



My data, my choices

Consumer consent & the
Consumer Data Right



Objective

The Consumer Policy Research Centre (CPRC) has been engaged by the Data Standards Body (DSB) to prepare a series of consumer research reports on how the Consumer Data Right will change the experience of Australian consumers transacting in the data economy.

Our reports cover subjects identified as being priority topics by the DSB and CPRC, addressing issues that are of significance for government, industry and consumers. Our research findings are derived from direct engagement with community sector stakeholders, evidence held in CPRC's broader consumer research bank, and analysis of a range of material relating to CDR and to data markets and consumer data reforms in other jurisdictions.

This report, the fourth in the series, addresses the critical issue of consumer consent for the collection, use, and disclosure of CDR data as facilitated by the reform. It explores opportunities for CDR to be 'doing consent well', and highlights which of these are within the remit of the DSB. To support our recommendation for clearer articulation of consumer outcomes from CDR as a means for continuous improvement of the regime, the core of the report builds on indicators for effective consent identified in CPRC's first report and provides preliminary modelling for a CDR consumer outcomes measurement framework.

The project overall aims to help realise the policy intent of CDR as a consumer-centric reform geared toward creating a fair and inclusive data economy in which competition and innovation provide consumers with opportunities and mechanisms to achieve the market outcomes they deserve.

Our work taps into the subject expertise of community sector organisations to bring practice-informed knowledge of consumer experiences, needs, and expectations for data sharing into the evidence base informing ongoing development of data standards for Australia's Consumer Data Right (CDR). Our vision is for the community sector to be supported in contributing to CDR development in ways that will facilitate all Australian consumers having access to positive outcomes from the regime.

Notes on methodology

This report is based on qualitative research (case study methods) and literature review. Qualitative research for the project was conducted in two phases:

Phase 1 consisted of in-depth interviews, conducted via telephone or video conference. A CPRC staff member spoke to 20 individuals from 13 peak and frontline organisations providing advice, advocacy or services to consumers across financial, energy and telco markets. Interviewees held professional expertise in a range of areas, including consumer policy; consumer vulnerability; financial capability, hardship and debt; domestic and family violence and economic abuse; services for Aboriginal consumers; legal services; consumer rights; and inclusive service design. Most interviews were recorded (where permission to do so was granted by interviewees). These were largely unstructured conversations, however data sharing from joint accounts was a nominated subject for all interviews.

Phase 2 consisted of two video conference roundtable discussions, with eight participants drawn from the pool of prior interviewees. These were semi-structured discussions facilitated by the same CPRC staff member who conducted the Phase 1 interviews. The nominated topics for discussion were consumer vulnerability and capability; consumer consent; and measuring consumer outcomes. Permission was obtained from participants to record both roundtables, however recording failed in one case – for this discussion we have notes only.

A key observation from our consultation phases is the extent to which the community sector feels unclear about the detail of how the Consumer Data Right will operate. Most interviewees self-identified as having limited understanding of how CDR will function in practice, which in turn impacted on the nature and content of our discussions. Our interviews were guided by research co-production principles of reciprocity and respect; in consequence we often spent substantial interview time exploring questions raised by the interviewees about CDR's rules and underlying principles. Many interviewees did not feel comfortable engaging with the detail of data standards because they considered they did not yet hold appropriate understanding of how the scheme was being designed to operate at a higher level. This was compounded by a number of factors, including: variances between how the scheme is proposed to operate in different sectors (for example in relation to joint accounts), and what that might mean for consumers when use cases request data drawn from multiple sectors; limitations on organisational resource capacity to support community sector participation in ongoing CDR learning and consultation processes; and the unsettled nature of the Rules framework (for example, government consultation on proposed CDR Rules changes during the Phase 2 consultation meant existing understandings that had been established needed to be reassessed in a number of areas, including how CDR consents are defined and operate).

We recognise that our qualitative research was conducted with a relatively small sample group of interviewees, and that discussions with a different universe of participants would have surfaced a different set of experiences, opinions, and scenarios. Accordingly, this report does not purport to capture the full range of views held by consumer representatives regarding the complexity of consumer consent and the opportunities and risks associated with consent mechanisms for CDR data sharing. Rather, we are pointing to the diversity and complexity of consumer circumstances; and voicing a need for the CDR regime to continue to engage with the consumer experience and outcomes and remain clearly accountable to all consumers whose data it is enacting rights to. Hypothetical scenarios based on actual and potential CDR Rules and functionalities (including changes proposed for ongoing rules consultations and in the CDR Future Directions Report) were developed in our previous reports and have informed the thinking behind the impact goals and Outcomes Measurement Framework model presented here. In drawing on these scenarios, we acknowledge that they represent amalgamations of actual and potential consumer use cases identified by or played out with multiple interviewees and described to us from a range of perspectives and emphasise that interviews did not always suggest a single point of agreement on the issues being discussed.



| | |
|--|-----------|
| Executive Summary | 1 |
| Part 1: Identifying impact areas | 4 |
| <ul style="list-style-type: none">• Empowered consumers• Meaningful participation• Trusted systems• Fair and inclusive outcomes• Summary: opportunities for strengthening CDR’s consumer consent mechanisms | |
| Part 2: A consumer consent check-up for CDR | 10 |
| <ul style="list-style-type: none">• How does consent work in CDR?• What does it look like for consent to be done well – and how does CDR measure up? | |
| Part 3: Measuring consent outcomes | 19 |
| <ul style="list-style-type: none">• Consent metrics and outcomes measurement | |
| Part 4: Activating opportunities | 26 |
| <ul style="list-style-type: none">• Activating CDR consent opportunity areas• Develop data standards for CDR consumer dashboards• Iterate and expand consumer-centred guides for CDR consent• Establish a CDR regulatory sandbox• Institute a program of consumer-involved CDR data for good initiatives• Encourage open-source CDR design assets• Consider codified consent and associated metadata standards into CDR• Articulate a CDR consumer outcomes framework• Define and collect technical and CX metrics for CDR consent | |
| Appendix 1: Addressing consent challenges in CDR | 36 |
| Endnotes | 40 |

Executive summary

Consent, in the form of consumers being able to clearly and accurately communicate their preferences and permissions to enact data sharing choices, is foundational to Australia's Consumer Data Right (CDR).¹ Although CDR will be iterated over time, evolving with the growing data economy, it is important that consent is 'done well' from the outset to allow consumers the chance to safely test and enlarge their levels of comfort in engaging with the reform.

Technology that leverages consumer data, when done respectfully and well, has benefits for both customers and business. It can address the requirements of both in more streamlined or lower cost ways. It can align interests between companies and consumers, linking people to products that work for them. It can generate entirely new product segments or markets, better catering to diversity of needs. Where data-driven technology prioritises consent and enlarges people's agency in decision making, this kind of innovation can deeply impact lives.

Conversely, successful consumer outcomes from CDR will be put at risk if technology is built on "a dangerous mindset of data entitlement".² Consent is the pivot on which this risk and opportunity tips. Our stakeholder consultation suggests opportunities to strengthen CDR consent mechanisms will be facilitated by implementing policy levers that encourage mindset growth within business and data communities to actively support consumer agency and safety.

Having a framework in which consent *can* be done well – which CDR has worked hard to establish – is only the first step. Leveraging opportunities to generate consumer-centric data innovation and competition on consent issues that are important for consumers,³ is where real value can be realised. In this report we explore opportunities where the Consumer Data Standards, and CDR more broadly, can lead on approaches to consent that better embed a culture of care for consumers within an environment of increased consumer choice and market competition.

What do consumers need from CDR consent?

Consent mechanisms done well will allow people to act on decisions about sharing their consumer data in ways that reflect immediate requirements and intentions while being compatible with long term needs and personal values. To achieve this, CDR must be able to support consumers with differing capabilities and requirements to clearly understand, articulate, amend, and withdraw their consent in line with changing requirements, preferences, or circumstances.

Consumers need simple and reliable ways to make their data sharing choices known; for those choices to be respected and acted on in safe environments; and access to responsive avenues to address and remedy problems if this doesn't happen. To support consumer confidence and meet these consumer needs, CDR's consent experiences should be comprehensible, accessible, and nimble enough to respond to the sophisticated reality of negotiating consumer consent as an ongoing process.⁴

How is business responding?

For businesses, the consent picture is complicated. Statistics suggesting that transparency can affect consumer propensity for data sharing⁵ may leave firms reluctant to capitalise on the benefits of reforms such as CDR. Some hold reservations that disclosing more information to consumers about what data sharing consents mean in practice will result in losing access to that data.

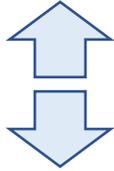
Internationally, industry players are increasingly recognising this issue as being a problem arising from outmoded supply side models and unsustainable views of data entitlement.⁶ A recent global survey identified that 74% of Chief Marketing Officers (CMOs) expect 'Data Ethics' to become more important in their roles over the next five years.⁷

Consumers need simple and reliable ways to make their data sharing choices known; for these choices to be respected and acted on safely; and to have responsive avenues for remedy if this doesn't occur.

Impact logic



Empowered Consumers



Meaningful Participation



Trusted Systems



Inclusive and Fair Outcomes

Previously identified consumer consent goals⁸

What will success look like?

Consumers understand data sharing actions and outcomes, with protection to provide consent freely and expressly.

Consumers enjoy simple processes to enact data sharing choices, which are appropriate to their capabilities and requirements, and which accurately capture and communicate their preferences and permissions.

Consumers secure fair and inclusive outcomes that align with their intentions.

