



29 October 2020

Email: ACCC-CDR@acc.gov.au

Dear Sir/Madam,

SMSF ASSOCIATION SUBMISSION ON CONSUMER DATA RIGHT EXPANSION AMENDMENTS

The SMSF Association (SMSFA) welcomes the opportunity to make a submission on the Consumer Data Right (CDR) rules expansion amendments. The CDR reforms are a significant piece of economic reform that have great potential benefit for many industries, particularly the SMSF sector.

Our membership consists of professional members, principally accountants, auditors, lawyers, financial planners and other professionals such as tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them access to independent education materials to assist them in the running of their SMSF.

As at June 2020, Australian Tax Office statistics estimate that \$168 billion, or 22.9% of all SMSF assets, are invested in cash, term deposits and debt securities. Much of the SMSF industry is built on technology efficiency and data such as bank data feeds which reduce fees to 1.1 million Australians.

Therefore, our membership will be directly affected and benefit greatly from the successful implementation of the CDR.

The SMSFA is supportive of measures that will give customers greater access to and control over their own banking data and increase competition, innovation and productivity. Therefore, we support proposed rules that provide greater choices for consumers about who they share their data with and increase consumer benefit by adding flexibility and functionality to the CDR.

The SMSFA has limited this submission to section 5 regarding greater flexibility for consumers to share their CDR data.

[Greater flexibility for consumers to share their CDR data](#)

We believe the ability to disclose CDR data to particular classes of non-accredited persons with a consumer's informed consent is essential to harness the full benefits of open data. Therefore, we strongly support proposed rules which include a list of trusted advisers that will be able to receive CDR data from their client.

It is our opinion, that a trusted advisor should be treated more like the consumer under the CDR rather than a large corporate third-party accredited data recipient (Fin-techs/platforms, companies, start-ups, banks). That is, consumers own their own data, have a distinct and contractual relationship with their trusted adviser (who have their own regulatory oversight), and should be able provide CDR data to them as freely as possible and as they see fit. For example, the proposed rules relating to joint



accounts, where consumers can preference how joint accounts can be used, should have many of their principles applied to the trusted advisor.

Viewing trusted advisers as if they are like the consumer who owns the data, should make proposed rules for flexibility simpler. This is because consumers trust their advisor and want to provide them with all the relevant information necessary for them to provide their trusted advice service. The process for sharing CDR data should not be constrained by additional stringent requirements on whether a third party has existing accreditation or not.

We believe there is a significant risk that the current proposed rules are too complex for many of the proposed participants and stakeholders and are being made more difficult than necessary. This means the benefits of the CDR will be limited.

Likely benefit to consumers of disclosures of CDR data

Consumers routinely share their banking data with trusted advisers, and we believe there will be consumer benefit in allowing this to occur via the CDR. For example, an accountant will seek to use bank feeds and consumer data, most likely from an accredited receipt software company, to create financial statements.

With increased access to banking data, the fees charged to SMSF trustees will reduce. There will also be greater provision of services and client understanding which will facilitate improved advice services.

Financial technology services will be able to use open banking data to assist in bringing full financial pictures to consumers. The provision of ‘robo-advice’ for example, will benefit from the use of data to provide relevant services which will help consumers understand, manage and maximise their retirement savings.

In addition, there is a growing advice gap in the marketplace which has recently widened as part of the COVID crisis. Many Australians and small businesses require financial advice yet are unable to access it due to high cost constraints. Open banking is a key aspect in allowing more consumers to access affordable and high-quality advice.

Based off precedents in the United Kingdom’s Open Bank Project (which aims to create a uniform technical interface where software developers can build banking applications and services that seamlessly interact with the banking system) open banking may produce further revolutionising efficiencies. SMSF trustees may be able to use their mobile phone to make withdrawals via their SMSF platform provider without having to interact with any of their banks. This data could then be integrated with their advisor and reporting requirements with the ATO.

To which professional classes do you consider consumers should be able to consent to ADRs disclosing their CDR Data? How should these classes be described in the rules?

The classes currently proposed to be included as trusted advisors include accountants, lawyers, tax agents, BAS agents, financial advisors, financial counsellors, and mortgage brokers.



The majority of these trusted advisors are subject to existing professional or regulatory oversight. This is important in determining the scope and flexibility that trusted advisors should be afforded under the CDR because they will be required to ensure they act in the interests for their consumer and comply with privacy requirements.

