract information</i>	<ul style="list-style-type: none"> Including whether a service is provided on contract and term of contract Any minimum contract periods Contract break or early termination fees
<i>Charges and fees</i>	<p>All fees and charges for the service, including:</p> <ul style="list-style-type: none"> Monthly price of the service Additional charges, such as extra data fees for usage beyond included data allowance and call charges for usage beyond included call minutes Discounts for bundling multiples products
<i>Network coverage</i>	<ul style="list-style-type: none"> Information about the availability of a network in different locations and the quality of the coverage Information about which technology is available at a particular location (e.g. 4G/5G, NBN Fibre to the Premises/Fibre to the Node/Satellite)
<i>Service quality</i>	<ul style="list-style-type: none"> More general information that consumers need to make confident decisions about which service provider is best suited to their needs Possible datasets in this category are likely to be many and varied and stakeholder feedback is specifically sought on datasets that consumers would find most useful