Features of effective consent processes

- Consumers are presented with all terms and conditions they will be consenting to, in formats meaningful to them
- Consumers have protection against being coerced or enticed into sharing data against their interests
- Consumers have sufficient levels of data fluency to distinguish short- and long-term consequences of data sharing
- Consumers have capability and opportunity to assess risk and benefit before providing consent for data sharing
- Consumers can clearly navigate through CDR consents applying to their consumer data at any time to review what data is being collected by ADRs, who has access to that data, for what purpose, and to what effect
- Consumers can renew data sharing consents easily, or revoke them without penalty
- Consumer consent applies for a prescribed time and purpose, and recipients of CDR data, do not make use of it outside those parameters*
- Processes for CDR data sharing provide consumers with clear confirmation of their actions and consents
- Processes for CDR data sharing provide consumers with clear confirmation of ADR actions, including deletion, deidentification, and disclosures of consumer data
- Processes for CDR data sharing support conditional and granular consents
- Processes for using CDR data, including for processing CDR data or deriving insights from CDR data, can be clearly explained in human-understandable terms

Opportunity areas

This report focuses on opportunities for CDR to be 'doing consent well'. Specifically, we propose the following are likely to be of benefit to consumers:

- **Develop data standards for CDR consumer dashboards**
- **Iterate and expand consumer-centred guides for CDR consent**
- **Establish a CDR regulatory sandbox**
- **Institute a program of consumer-involved CDR data for good initiatives**
- **Encourage open-source CDR design assets**
- **Consider codified consent and associated metadata standards into CDR**
- **Articulate a CDR consumer outcomes framework**
- **Define and collect technical and CX metrics for CDR consent in consultation with consumer and industry stakeholders**

Building the path

We believe clearer articulation and reporting of CDR consumer outcomes is a necessary ingredient for continuous improvement of the regime. To support this, CPRC has delivered a preliminary consumer outcomes framework as part of this report, addressing a goal of *Consentful technology in CDR*, and streaming consumer outcomes to four impact areas: Empowered Consumers, Trusted Systems; Meaningful Participation; and Inclusive and Fair Outcomes.

Part 3 of this report builds from the features of effective consent identified in CPRC's first report for DSB,⁹ and provides preliminary modelling for a CDR consumer outcomes measurement framework.

Our objective in doing this is to provide building blocks for measuring consent in CDR in ways that can bolster how well the reform is working to empower consumers in making the CDR choices that are right for them. With robust metrics to measure for the quality of consent policymakers will be better equipped with useful evidence to measure and improve how well the reform is working.

The prototype outcomes framework outlined on pages 19-25 is informed by discussions about CDR opportunities and risks that CPRC has undertaken over the past nine months with stakeholders working in consumer support and advocacy. It articulates high level and intermediate consumer consent outcomes for each of the four impact areas (Empowered Consumers, Trusted Systems; Meaningful Participation; and Inclusive and Fair Outcomes) and maps a range of indicators that should be present if these outcomes are being achieved. For one impact area, Empowered Consumers, another layer of detail is added to include indicative quantitative metrics to gauge the extent to which indicators are in effect.

Quantitative metrics can only tell part of the CDR story. Our consultation interviews made clear that consumer-reported measures are equally important for evaluating the success of consent mechanisms, and other outcomes of the reform. A robust CDR consumer outcomes framework will also include metrics that support qualitative data on the consumer consent experience being regularly captured and reported.

The draft approach presented in this report is a preliminary model. It would be enhanced by further stakeholder engagement to test the initial modelling of consent outcomes and indicators, and to more fully build out a framework of consent metrics that meet a range of stakeholder needs for measuring how well CDR performs in safely giving effect to consumer data sharing choices as consumers intend them.



Part 1: Identifying impact areas

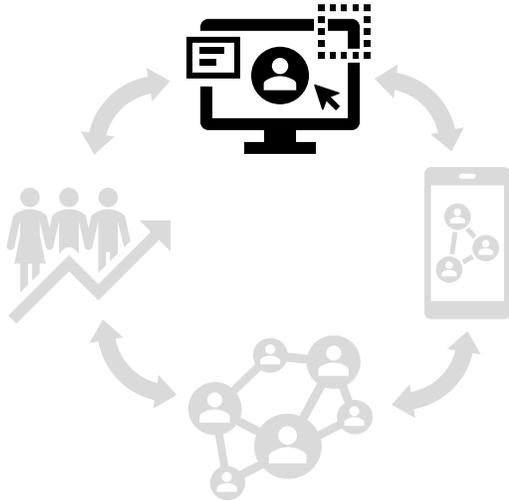
“The consent issue is massive.

Many of our clients - and this is so real - they will just say yes without having any understanding of what they may have just agreed to.”

- Participant, CPRC Consultation

Impact area: EMPOWERED CONSUMERS

High level outcome: Consumers have simple, accessible tools to accurately communicate their data sharing preferences and permissions and can enact CDR choices freely and safely.



What will better empower consumers in CDR consent relationships?

- **Consumer awareness:** simple, understandable materials that provide clarity about what CDR consent and authorisation actions mean (including any likely flow on effects); and explain how to use CDR processes to align technical consent pathways with the choices and decisions they want to make (particularly in relation to amending and withdrawing consent); and which do so in formats that are accessible to all eligible CDR consumers.
- **Accessible technology:** resources and tools for providing and managing consent are useful and understandable for consumers, recognising that consumer capabilities and information needs differ from those of entities implementing CDR.
- **Efficacy of actions:** consumers experience consistency in CDR consent mechanisms and terminology across providers, sectors, and regulatory interactions, so that they can have confidence that when they do X the result is Y.

Why is this important?

- Mitigating the likelihood of ‘consent’ being interpreted differently and operationalized inconsistently by actors in the system.
- Designing resources, platforms, and interfaces that allow consumers to develop familiarity and capability with CDR and help businesses to obtain accurate and meaningful consumer consent.
- Addressing informational imbalances so that consumers are not required to continually recalibrate understandings of how consent works in CDR as they move across different providers/services/products.

Relevant opportunities:

- **Iterate and expand consumer-centred guides for CDR consent.** Explore how guides can be developed with consumer representatives to highlight pathways for specific consumer-identified consent priorities and journeys (*I want to... / How do I...*); to clarify areas of potential confusion in CDR consent terminology and processes;¹¹ to provide mapping of any future CDR Consent Dictionary to consumer-tested language;¹² and to highlight core CDR protections and how to give effect to them.¹³
- **Develop data standards for CDR consumer dashboards.** Continue expanding CX artefacts and articulating data standards that reflect the significance of consumer dashboards as the primary instruments through which consumers can review and exercise consent management through time.

“Without the sufficient consumer information package [in app] and community information package [about CDR], how good is that consent going to be?”

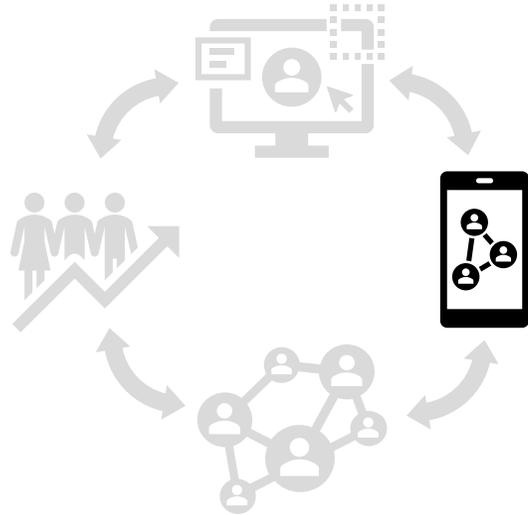
- Participant, CPRC Consultation

People giving consent often rely on the regulatory environment to protect them, based on a presumption or general knowledge that oversight exists, rather than any detailed understanding.

- Finding from an overseas study¹⁰

Impact area: MEANINGFUL PARTICIPATION

High level outcome: Consumers have increased capability to understand, influence, and participate in data sharing to achieve positive outcomes through CDR.



What will encourage deeper consumer engagement with CDR consent?

- **Ability to participate on their own terms:** establishing pathways for consumer groups to play a more significant role in driving CDR innovation in consumer-centric ways.
- **Inclusive technology and use cases:** incentivising the development of ‘consentful technology’ that directs resources toward how CDR can address a socio-technical gap between what people want to do and what technology facilitates them doing in practice.¹⁶
- **Being seen and heard:** if difficulties arise, or if something goes wrong, during or as a result of CDR consent processes; consumers need responsive person-centred CDR technology implementations to minimise barriers to participation in product use or process improvement.
- **Positive experiences:** having CDR applications that support consumers to exercise control over consumer data in ways that make sense to them, and without trading off their rights and agency in the process.

“Consentful technologies are digital applications and spaces that are built with consent at their core, and that support the self-determination of people who use and are affected by these technologies.”¹⁴

- Participant, CPRC Consultation

“We need to deepen our understanding of consent in technologies, but also actually build novel consentful systems ... traditional market-based mechanisms likely will not incentivize exploring these spaces.”

- Academic study on affirmative consent¹⁵

Why is this important?

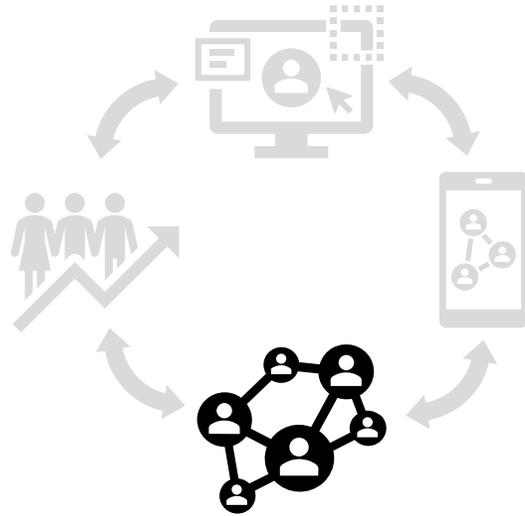
- Shared understanding of consumer needs, experiences, and expectations regarding consent will promote more socially aware design in CDR technologies; encouraging data innovation and market competition around consent on issues that matter to consumers.
- Integrating lived experiences of consumers into the design of CDR frameworks and products will bolster consumer buy-in to the regime; connecting its relevance to more people so that they can recognise their reality and requirements reflected in how the reform works and the outcomes it is intended to facilitate.
- When consumers can easily access channels to participate and can see how their input has effect, there is more incentive for them to engage with CDR and take time to communicate information that can inform usability for diverse sets of conditions and capabilities, leading to specific benefit for underserved cohorts, and better experiences for all consumers.