We outline our proposed categorisations below:

Current definition	Proposed definition	Regulator	Privacy requirements	Fiduciary duty	Comments
Accountant	Qualified accountant	Legally recognised professional accounting bodies	APES 110 <i>Code of Ethics for Professional Accountants</i>	APES 110 <i>Code of Ethics for Professional Accountants</i>	Ensuring 'qualified' means the accountant is a member of a legally recognised local professional accounting body. If this is not sufficient, the ACCC should refer to tax agents as the class which will cover accountants.
Lawyer	Lawyer	Lawyer must hold a practicing certificate	Relevant law society	Fiduciary duty	
Financial adviser	Financial adviser	The adviser must be FASEA-compliant and operate under an AFSL	FASEA Code of Ethics	Best interests duty	We do not believe AFSLs need to be recognised as a class in their own right. This would create separate unnecessary category.
Tax Agent	Tax Agent*	TPB	Confidentiality of client information TPB Code	Code of Professional Conduct for tax agents	Expanded to include SMSF administrators
BAS Agent	BAS Agent	TPB			No comment on their relevance is provided
Financial Counsellor					No comment provided
Mortgage Brokers					No comment provided
N/A	Auditors	Must be registered with ASIC	APES 110 <i>Code of Ethics for Professional Accountants</i>	APES 110 + ASIC Auditor obligations	We believe auditors should be recognised separately.

*To include SMSF administrators who are the appointed tax agent of the 'SMSF'. Under current arrangements, only tax agents who have authority to act on behalf of the client for their personal tax affairs would be included. Extending the definition of 'tax agent' to include SMSF administrators who are the appointed tax agent of the SMSF is essential for the CDR.



Should disclosures of CDR data to trusted advisors by ADRs be limited to situations where the ADR is providing a good or service directly to the consumer? - Scope of CDR service

In almost all scenarios, the above trusted advisors will be providing a good or service directly to the consumer.

We note the Paper details that there may be situations where the trusted adviser only provides secure collection, management, and disclosure of their data. In our opinion, these can be defined as services which a trusted adviser may offer in order to provide their requested advice.

Therefore, we believe it is appropriate that the scope of the CDR service extends as far to providing requested goods or services or using collected data for any purpose consented to by the CDR consumer with a sufficient nexus to the goods or service. The trusted adviser should not use the collected CDR data, or CDR data derived from it, beyond what is reasonably needed in order to provide the requested goods or services or fulfil any other purpose.

Should disclosures of CDR data insights be limited to derived CDR data (i.e. excluding 'raw' CDR data as disclosed by the data holder)? – Disclosure of CDR insights

We believe the intent of the CDR framework is to ensure customers are able to share their data with informed consent to harness greater benefits and efficiencies. Understanding the ACCC concerns regarding sensitivity of data, it is our understanding that the consumer should have ultimate control.

In this regard, if a consumer wishes to share their 'raw' CDR data to a trusted adviser, we believe the CDR framework should facilitate this where practical. As highlighted above, a trusted adviser should be seen as if they are the consumer who owns the data and therefore be able to be provided data through the CDR if the consumer consents.

We agree that it is important for the data recipients to provide transparency over the disclosure to the consumer. Consequently, the consumer should be aware when data has been disclosed, and to whom, and have the ability to request records of disclosure.

Fees

The SMSFA also notes the potential for fees to be charged to a trusted adviser. It is important that the CDR ensures safeguards are in place so that these fees, if they are necessary, are not substantial. This is because the continuous amount of growing regulation and compliance costs in the advice industry are restricting the ability for advisers to provide affordable advice. The CDR should aim to ensure it is not a further regulatory burden on the industry.

Accelerated progression

The SMSFA believes it is important that retirement savings accounts, trust accounts, cash management accounts and corporate trustee bank accounts which form the overwhelming majority of SMSF bank accounts and transactions should be accelerated to an earlier stage as soon as possible under the CDR.



The benefits of CDR to the 1.1 million SMSF trustees will be extremely evident to this consumer base who currently are operating with manual and outdated 'data feed' processes. If an accelerated progression is not possible, it is imperative that the current processes are not restricted from being applied until such time.

If you have any questions about our submission, please do not hesitate in contacting us

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Peter Burgess', written over a faint circular stamp or watermark.

Peter Burgess
Deputy CEO/Director of Policy and Education
SMSF Association

ABOUT THE SMSF ASSOCIATION

The SMSF Association is the peak professional body representing the SMSF sector which is comprised of over 1.1 million SMSF members who have \$700 billion of funds under management and a diverse range of financial professionals servicing SMSFs. The SMSF Association continues to build integrity through professional and education standards for advisors and education standards for trustees. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial planners and other professionals such as tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them access to independent education materials to assist them in the running of their SMSF.