
Submission

14 October 2022

Rules Unit
Consumer Data and Digital Division
Treasury
Langton Cres
Parkes ACT 2600

Via email: data@treasury.gov.au

Re: Consumer Data Right rules - expansion to the telecommunications sector and other operational enhancements

The Australian Communications Consumer Action Network (ACCAN) thanks the Treasury for the opportunity to comment on the *Consumer Data Right rules - expansion to the telecommunications sector and other operational enhancements* (the Exposure Draft). ACCAN is the peak body that represents 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 the peak body representing communication consumers, ACCAN has engaged with the development of the Consumer Data Right (CDR), especially as it relates to the telecommunications sector.¹ Throughout our engagement ACCAN has supported the development of a CDR in the telecommunications sector, provided that the scheme is developed in close consultation with consumers and their representatives.

We are pleased that the Exposure Draft responds to our recommendation that hardship data be excluded from the CDR. ACCAN was concerned that including information about a customer's access to hardship provisions could be used against them and limit their access to services.

We have set out our comments on specific aspects of the Exposure Draft below. These relate to the phasing of required product data, small business' access to CDR, access to closed accounts and excluded offline accounts.

Phasing of required product data

Every effort must be made to ensure that consumers can find suitable products and services. Standards to share machine readable product data are one of CDR's strongest use cases. The Exposure Draft rules require carriers to provide machine readable product data. The requirement to provide product data will be phased in according to the number of active accounts a carriage service provider (CSP) holds. There are three categories of CSP. Initial CSPs are Telstra, Optus & TPG

¹ ACCAN 2022, *CDR Rules and Standards Design Paper*. Available at: www.accan.org.au/accans-work/submissions/1978-cdr-rules-and-standards-design-paper

Telecom. Large CSPs have more than 30,000 services in operation. Small CSPs have less than 30,000 services in operation.

Initial CSPs will offer machine readable Required Product Data in tranche 1 followed by Large CSPs in tranche 2. Small CSPs will be included 12 months after tranche 1 (or they can apply to be included earlier). This means that from the launch of tranche 1 there could be 12 months before consumers can take advantage of comparison products that make use of Required Product Data to gain an accurate view of the market.

While phasing the introduction could give CSPs with less resources more time to implement data systems, it could impact the CDR's ability to provide consumers with an accurate view of the market. 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.

Recommendation 1: ACCAN recommends that all CSPs in the CDR offer machine readable Required Product Data simultaneously rather than in tranches.

Large-scale commercial accounts

ACCAN considers that the definition of large-scale commercial accounts should be changed to require a minimum \$70,000 annual spend to reflect the needs of modern small businesses. Part 2 2.1(2) of the Exposure Draft defines a large-scale commercial account as an account excluded from the CDR, if:

- i. the account is such that the account holder had a genuine or reasonable opportunity to negotiate its terms; or
- ii. for an account that has been in existence for 12 months or more—the spend associated with the account was more than \$40,000 in the last 12 months; or
- iii. for an account that has been in existence for less than 12 months—the estimated annual spend for the account is more than \$40,000.

These terms have been replicated from the *Telecommunications Consumer Protections (TCP) Code*. This definition, in the TCP Code and in this exposure draft, should be revised to better reflect the Australian Government's Digital Economy Strategy goals of 95% of SME's using e-commerce tools and all new businesses being integrating digital technology.²

In past consultations with ACCAN's small business members, they have recommended that the figure for the annual spend on telecommunications services be increased to \$70,000 per year.³ It should be noted that this figure was discussed before COVID-19 increased the need for digital services for business and recent rises in inflation. The figure would likely be higher than \$70,000 per

² For more information, see: <https://digitaleconomy.pmc.gov.au/sites/default/files/2021-05/digital-economy-strategy-on-a-page.pdf>

³ ACCAN, 2018, *Telecommunications (Consumer Complaints Handling) Industry Standard 2018*, available: www.accan.org.au/ACMA%20Complaints%20Handling%20Standard_ACCAN%20submission%20180418.pdf

year now and demonstrates that the \$40,000 cut off in the proposed rules risks excluding small businesses that could benefit from the scheme.

We also note that the exposure draft adopts the wording of consumer in the TCP Code, relating to the “*opportunity to negotiate the terms of the consumer contract*”.⁴ 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.⁵ These changes would ensure that the CDR can benefit as many consumers as possible, including small business owners.

Recommendation 2: ACCAN recommends that the CDR eligibility threshold for small business is set at a maximum annual spend of \$70,000 on telecommunications goods and services.

Accessing data on closed accounts

Consumers should be able to access their data for as long as data holders retain it, regardless of whether they have an open account with the data holder. Schedule 5, Part 3.2(5) of the Exposure Draft provides for CDR data that relates to a closed account. The rules state that *Required Consumer Data* can only be accessed by a consumer who still has an active account with the data holder *and* makes a request for data that is less than 12 months old.

As drafted, this may mean that consumers who are no longer with a service provider or have data older than 12 months would not be able to access their *Required Consumer Data*. This could force consumers to hold an account with a data holder to maintain access to their consumer data, restricting the value of the CDR to consumers. 12 months should be the absolute minimum for consumers to access data on a closed account and access should remain as long as an account’s consumer data is retained.

Recommendation 3: ACCAN recommends that consumers be able to access their Required Consumer Data from an account for at least 12 months, whether it is closed or not.

Excluding offline accounts

One of the key benefits of the CDR is its ability to provide all consumers with information on better deals through their consumer data. The Exposure Draft notes that for a CDR consumer to be eligible for CDR, their account must be “*set up in such a way that it can be accessed online*”.⁶ We are disappointed to see that under this rule, offline customers may not be able to access 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

⁴ C628:2019 TELECOMMUNICATIONS CONSUMER PROTECTIONS (TCP) CODE, p.9. Available at: www.commsalliance.com.au/Documents/all/codes/c628

⁵ ACCAN, 2018, *Telecommunications (Consumer Complaints Handling) Industry Standard 2018*, available: www.accan.org.au/ACMA%20Complaints%20Handling%20Standard_ACCAN%20submission%20180418.pdf

⁶ Exposure draft, Consumer Data Right rules - expansion to the telecommunications sector and other operational enhancements, Schedule 5 Part 2.1(b).

sold in-store or over the phone. Not all telecommunications services, such as fixed voice services, provide consumers with internet access. ACCAN supports all consumers having access to the benefits of CDR.

Recommendation 4: ACCAN recommends that the CDR support offline consumers to access the scheme.

The Exposure Draft is a valuable step towards providing a Consumer Data Right in the telecommunications sector. To ensure that the CDR provides maximum benefits to consumers, it should aim to include a wide variety of players both on the supply side with smaller carriers but also small businesses and consumers who may not be online or with closed accounts.

We thank the Treasury for the opportunity to provide this submission and look forward to further engagement with the Treasury on the CDR. Should you wish to discuss any of the issues raised in this submission further, please do not hesitate to contact me at 02 9288 4010.

Yours sincerely,
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Policy Adviser

The Australian Communications Consumer Action Network (ACCAN) is Australia's peak communication consumer organisation. The operation of ACCAN is made possible by funding provided by the Commonwealth of Australia under section 593 of the Telecommunications Act 1997. This funding is recovered from charges on telecommunications carriers.