Relevant opportunities:

- **Establish a CDR regulatory sandbox** – with appropriate support for consumer representatives to contribute to this environment (material and engagement pathways for equitable participation).¹⁷
- **Institute a program of consumer-involved CDR data for good initiatives.**¹⁸

Impact area: TRUSTED SYSTEMS

High level outcome: Consumers can trust that systems established by CDR deliver them agency and engender accountability of scheme participants.



What will improve integrity and consumer confidence in CDR consent systems?

- **Auditability of CDR actions:** build CDR systems functionality and consent schema so that consumer consent travels with datasets, and there is greater capacity to trace and confirm data movement, use, and disclosure accordingly.
- **Accountability for CDR impacts:** demonstrate a commitment to responsible data stewardship alongside the technical validity of consumer consent.

Why is this important?

- Having standardised and verifiable means of assessing whether actions of CDR participants align with consumer consent would add a layer of oversight as security against data being used outside the parameters of consumer consent¹⁹ and will improve consumer confidence in regulators being able to identify and act on breaches.
- A safety net that enables data recipients to clearly identify consumer consent preferences for how CDR data is handled means they will be better equipped to act accordance with those wishes even where they may not have a direct relationship with the CDR consumer (for example if CDR data is being handled/processed by a third party or travels outside the ecosystem*).
- Recognising the economic value of 'good' consent and encouraging the development of technology that delivers consumer data protections by-design will be key for safely activating proposed future functionality of CDR (such as action initiation / write access).

I think that [write-access] offering is probably a bit of a bridge too far, at this stage. Because you need to guarantee having explicit informed consent of the customer...

- Participant,
CPRC Consultation

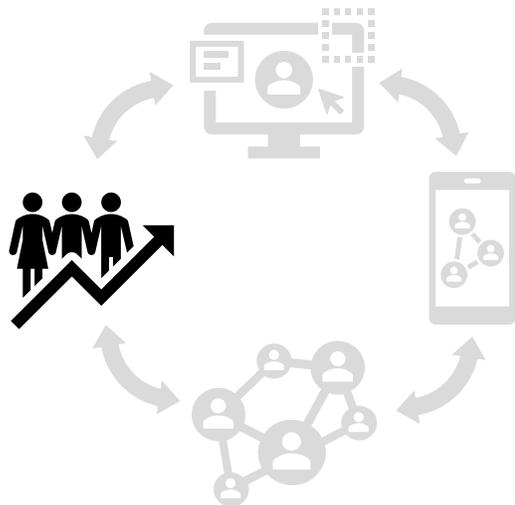
"[Codifying consent] has two key benefits. Firstly, the language used to capture the user consent can be structured in a way that ensures it is unambiguous, simple to understand and is limited in scope. Secondly ... there is an audit trail reflecting the customer's wishes."

- Open Data Institute report²⁰

Relevant opportunities:

- **Consider codified consent and associated metadata standards into CDR.** Develop and consider implementation of technical data standards and metadata schema that enable consumers' consent preferences and permissions to be codified as structured data and travel with CDR consumer datasets.
- **Encourage open-source CDR design assets.** For example, a public design library for CDR consent artefacts, potentially including design patterns and consent metrics as well as open-source implementation assets.

* This came into effect on 1 February 2022 via the Version 3 of the CDR Rules (*Competition and Consumer (Consumer Data Right) Amendment Rules (No.1) 2021*). The changes allow consumers to use the CDR to share data with 'trusted advisers' for advice or service. Trusted advisers are members of specified professions as outlined in the CDR Rules version 3. For more information visit: <https://www.legislation.gov.au/Details/F2021L01392>.



Impact area: INCLUSIVE AND FAIR OUTCOMES

High level outcome: Consumers have evidence of how any barriers and imbalances in CDR consent mechanisms and consumer outcomes are being identified, addressed, and remedied.

What will build CDR's capacity to provide fair and inclusive outcomes for consumers?

- **Transparency of policy aims and outcomes:** openly sharing (and building) the evidence base for determining policy and regulatory priorities as CDR becomes the mainstream for consumer data sharing transactions.
- **Robust evidence base, relevant across the spectrum of consumers:** capturing data to evaluate and improve how well CDR consent mechanisms and technology implementations serve diverse consumers; supported by consumer-informed consent metrics
- **Contestability:** Ability for consumers to challenge unfair or unexpected CDR processes or outcomes.

Why is this important?

- Transparency of policy aims and outcomes leads to better accountability for decisions about how the CDR evolves, and ensures consumers have relevant information on which to assess the fairness and relevance of the scheme in relation to their circumstances. Clear alignment of CDR policy with desired consumer outcomes can also assist policymakers and regulators to understand, in an economy wide context, where benefits of CDR are strongest, and where existing or emerging risk might need to be managed.²¹
- CDR must be able to align differing perspectives surrounding consumer consent processes across and within sectors so that consumers encounter sufficient stability and consistency of experience when using CDR products and services to trust in adopting it as part of their everyday experience.
- Consistent collection of metrics will support continuous improvement of CDR by facilitating evidence-based evaluation of the success of CDR reforms in empowering consumers to decide and act on consumer data sharing choices that are right for them.
- Inclusive design of metrics will help ensure the experiences of consumers who are marginalised or experiencing vulnerability are not overlooked in the outcomes evidence base for CDR; and that appropriate data are being collected to assess how well CDR is delivering benefits for all consumers (and to identify any widening or entrenching disparity stemming from CDR processes or consent mechanisms that might require changes to be made).

*"It all comes down to consumers understanding **what** they are consenting to disclose, **who** they are giving that information to, and **why** they are giving it to them."*

- Participant, CPRC Roundtable

Relevant opportunities:

- **Articulate a CDR consumer outcomes framework.**
- **Define and collect technical and CX metrics for CDR consent in consultation with consumer and industry stakeholders.**

Summary – opportunities for strengthening CDR’s consumer consent mechanisms

- 1. Develop data standards for CDR consumer dashboards.** Facilitate consumers’ capability and self efficacy in managing CDR consents/authorisations over time and across different providers/products/platforms by developing data standards specific to CDR dashboards; ensuring that all dashboards supplied to consumers will conform to accessibility and performance standards and enable consistent consumer expectations and experience of CDR consent management.
- 2. Iterate and expand consumer-centred guides for CDR consent.** Build on and complement existing resources (such as those already published by DSB and cdr.gov.au) to support consumers’ understanding of how CDR consent/authorisation works and provide consumers deeper insight into CDR consent than is currently available. We suggest this opportunity space could also encompass mapping any CDR consent dictionary and/or codified consent syntax to plain language explanations that are regularly tested for comprehensibility.
- 3. Establish a CDR regulatory sandbox.** Establish a testing ground to bring together consumers, community organisations, industry and policymakers to trial and iterate consent standards, regulations and interfaces in real conditions as part of CDR consultation and decision-making processes; including exploring how to provide material support and compensation to increase consumer and community sector participation in this process.
- 4. Institute a program of consumer-involved CDR data for good initiatives.** Structure a program of data for good initiatives, with technical participants required to be partnered by consumer representatives (and, where relevant, auspiced by community organisations) to promote cross-disciplinary understanding of effective consent and greater utility of technology outcomes for underserved consumers and the organisations assisting them.
- 5. Encourage open-source CDR design assets.** Build on DSB’s CX guidelines by establishing a publicly accessible and open-source design library for CDR consent artefacts, including documenting relevant design patterns and consent metrics. We note there may be crossover with the above opportunity; for example, with consideration to where data for good initiatives might require outputs to be open source.
- 6. Consider codified consent and associated metadata standards into CDR.** Develop and consider implementing technical data standards that enable consumers’ CDR consent permissions to be codified and attached as metadata (and travel with consumer datasets that are transacted through CDR). Establish clear audit and reporting trails aligned to codified consent, reinforced by data standards, to clarify accountability and ensure enforceability.
- 7. Articulate a CDR consumer outcomes framework.** Clear alignment of CDR policy intent with desired consumer outcomes and identified indicators and measures for success will variously help consumers, policymakers, and regulators understand where benefits of CDR are strongest, and where existing or emerging risks may need to be more strongly managed.
- 8. Define and collect technical and CX metrics for CDR consent in consultation with consumer and industry stakeholders.** Develop an agreed set of metrics suitable for gauging technical performance and consumer experience of CDR consent functions; to inform and improve CDR consent processes and to measure progress against intended consumer outcomes of the scheme.



