**19 August 2021**

Law Council
OF AUSTRALIA
*Business Law Section*

Consumer Data Right Division
Treasury
Langton Cres
Parkes ACT 2600

**By email:** data@treasury.gov.au

Dear Sir/Madam,

## Consumer Data Right strategic assessment

1. The Competition and Consumer Committee of the Business Law Section of the Law Council of Australia (the **Committee**) is pleased to make the following submission responding to the Treasury's Consumer Data Right Strategic Assessment consultation paper (**Paper**).
2. The Committee agrees that the extension of the Consumer Data Right (**CDR**) regime to any sector, use case and/or data set (as the case may be) should focus on the areas that will unlock the greatest benefits for consumers in terms of access to better services and products, and ensuring consumers benefit from the associated data collected.
3. While the Committee acknowledges the potential for consumer benefit from the CDR, the Committee encourages Government to give careful consideration to the costs to businesses of implementing the CDR, particularly as those costs may be passed onto consumers and may, in some cases, outweigh the benefits to consumers.
4. The Committee considers the Government should have regard to the following principles when prioritising and sequencing CDR implementation.

## Industries exhibiting low switching rates and information asymmetry

5. The CDR is intended to make it easier for consumers to make informed decisions based on the data they generate to switch to products and services that represent better value for them.
6. The Committee considers industries of priority to therefore be industries with the potential for greater customer switching and where there are identifiable 'information gaps' that could be mitigated by the CDR to help consumers make better decisions.
7. This may include industries where switching providers or products is difficult because it is difficult for customers to understand product offerings or compare offerings on a like-for-like basis, where products are bundled or where switching opportunities are infrequent. Additionally, industries where there is low service quality transparency because retailers generally do not make available information to consumers may be suitable to be prioritised.
8. However, Government should ensure low switching rates are not due to unrelated reasons eg, customers being generally satisfied with their existing provider (as opposed to existing information asymmetry or the perceived lack of competition between providers in the industry). Where this is the case, the Committee considers such industries should not necessarily be prioritised for CDR roll-out because the benefits to customers may be outweighed by the costs of implementation.

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**Industries that account for a significant proportion of spend**

9. The Committee considers Government should also have regard to the proportion of household spending the industries brought within the CDR regime would account for.

10. The Committee considers this may be a good proxy for how important or critical the industry is to consumers and would help to highlight areas of greatest consumer benefit.

11. This information could additionally be used to support CDR uses cases like access to financial management and budgeting applications.

**Accelerating the roll-out of the CDR should not detract from the time needed for consultation**

12. The Committee considers that an in-depth consultation for each industry brought within the scope of the CDR regime is necessary because all industries raise their own specific issues.

13. Any acceleration in rolling out the CDR regime should not detract from the time needed to engage with industry and receive the input required to ensure the CDR regime is fit for purpose.

**Industries where CDR implementation is lower cost and involves less risk**

14. Government should give priority to industries where implementation of the CDR is lower cost, there are fewer implementation risks and fewer challenges due to the sensitivity of the data.

15. For example, Government should have regard to the level of digital maturity in an industry. Sectors with more sophisticated digital infrastructure, greater levels of data standardisation and consistency in adoption of technology for the provision of services to consumers, would be more easily transitioned to the CDR.

16. Additionally, industries where there are industry codes/regulatory requirements already mandating the provision of standardised product information may also be more easily transitioned to the CDR, as the quality of the data may already be high.

17. Government should also have regard to whether industries under consideration for CDR implementation have sufficiently robust systems and appropriate protocols for securing data, especially where data is sensitive in nature.

**Industries where most providers can participate on an equal basis**

18. The Committee considers Government should, as far as possible, implement the CDR in a manner that encourages equal participation and reciprocity from all industry operators to ensure the stability of the CDR system.

19. Accordingly, industries where a greater proportion of providers are able to participate at low cost should be prioritised and implementation of the CDR may be less suitable for industries where a subset of providers would incur materially higher implementation costs relative to other providers. This could otherwise have distorting effects on competition which may lead to detrimental outcomes for consumers.

**Broader Government and industry initiatives should be taken into account**

20. As has been acknowledged in the Paper, the CDR is being rolled out in the context of broader Government and industry initiatives which may mean the CDR is not always the best mechanism to drive competition, innovation and consumer outcomes.

21. The Committee therefore encourages Government to conduct a gap analysis taking into account these other initiatives when identifying and prioritising industries for the roll-out of the CDR.

22. The Committee would be pleased to discuss this submission. Please contact Committee Chair, Jacqueline Downes at jacqueline.downes@allens.com.au in the first instance.

Yours faithfully,



**Greg Rodgers**
**Chair, Business Law Section**