Part 2:

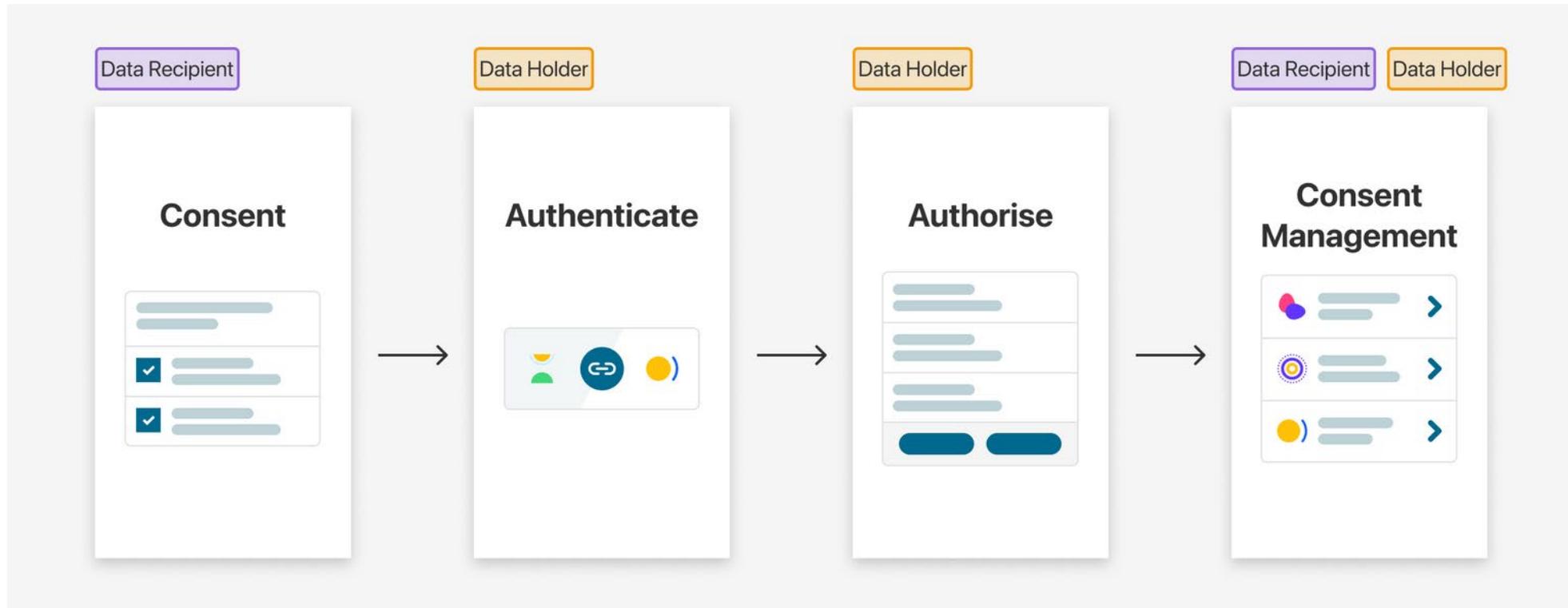
A consumer consent check-up for CDR

“Just giving people a really complex set of criteria and saying, ‘do you consent?’ or ‘do you agree with these terms and conditions?’ – we all know that is rubbish.”

- Participant, CPRC Consultation

Simplified CDR Consent Model ²²

*Additional steps will apply for consent to share data from multiple data holders, or to share data from accounts with multiple account holders ('joint accounts')*²³



Accredited Data Recipient (ADR) requests consent from consumer for specific data types and purposes.

Consumer selects data types and purposes that accord with how they want to share data with the ADR & nominates Data Holders that they choose to share CDR data from.

Consumer is temporarily redirected away from the ADR's site/app to Data Holder.

Data Holder authenticates identity of the consumer using existing customer credentials and a one-time-password.

Consumer selects from available accounts with this Data Holder and authorises data sharing from the chosen accounts.

Consumer is returned to ADR app to continue or finalise the CDR request.

Consumer accesses CDR dashboards to view and manage consents (for example, to amend, extend or revoke an active consent; to request CDR data held by an ADR be deleted when consent expires; or to otherwise manage their CDR consents).

Each ADR and Data Holder with whom a consumer makes CDR consents must provide them with a consumer dashboard.

How does consent work in CDR?

Accredited data recipients for CDR data must obtain relevant valid consent from consumers before requesting data holders transfer consumer data to them through the system, and must hold an active and appropriate consent at any time when they make use of or disclose such data for purposes allowed under CDR. To support this, CDR user interfaces, APIs and data management systems need to be sufficient to communicate, record, and convey such consent in both machine-readable and human-understandable forms. However, as the list of consent types and categories currently defined under the CDR Rules illustrates (box at right), expectations for consumers to be able to interpret and apply distinctions between consent types during the transactional flow of an online or in-app consent process are set high.

Striking the right balance between simplicity, transparency, and comprehension (or, between smooth and sticky CX) to achieve meaningful consumer consent remains a core challenge facing CDR participants now and into the future. CDR consent challenges are outlined as Appendix 1.

Future state

Consent will garner more complexity when additional types of CDR consent, potentially including write access consent, come into scope of the regime, enabling (for example) ADRs to provide 'life admin' services which go beyond recommending products, and can initiate switching to a new provider. We have heard use cases proposing ...*a consumer may be out having lunch when they get a notification on their phone advising a better loan product, insurance offer, or energy plan. They will simply need to hit 'accept' to action a switch.*²⁴

There are justifiable concerns from consumer advocates that a scenario of this kind is likely to see an increase in the incidence of consumers providing 'valid' consent for CDR transactions without understanding or giving due consideration to substantial or ongoing impacts it may have on their quality of life. It is not difficult to imagine how a person might accept a pop-up notification when inattentive or distracted; by accident; in the absence of advice; or while they are in an environment where their judgement might reasonably be assumed to be affected.

"CDR places a high threshold on consent, so consumers know what they are agreeing to when they consent to their data being collected and used. The focus of consent to collect and use consumer data is on transparency and making sure consumers understand the benefits and any potential consequences of what they are agreeing to."

- FAQ section of the CDR website²⁵

Types of consent as defined under CDR Rules²⁶

- a) **collection consent** is a consent given by a CDR consumer for an accredited person to collect particular CDR data from a CDR participant
- b) **use consent** is a consent given by a CDR consumer for an accredited data recipient of particular CDR data to use that CDR data in a particular way
- c) **disclosure consent** is a consent given by a CDR consumer for an accredited data recipient of particular CDR data to disclose that CDR data:
 - (i) to an accredited person in response to a consumer data request (this is defined as an **AP disclosure consent**); or
 - (ii) to an accredited person for the purposes of direct marketing; and
- (d) **direct marketing consent** is a consent given by a CDR consumer under these rules for an accredited data recipient of particular CDR data to use or disclose the CDR data for the purposes of direct marketing; and
- (e) **de-identification consent** is a consent given by a CDR consumer under these rules for an accredited data recipient of particular CDR data to de-identify some or all of the collected CDR data and do either or both of the following:
 - (i) use the de-identified data for general research;
 - (ii) disclose (including by selling) the de-identified data.

Note:

Permission given by a CDR consumer for a data holder to disclose particular CDR data to an accredited person (in accordance with a valid consent provided by the CDR consumer to the accredited person) is not defined as 'consent' in CDR terminology and is not a 'disclosure consent' under the Rules.

Authorisation is the term used for the CDR permission that is established between a consumer and data holder.

What does it look like for consent to be done well – and how does CDR measure up?

The CDR consent experience should be comprehensible, accessible, and nimble. Consent done well will support consumers' expectations to be able to evolve their consent in line with changing knowledge, circumstances or life events.

As a gauge for whether CDR consent mechanisms are likely to meet consumer needs and expectations, we have chosen to test CDR against an existing consent model, FRIES, that has already been applied elsewhere as a consent framework to communicate about consent needs, understandings, and behaviours in the context of data design that bridges technology and human requirements.²⁷ Building on the work of the Consentful Tech project, which expanded the original FRIES definition statements devised by Planned Parenthood to include qualities of consent that are specific to personal data and digital technologies (in work that has been positively cited by the World Economic Foundation's data privacy white paper),²⁸ we have adapted FRIES to directly address CDR consent relationships.

Against each of the FRIES criteria, we give a high-level 'check-up' of how well CDR may perform. This illustrates that the consent framework CDR has established to date is overall sound, but in its naissance stage*, with there are still high dependencies on the capacity of CDR participants to engage in socially responsible technology design, and the capability of consumers to engage with digital platforms and technical concepts.²⁹



* Over the coming period, as CDR moves from its early stages and is implemented across more sectors with more consumers participating in the scheme, it will provide an opportunity for Government to learn from the ecosystem and review and refine settings as impacts to participants including consumers are better understood.

Applying a 'FRIES' consent check-up to CDR:

Consent criteria 1: Freely given

- If a CDR interface is designed to lead people into doing something that they normally wouldn't do, or aren't comfortable with doing, the application is not consentful.
- Consumer choices about data sharing should not be made under pressure, force, manipulation, or while incapacitated.
- If people are giving up their CDR data because they must do so in order to access necessary services, and not because they genuinely want to, that is not consentful.



Consumer consent for any CDR data sharing/activity must be 'voluntary'.³¹



Consent requests presented to consumers by accredited persons must be made in accordance with the data standards.³² Use of 'dark patterns' to solicit consumer consent is discouraged by implication, but is not explicitly prohibited in CDR.

– this protection could be enhanced by providing consumers greater clarity over how design compliance will be monitored and reported (including, for example, public availability of information detailing penalties that have been applied on these grounds; including any revocation or suspension of CDR accreditation due to manipulation of consent).



CDR Data Standards offer guidance for good CX design

– as above, DSB guidance could be expanded to explicitly outline undesirable or prohibited design patterns. This would benefit consumers and regulators in being able to identify and respond to risk, as well as assisting data holders to avoid poor design.



CDR allows for joint account holders of banking products to opt-in to require co-approval be obtained for every CDR consent request.³³

– this protection could be strengthened if it were mandatory for data holders to offer this functionality; and if it was implemented as an opt-out (rather than opt-in) offering.



CDR consumer protections in relation to joint accounts also allow for exceptions to be made to treat joint account holders as if they were sole account holders for the purposes of CDR consent if the data holder considers it necessary in order to prevent physical or financial harm or abuse, for example, where a data holder is aware of coercive control occurring between joint parties to an account.³⁴

Consent criteria 2: Reversible

- Consumers should be able to change their mind about how they choose to on-share their consumer data, and who they give permission to use it, at any time.
- Technology should allow consumers the right to limit access or require deletion of data they have shared under CDR when they no longer want others to use it.



Consumer consent for any CDR data sharing/activity must be able to be 'easily withdrawn'.³⁵



There is currently no 'bulk-withdrawal' offering for consumer consent; which may impact on how easy it is for consumers to effectively withdraw consent. We suggest strategies should be implemented to mitigate against potential situations where consumers might withdraw CDR authorisations without being aware that use/disclosure consents are continuing³⁶

– for example, this might be effectively addressed through fit for purpose external consent management, as raised by the CDR Future Directions report.³⁷



CDR does not currently support consumers being able to specify and apply consent preferences (including withdrawal options) at ADR level; at account level; or in relation to specific data types or service offerings

– we see value in DSB investigating approaches to codified consent (and consent profiles) to address this issue, as discussed at page 33 of this report.



CDR Data Standards offer guidance for good CX design in amending consent, including withdrawing consents and authorisations

– this protection could be further enhanced by expanding data standards and notification requirements applicable to consumer dashboards, so that dashboard consent/authorisation records will be represented for consumers in ways that more clearly illustrate linked consents and the flow-on effects of amending or withdrawing consent/authorisation. Our interviewees suggested that this likely to be of particular importance for joint accounts and in situations where multiple types of consent were agreed under an initial CDR request and are being differently amended by a consumer (for example, if a consumer wishes to withdraw direct marketing consent but otherwise continue using an ADR's product or service).

Consent criteria 3: Informed

- ADRs seeking consent from consumers should be honest about their intentions.
- If a CDR application uses loopholes or fine print to omit or bury important details, it is not consentful.
- CDR applications should use clear and accessible language to explain how data is processed, used and disclosed; and to alert consumers about any risks.

-  Consumer consent for any CDR data sharing/activity must be 'informed'.³⁸
-  CDR does not require ADRs to notify consumers of commercial arrangements that may exist between ADRs and businesses whose products they may recommend to consumers, for example where a CDR data is requested to provide a personalised product comparison and switching recommendation service.
-  CDR does not require ADRs to notify or obtain consent from consumers for disclosing consumer data to all persons who will handle or process their data.³⁹
– to mitigate this information gap, we suggest DSB investigate whether data standards for dashboards can benefit consumers in making it clearer when CDR data subject under a consent is being handled by other parties not named as part of that consent, as discussed at page 28 of this report.
-  DSB has produced CX artefacts to support brand awareness via DH consumer dashboards; and is investigating brand aware metrics to facilitate compliance monitoring and reporting at the level of consumer facing brands, as well as parent ADRs
– we support DSB continuing to release guidance and models that help consumers and regulators to distinguish between (or make relevant associations between) CDR products, provider brands, and participating ADRs where a product offering is a sub-brand and/or uses different nomenclature to the responsible ADR.
-  Protection for joint account holders to provide informed consent will be enhanced by the pending data standards requirement that joint account holders be notified, as a condition of each consent authorisation, that the other account holders will be notified of their CDR activity.⁴⁰
– having this safeguard implemented, distinct from information provided once-off at the time of joint account election, was identified by domestic violence services and legal services during our consultation interviews as being a critical informational alert to individuals experiencing domestic violence who may face harmful repercussions for acting independently through CDR, and is of particular importance in instances where the data holder does not know a joint account holder is at risk of harm.

Consent criteria 4: Enthusiastic

- People should be genuinely motivated about the potential outcomes of sharing data. Indifference or discomfort do not indicate consent.
- If CDR processes push people to share data when they have ongoing reservations about doing so, that is not consentful.



CDR does not require consent to be enthusiastic.



Consumer consent for any CDR data sharing/activity must be 'express'⁴¹ (consent is unambiguous).



Consumer consent for any CDR data sharing/activity must be 'time limited'⁴² (consent is not indefinite); and DSB guidance (CX Principle 4) is that consent should be current.



Mechanisms for requesting CDR consumer consent must enable the consumer to "actively select or otherwise clearly indicate" choices and requests for CDR consent must not be presented as an 'opt out' of preselected or default settings.⁴³

– Continue to iterate guidelines for amending consent to mitigate against any potential for this having negative impact for consumers.

For example, interviewees we spoke to noted that if prompted to extend consent by an ADR it would be important for consumers to be reminded of their current consent settings in order to meaningfully nominate whether they wish to continue it, with some then querying whether this would be considered as showing pre-selected consent settings. Most interviewees considered that settings which had effectively been preselected by the consumer rather than the ADR should not be considered a conflict.



While CDR and its accreditation are open to all entities, motivation for consumers to engage with CDR is largely being left to the competitive space (with the design of CDR use cases, products and interfaces being driven primarily by commercial interests). Consumer advocates have raised concerns with us that this will lead to some consumers being shut out of obtaining benefit from CDR, or that it may widen existing disparity of consumer access to some products or pricing.⁴⁴

– DSB involvement in CDR 'data for good' initiatives could help to stimulate development of products and services to benefit consumers who might otherwise be underserved by or disengaged from CDR, as discussed at page 31 of this report.

Consent criteria 5: Specific

- Saying yes to one thing doesn't mean a consumer agrees to others.
- Consentful technology only uses consumer data the person has directly given permission for it to collect, not data about that person acquired through other means, and uses it only in ways someone has consented to.
- If CDR data is being combined with data from other sources, this should be clearly made known to and agreed to by the consumer.



Consumer consent for any CDR data sharing/activity must be 'specific as to purpose'.⁴⁵



The separation of CDR consent types (detailed on page 12 of this report) supports consumers having opportunity to apply more granular control over the purposes for which they elect to give consent for specified CDR consumer data to be used



Conversely, separation of CDR consent types may make it difficult for consumers to correctly understand the specificity of their consent (this issue is elaborated in Appendix 1).



CDR does not prohibit an ADR from combining CDR data with data it has obtained by other means, and does not require consumers to be specifically notified if this will occur as part of fulfilling the purpose of a use consent.

– to mitigate this gap, we suggest DSB investigate whether data standards for obtaining consent can benefit consumers by providing a standard flag to indicate where a use consent involves CDR being data combined with consumer data obtained by other means. This might also be conveyed on consumer dashboards.



The CDR data minimisation principle means that ADRs must not seek to collect more data than is reasonably needed to provide the goods or services requested by the consumer;⁴⁶ and information presented to consumers when asking for consent must indicate how collection or use (as applicable) complies with the data minimisation principle; including, in the case of a collection consent, that all the requested data are reasonably needed, and relate to no longer a time period than is reasonably needed.⁴⁷



CDR does not require ADRs requesting consent to explicitly inform consumers of the extent of historical data subject to collection and use under that consent.⁴⁸



CDR requires *Data Holders* to inform consumers of the full extent (date range) of data that will be released to an ADR under a consent request, including historical data, prior to the consumer authorising disclosure of that data.⁴⁹

– to improve specificity of consent we suggest DSB continue to investigate how data standards can facilitate this information being conveyed as part of ADR consent requests, and as a feature on dashboards provided by both ADRs and Data Holders.



Part 3:

Measuring consent outcomes

“The idea is it’s meant to help people shop around to get better deals, isn’t it? – so, are people using [CDR] for that or is it essentially just being used to flog more products to people?”

I don’t know how you’ll measure that, it’s sort of my hunch, but we’ll see!”

- Participant, CPRC Consultation

Consent metrics and outcomes measurement

To ensure strong foundations for the regime, CDR must be seen and known by consumers to operate so that their consent is meaningful and effective. Accountability for achieving this will be aided by having clear indicators and consistently interpreted metrics for consumer consent outcomes – and for consumer outcomes more broadly.

Drawing on earlier work by CPRC and what interviewees have told us about consumer requirements and expectations of consent, the following two pages present a sketch of what impact pathways and metrics for consent could look like in the context of an Outcomes Measurement Framework for CDR. We emphasise this is a building block intended to convey the broad scope of what might be required for further engagement and definitional work.

In sketching out a draft outcomes measurement approach, we have assigned a core goal of “consentful technology in CDR”, and aligned it to the same impact areas that are discussed throughout this report:

- Empowered Consumers
- Meaningful Participation
- Trusted Systems, and
- Inclusive and Fair Outcomes.

On the following pages, we have identified high-level and intermediate outcomes for each of these impact areas and mapped a range of indicators that might be used to gauge if these outcomes are being achieved. For the first of the four impact areas (“Empowered consumers”), we have also included indicative quantitative metrics in relation to selected indicators. We note this is a representative set of metrics and is not intended as an exhaustive list.

Our consultation findings emphasise that quantitative metrics can only tell part of the story. Consumer-reported consent measures likewise play a vital part in evaluating the success of the reform and must be incorporated into any outcomes framework.⁵⁰ We further acknowledge that our engagement on consent metrics has been undertaken within the context of wider CDR discussions and with a relatively small sample of consumer advocates and representatives from community sector organisations. Our advice is that any dedicated project to devise a CDR consumer outcomes measurement framework should be appropriately resourced to include more extensive collaboration and testing with consumer representatives.

“A consent process can fulfill all of the legal imperatives to ensure consent is informed from a process perspective - provision of information, discussion, etc.

However, only by asking participants for their perspectives can judgements be made about whether or not consent was truly informed.”⁵¹

Core goal

CONSENTFUL TECHNOLOGY IN CDR – DRAFT APPROACH

Impact areas

EMPOWERED CONSUMERS

MEANINGFUL PARTICIPATION

TRUSTED SYSTEMS

INCLUSIVE & FAIR OUTCOMES

High level outcomes

1. Consumers have simple, accessible tools to accurately communicate their data sharing preferences and permissions and can enact CDR choices freely and safely.

2. Consumers have increased capability to understand, influence, and participate in data sharing to achieve positive outcomes through CDR.

3. Consumers can trust that systems established by CDR deliver them agency, and engender accountability of scheme participants.

4. Consumers have evidence that any barriers and imbalances in CDR consent mechanisms and consumer outcomes are being identified, addressed, and remedied.

Intermediate outcomes

1.1 Consumers better understand context for CDR data sharing and the implications of consent
1.2 Consumers have agency in how their consumer data is shared and used
1.3 Consumers can exercise intention about how their consumer data is shared and used

2.1 Consumers are heard and respected as key stakeholders in technology design processes
2.2 Consumers are supported to receive and respond to information about their data sharing rights, and about CDR policies and procedures, in formats that are relevant, understandable and useful to them
2.3 Consumers are motivated to use CDR

3.1 Consumers and regulators can follow where and how decisions are made based on CDR consents, and can trace accountability for quality and accuracy of the associated data use and outcomes
3.2 Consumers have greater understanding of risks and benefits of CDR
3.3 Consumer use of CDR products and services has outcomes that align with their expectations
3.4 Consumers have clear and accessible pathways and effective mechanisms for complaints and redress if things go wrong

4.1 Decision makers, industry, and the wider community have shared understandings about the intent of CDR
4.2 Businesses deliver CDR business models that limit potential for consumer harm
4.3 CDR protections for vulnerable consumers are being prioritised by participants
4.4 Decision makers and businesses work together with consumer representatives to address barriers to equitable CDR outcomes

EMPOWERED CONSUMERS / High level outcome 1:

Consumers have simple, accessible tools to accurately communicate their data sharing preferences and permissions and can enact CDR choices freely and safely.

| INTERMEDIATE OUTCOMES | INDICATORS | INDICATIVE METRICS |
|---|---|---|
| <p>1.1 Consumers better understand context for CDR data sharing and the implications of consent</p> | <p>When using CDR platforms/services,</p> <ul style="list-style-type: none"> (a) Consumers have sufficient levels of data fluency to distinguish short and long-term consequences of data sharing (b) Consumers are presented with all terms and conditions they will be consenting to, in formats meaningful to them (c) Processes for CDR data sharing support conditional and granular consents | <p>1.1 (b)</p> <ul style="list-style-type: none"> • Time spent per screen • Drop off counts at decision points • Frequency of accessing accordions, FAQs in consumer journey • Counts of help requests for relevant categories of information, and formats requested • Counts of CDR complaints received against relevant categories (across DHs, ADRs, EDR schemes and OAIC)* |
| <p>1.2 Consumers have agency in how their consumer data is shared and used</p> | <ul style="list-style-type: none"> (a) When using CDR platforms/services, consumers are not being coerced or enticed into sharing data against their wishes or interests (b) All consumers can easily obtain documentary proofs and contextual records necessary to manage their CDR data sharing decisions or to progress CDR-related administrative decisions and actions (c) Consumers can renew data CDR sharing consents without difficulty, and can revoke them easily and without penalty | <p>1.2 (b)</p> <ul style="list-style-type: none"> • Count of consumers who open CDR receipt/s via dashboards [while such consent is active] & [after the consent is no longer current] • Count of consumers who download CDR receipts via dashboards [while such consent is active] & [after the consent is no longer current] • Total count all CDR receipts [opened] & [downloaded] via dashboards • Numbers of searches or help requests via ADR/DH website, app, or dashboard in relation to records of consent • # of complaints in relation to access to records of consent <p>1.2 (c)</p> <ul style="list-style-type: none"> • Percentage of consumers who commence (all/any) CDR consent transactions who fully complete the process (ie. receive a CDR receipt) • Percentage of consumers who commence withdrawal of a consent (ADR) or authorisation (DH) who fully complete the process; and, for ADR, numbers who go on to complete additional consent withdrawals in the same session in relation to the same dataset • Numbers of searches or help requests in relation to a) extending and b) stopping CDR consents (ADR) or authorisations (DH) • Total number consents/authorisations where duration was amended (renewed or withdrawn) |
| <p>1.3 Consumers can exercise intention about how their consumer data is shared and used</p> | <ul style="list-style-type: none"> (a) Consumer consent applies for a prescribed time and purpose, and recipients of CDR data do not make use of it outside those parameters (b) Consumers can clearly navigate through CDR consents applying to their consumer data at any time to review and amend those consents (c) Consumers have sufficient levels of data fluency to distinguish short- and long-term consequences of data sharing | <p>1.3 (b)</p> <p><i>Collect/compare data for both ADR and DH dashboards:</i></p> <ul style="list-style-type: none"> • Count of dashboard log ins (# unique consumers & total) • Count of dashboard log-ins by consumer (average & max) • Total count of dashboard sessions where new action taken on one or more active consents/authorisations • Count of dashboard sessions where new action taken on one or more active consents by consumer (average & max) • Prevalence of consent amendments by type of amendment • Frequency of dashboard logs ins • Count of dashboard sessions abandoned/expired |

* We note that while complaints data is valuable, we caution against it being the only metric for measuring 'consumer understanding' as it needs to be analysed in context of other data points (e.g. not all consumers may complain due to specific barriers and not all complaints necessarily equate to a breach).

MEANINGFUL PARTICIPATION / High level outcome 2:

Consumers have increased capability to understand, influence, and participate in data sharing to achieve positive outcomes through CDR.

INTERMEDIATE OUTCOMES

INDICATORS

2.1 Consumers are heard and respected as key stakeholders in technology design processes

- (a) Consumers are effectively represented in standards and technology design processes with sufficient resources to provide meaningful input alongside industry on equal footing
- (b) Increase in proportional representation by consumer representatives on formal CDR Committees, and in the numbers of submissions directly representing consumer interests to CDR consultation channels
- (c) Collaborative design and data for good initiatives unpack assumptions about consumer needs and adopt a principle of “nothing about us without us” when surfacing CDR technology challenges and solutions for the benefit of underserved consumers
- (d) Regular and transparent reporting of consumer experiences and outcomes within the CDR is being undertaken and published

2.2 Consumers are supported to receive and respond to information about their data sharing rights, and about CDR policies and procedures, in formats that are relevant, understandable and useful to them

- (a) CDR resources are made available to consumers in a variety of formats and languages, and consultation processes provide flexibility for differing engagement capacities and capabilities
- (b) CDR platforms and interfaces, and any sandbox environments that invite participation by consumer representatives, conform to current WCAG accessibility standards and to CX guidelines published by DSB

2.3 Consumers are motivated to use CDR

- (a) Growth in numbers of consumers accessing and using CDR data sharing platforms/services in preference to alternative methods of consumer data sharing, such as screen scraping
- (b) Growth in CDR use cases that demonstrably improve consumer wellbeing and welfare

TRUSTED SYSTEMS / High level outcome 3:

Consumers can trust that systems established by CDR will deliver them agency and will engender accountability of scheme participants.

INTERMEDIATE OUTCOMES

INDICATORS

3.1 Consumers and regulators can follow where and how decisions are made based on CDR consents, and can trace accountability for quality and accuracy of the associated data use and outcomes

- (a) CDR has well-developed and documented audit trails that enable effective enforcement to ensure that businesses are collecting, sharing and using data only in line with explicit and informed consent by consumers
- (b) Consumers can clearly review their consents at any time to check or modify what CDR data is being disclosed, who has access to that data, for what purpose, and to what effect
- (c) Processes for CDR data sharing provide consumers with clear confirmation of their actions and consents
- (d) Processes for CDR data sharing provide consumers with clear confirmation of ADR actions, including deletion, deidentification, and disclosures of consumer data
- (e) Processes for CDR data sharing, including for processing or refining CDR data, can be clearly explained in human-understandable terms

3.2 Consumers have greater understanding of risks and benefits of CDR

- (a) CDR use cases are well defined and comprehensible to consumers
- (b) Consumers have capability and opportunity to assess risk and benefit before consenting to data sharing

3.3 Consumer use of CDR products and services has outcomes that align with their expectations

- (a) Consumers do not report being surprised by the detail of how their CDR data was used, managed, or shared after providing CDR consents or authorisations

3.4 Consumers have clear and accessible pathways and effective mechanisms for complaints and redress if things go wrong

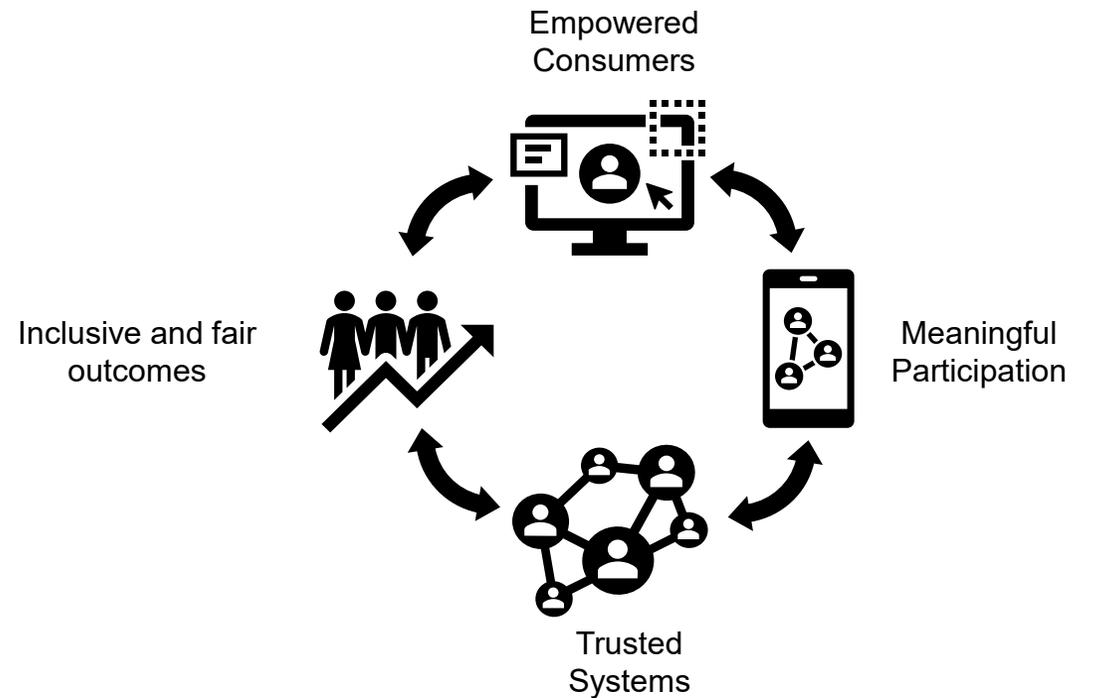
- (a) All consumers who feel CDR their data has been handled contrary to their consent are able to easily access procedures for making a complaint, should they choose to do so
- (b) Most consumers obtain satisfactory resolution, within expected/specified timeframes, if they have a complaint about CDR data being handled contrary to their consent

INCLUSIVE AND FAIR OUTCOMES / High level outcome 4:

Consumers have evidence that barriers and imbalances in CDR consent mechanisms and consumer outcomes are being identified, addressed, and remedied.

| INTERMEDIATE OUTCOMES | INDICATORS |
|--|--|
| 4.1 Decision makers, industry, and the wider community have shared understandings about the intent of CDR | <ul style="list-style-type: none">(a) Key principles, protections, priorities and changes to CDR are communicated to stakeholders and consumers(b) Desired consumer outcomes are clearly articulated when CDR policy is developed; progress against those consumer outcomes is measured and reported on publicly; and there is transparency regarding where CDR priorities, policy or processes may shift as a result of this evidence |
| 4.2 Businesses deliver CDR business models that limit potential for consumer harm | <ul style="list-style-type: none">(a) The business models and practices of firms offering CDR services do not place consumer data at risk of leakage or misuse(b) Availability of CDR products, services or processes does not result in consumers obtaining worse outcomes than they might otherwise receive(c) Increase in number of CDR participants who are incorporating Vulnerability Strategies, Algorithmic Impact Assessments, or other Vulnerability Impact Assessments in their product or service design |
| 4.3 CDR protections for vulnerable consumers are being prioritised by participants | <ul style="list-style-type: none">(a) Measures and metrics that convey CDR consent experiences of and outcomes for vulnerable groups are being collected, and are well-understood by policymakers and regulators – including monitoring distributional benefits and costs of the scheme |
| 4.4 Decision makers and businesses work together with consumer representatives to address barriers to equitable CDR outcomes | <ul style="list-style-type: none">(a) A wide range of lived experiences of consumer vulnerability is informing inclusive approaches to formulating and improving CDR consent mechanisms and processes(a) Inclusive design is not just technology-specific, and extends to development of CDR consent policies, standards and regulations |

Part 4: Activating opportunities



Activating CDR consent opportunity areas

Section one of this report identified eight key opportunities for CDR to be ‘doing consent well’ that we propose are likely to be of benefit to consumers:

Opportunity space

1. **Develop data standards for CDR consumer dashboards**
2. **Iterate and expand consumer-centred guides for CDR consent**
3. **Establish a CDR regulatory sandbox**
4. **Institute a program of consumer-involved CDR data for good initiatives**
5. **Encourage open-source CDR design assets**
6. **Consider codified consent and associated metadata standards into CDR**
7. **Articulate a CDR consumer outcomes framework**
8. **Define and collect technical and CX metrics for CDR consent**

Impact area

Empowered consumers
Empowered consumers
Meaningful participation
Meaningful participation
Trusted systems
Trusted systems
Inclusive and fair outcomes
Inclusive and fair outcomes

The following pages outline additional detail for these opportunities and the ways in which they might be activated.

Opportunity 1:

Develop data standards for CDR consumer dashboards.

Continue producing data standards and associated CX artefacts that reflect the significance of consumer dashboards as the primary instruments through which consumers can review and exercise consent management through time.

Facilitate consumers' capability and self efficacy in managing their CDR consents/authorisations over time and across different providers, products, and platforms by developing data standards specific to CDR dashboards; ensuring that all dashboards supplied to consumers conform to accessibility and performance standards and enable consistent consumer expectations and experience of CDR consent management.

Data standards for consumer dashboards will help ensure CDR consent management functions well and consistently for consumers. Producing technical standards (such as those necessary for codifying consent – discussed separately as Opportunity 6 on page 33) that are applicable to CDR dashboards will be of direct relevance to all consumers using CDR platforms. We note that our research consistently reveals the need for consumers to have more meaningful choices, especially when it comes to managing their consent.* We encourage Treasury and Data Standards Body to consider the most effective central dashboard or other effective tools that can enable consumers to effectively manage their consent. As well, CX standards for dashboards can be developed to have both general and targeted benefit for consumers experiencing vulnerability, including those who encounter barriers to use technology, influenced by factors such as English language proficiency and literacy, digital fluency, digital access, or differences in cognitive and physical ability. Any development in this space could take into account the recommendations made in the Data Standards Body's *Consumer Data Standards: Manage and revoke Phase CX Stream 2 Report*** which specifically highlights the need to develop benchmarks, design verifiable trust into the ecosystem and use a collaborative framework that is evidence-based to mitigate risks.

Consumer dashboards have been openly positioned as being in the competitive space for CDR data innovation.⁵² To streamline regulation of this key component of CDR against established conventions for consumer safety and utility, we suggest it would be helpful to develop CX standards and guidelines that are specific to dashboard functions (i.e. building on existing data standards and CX artefacts for amending consent and for withdrawing consent and authorisation). We consider this is necessary to ensure a base level of consistency across different service offerings and to ensure dashboard products are designed in ways that accommodate consumer interests as well as commercial needs.

* See CPRC reports Day in the Life of Data: <https://cprc.org.au/report-a-day-in-the-life-of-data/> and Unfair Trading Practices in Digital Market: Evidence and Regulatory Gaps: [Unfair Trading Practices in Digital Market: Evidence and Regulatory Gaps – CPRC](https://cprc.org.au/unfair-trading-practices-in-digital-market-evidence-and-regulatory-gaps/)

** Stream 2 report available at: <https://consumerdatastandards.gov.au/engagement/reports/reports-cx/phase-2-cx-reports>.

Opportunity 2:

Iterate and expand consumer-centred guides for CDR consent.

Build on existing resources (such as those published by DSB and cdr.gov.au) to support consumer understanding of how CDR consent/authorisation works and to provide consumers with deeper insight into CDR consent than is currently available, including documenting how CDR's technical consent pathways align with choices and actions consumers might want to make and illustrating known dependencies or flow on effects between types of consents and/or consent and authorisation actions.

We suggest this opportunity space should also encompass mapping any CDR consent dictionary or codified consent syntax to plain language explanations that are regularly tested for consumer comprehensibility.

The CDR Future Directions Inquiry recommended consent measures focus on increasing clarity in usage consents: “Specifically ... that a dictionary of standard CDR terms and use cases be developed and a method of industry certification be encouraged to assist consumers and accredited persons to understand consents. Additionally, the Inquiry supports the DSB continuing to research what level of detail in the consent process leads to the greatest consumer empowerment and understanding.”⁵³ The Inquiry further proposed this dictionary should be included as part of the CX Standards’ Data Language Standards and set out two indicative examples of how entries might be structured.⁵⁴ While supporting the need for this resource, we express some reservation that the indicative examples provided in the *Future Directions* report still appear more geared to technical use than to consumer comprehension.

Alongside establishment of a CDR consent taxonomy (for use by regulators, and by industry in CDR technologies), we suggest building on existing DSB CX research to assist in developing a ‘plain language’ CDR dictionary, mapping content of the taxonomy to ensure it is a meaningful consumer guide to consent terms and constructions. Ideally, this dictionary should be designed and tested for comprehensibility in collaboration with consumers and accessibility experts; including investigating feasibility of translation into languages other than English.

We also see a gap for consumer guides that expand CDR use cases or consumer journeys to provide deeper insight or direction regarding associated decision paths that may be necessary to effect consent in the ways consumers are intending, without triggering information fatigue. For example, an enhanced consumer guide addressing withdrawing consent for data sharing might include:

- scenarios/information specific to joint accounts (for example: “After electing CDR pre-approval on the joint account, I’m not comfortable with a specific instance of data sharing another account holder has set up – what options are available to me; what implications might they have on other data sharing agreements that are in place; and how would I give effect to each those choices?”)
- explanation that deletion/deidentification preferences cannot be modified after consent is withdrawn and providing guidance for checking current permissions and how to modify them (how to find this information on a dashboard; what terminology to use when lodging a help request)
- flagging the terminological and functional difference between consent and authorisation; alerting consumers that withdrawing authorisation on a DH dashboard is only a partial action in terms of ‘ending’ consent; and explaining that withdrawing use consent(s) ADR side is necessary if the intent is to effect cessation of use of data already collected.

Opportunity 3:

Establish a CDR regulatory sandbox.

Establish a regulatory sandbox to bring together consumers, community organisations, industry and policymakers to trial and test consent standards, regulations and interfaces in real conditions / with real data – including material support for consumer representatives' participation in this process.

A regulatory sandbox environment* could help facilitate more workable solutions for all stakeholders, giving greater insight into real-world effects of CDR proposals in a 'working' technical environment that would allow unsuitable or ineffective proposals to be wound back at an early stage.

Some stakeholders we spoke with identified merit in establishing an environment where relevant stakeholders (including consumer representatives) can take a hands-on approach to explore, trial, iterate and challenge key elements of the regulatory frameworks for CDR before they are published, at which point it becomes far more onerous to remove or reverse engineer problematic aspects of regulation. This approach would allow for proposed solutions to be validated or discarded while still at the design stage.

Conversely, we note that some research has identified sandbox environments as potentially increasing the risk of 'regulatory capture' (where regulatory agencies may come to be more dominated by the interests they regulate than by the public interest - see note 17). To mitigate against this, we emphasise the regulatory sandbox environment cannot simply be a technical playpen for industry and business participants but must also be welcoming to less technically oriented stakeholders. Strategies to invite, support, and sustain participation from community representatives might, for example, include commitment to ensuring material supports and to developing relevant and accessible prototypes and proposals that consumer representatives feel confident to engage with.

* A 'regulatory sandbox environment' may include, but is not limited to, technical sandboxes (assisting participants to understand if their builds work properly), specific regulatory-focussed sandboxes (to ensure participants are compliant), ASIC style regulatory sandboxes (allowing a lighter form on regulation for start-ups with limited activities) and policy sandboxes (testing new rules or standards proposals on actual consumers to see how they work). While all can play an effective role in the CDR ecosystem, enabling technical consumer-focused sandboxes will ensure the scheme is working from a consumer perspective.

Opportunity 4:

Institute a program of consumer-involved CDR data for good initiatives.

Structure a program of data for good initiatives, with technical participants required to be partnered by consumer representatives (and, where relevant, auspiced by community organisations) to promote cross-disciplinary understanding of effective consent and greater utility of technology outcomes for underserved consumers and the organisations assisting them.

We suggest that DSB take a lead or supporting role in structuring and running CDR data for good initiatives that will require industry and technology partners to work together in genuine collaboration with community organisations to facilitate projects stimulating CDR competition and technology grounded in real consumer need and driven by the consumer interest. A scheme of this design could help bring more balanced representation of consumer interests into the development of CDR technology; noting that industry and business will have commercial drivers (and, in many cases, access to other innovation funding) to pursue their priorities.

Many people working in the community sector are excluded from engaging deeply with data because of technological, technical, assumed, and practical barriers. As a result, they are not always able to exert strong influence on the types of applications that are built, and to direct those efforts toward outcomes that may benefit the communities and individuals they are working with. Initiatives that encourage CDR participants to focus on socio-technical challenges can be a powerful policy lever to spur consumer-centric data innovation. Data challenges might be set based on consent issues that are already seen or anticipated to be emerging in the CDR landscape and affecting consumers (such as the consent challenges outlined in Appendix 1), to address new issues being surfaced through DSB's ongoing CX research, or through the iteration of problem statements through a process of smaller lead-in events.

We see benefit in government running a set of targeted events bringing together community sector organisations and data specialists in safe and respectful spaces, to:

- **initiate** familiarity and trust so that both groups have a better understanding of each other's domains, expertise, and needs and requirements for working together in successful collaborations
- **illustrate** examples that demonstrate what is possible, via speakers who can tell the story of why it matters and how to do it, speaking from a perspective that will be trusted and relevant
- **identify** 'for purpose' opportunities and use cases for CDR data, and other public benefit data projects that can meet organisational, service delivery, or market needs community organisations and their clients are contending with
- **iterate** initial blue-sky ideas into actionable projects and align these with potential developers and funding sources.

Opportunity 5:

Encourage open-source design assets.

Build on DSB's CX guidelines by establishing a publicly accessible and open-source design library for CDR consent artefacts, including documenting relevant design patterns and consent metrics.

We suggest a value opportunity exists for DSB to develop a library of design patterns and consent metrics. This would work in complement to the CX Guidelines by enabling deeper contextualization of standards, guidelines and wire frames that are being produced as tools for good practice.*

Further utility could be gained by widening the scope of the design library beyond design patterns to include open-source code for CDR compliant consent assets (such as dashboard components). This would make basic consent functions available for white label implementation by CDR participants who may not otherwise be financially or technically equipped to develop or purchase relevant technology to comply with their CDR obligations while supporting a positive consumer experience. We consider this will become increasingly relevant for small businesses who find themselves prescribed as CDR data holders as CDR rolls out across all sectors of the economy and note evidence that existing DSB design artefacts are already being relied on and implemented by CDR participants as a basis for this function.⁵⁶

We suggest the following principles for consideration:

- publicly accessible – a design library should be available for consumers, industry, and CDR regulatory agencies to reference and contribute to; with the process and criteria for contributions potentially to be managed by DSB.
- simple to navigate – the design library, and any submission processes, should be able easily navigated without specialist or technical knowledge.
- aggregator model – ideally, a design library would be able to ingest or consolidate relevant information from existing DSB knowledge hubs, without necessarily seeking to replace those resources.

* We note that ACCC and DSB already provide many open-source assets which have been strongly requested by the CDR community to help reduce entry barriers and implementation costs/time while facilitating consistency across the ecosystem.

Opportunity 6:

Consider codified consent and associated metadata standards into CDR.

Develop and consider implementation of technical data standards that enable consumers' CDR consent permissions and preferences to be codified and attached to transaction metadata (and travel with any onward disclosure of consumer datasets); and establish clear audit and reporting trails aligned to codified consent, to ensure enforceability of consent standards.

We see opportunity in the development of requisite data standards to support CDR consent being codified. Findings of a review of the first year of the UK's open banking implementation highlighted that improvements for consumer consent for customers were likely to be obtained through codifying consents.⁵⁷ *Codifying consent* refers to “codifying the intent underpinning the consent given by the user, and then attaching this codified intent [to the consumer dataset to which the consent applies] as metadata”.⁵⁸

Extending on this, the potential for CDR to allow consumers to tailor consent flows would be enhanced if, in addition to consent permissions relating to a specific CDR consent agreement, overarching consumer consent preferences could be similarly codified, stored, and transmitted (for example, preferences such as: deletion by default; no direct marketing; no de-identification). There is potential to reduce friction and build consumer confidence if, rather than having to manually apply their preferences to each CDR request, consumers have means to create and store consent profiles that let them specify fundamental consent preferences and communicate these automatically as part of CDR consent flows. Consumers might, for example, set up a single consent profile and use this function for certainty that they have the same consent preferences being applied for all CDR data sharing; alternatively, it could facilitate them being able to create a range of profiles which are specific to particular accounts or types of data. Potentially, this also opens up innovation pathways for external consent management via the ability for consumers to disclose the governance dataset (CDR consent profiles) to an external consent management provider who would overlay those preferences to all the consents a consumer has and give consumers a more consolidated point of control from which to manage consent.

There are several benefits to this approach. Firstly, as the UK experience suggests, language used to capture the user consent can be structured in a way that ensures it is “unambiguous, simple to understand and is limited in scope”.⁵⁹ Secondly, structured consent metadata would ensure there is an audit trail reflecting the customer's wishes that travels with the dataset, adding a layer of oversight to help prevent data being used outside the parameters of consumer consent. Thirdly, codifying consent lends support for daisy-chaining consents in a way that is traceable and detailed – not only strengthening audit trails for regulatory purposes, but also bolstering the CDR record keeping requirements that consumers can access. Finally, codified consent preferences (in the form of consent profiles) may offer a useful instrument for allowing consumers more intuitive and centralised control over specifying consent for CDR data sharing/activities. Together, these benefits suggest an avenue for more effective management and oversight of consent (benefiting consumers, participants, and regulators), including better prospects for a 'bulk-withdrawal' consent mechanism and for 'real-time' views of where and how CDR data is being handled.

We propose a CDR regulatory sandbox (Opportunity 3) may have benefit for deeper investigation into codifying consent, including exploring how CDR technology can offer mechanisms to routinely communicate consent profiles, including providing audit trails of amended consent metadata to CDR datasets where appropriate. Investigation could also include testing and mitigating privacy implications if data about consumers are shared onwards in addition to data that is specifically 'CDR data', with the aim to ensure data that enables codified consent is safe and secure.

Opportunity 7:

Articulate a CDR consumer outcomes framework.

Clear alignment of CDR policy intent with desired consumer outcomes and identified indicators and measures for success will variously help consumers, policymakers, and regulators understand where benefits of CDR are strongest, and where existing or emerging risks may need to be more strongly managed.

A key question conveyed to us as being fundamental to measuring the success of CDR was “Does the consumer experience align with their expectations?” If not, interviewees told us, consumers (and consumer advocates acting on their behalf) must be able to recognise this, and to rely on consistent CDR dispute resolution processes to seek redress or remedy in circumstances where there is a reasonable belief that CDR consent permissions have been breached; or where CDR products and processes are not sufficiently enabling consumers to accurately effect their data sharing intentions. A clearly articulated consumer outcomes framework will support better accountability for decisions being made about how the CDR evolves, and ensure consumers have access to relevant information on which to assess and interact with the scheme in relation to their circumstances.

Regarding outcomes measurement, interviewees highlighted the importance of having CDR mechanisms to monitor what happens when consumers experience unexpected results from their use of CDR – including the need to make sure all consumers have accessible dispute resolution processes (ie, as CDR rolls out and use becomes mainstreamed, continuing to measure and evaluate the usability, quality and efficacy of mechanisms such as CDR’s no wrong door approach and centralised complaints portal). There was concern about how consumers might be treated in dispute resolution in scenarios where consumers maintain their CDR consent has been breached but the actions of CDR participants appear to conform with a technically valid consent.⁶⁰ We consider this scenario suggests an example where quantifying the frequency, context, and outcomes of such instances could help identify whether the core issue – and remedial action required – is located with provider or CDR dispute processes; and to what extent the problems might be technical, process, or program driven.

Developing a consumer outcomes measurement framework would also include identifying where data sources for proposed measures exist. We note that reporting and metrics, and the importance of are the subject of a recent DSB Decision Proposal from the Technical Working Group.⁶¹ The proposal notes:

When the metrics endpoint was initially defined through consultation the expectation was that it would be used for simple dashboard style reporting. The main reporting to demonstrate compliance and inform the regulators would be delivered via periodic manual reports as defined in the Rules ... it has [since] become clear that there is an opportunity to expand systemic reporting via API data collection to the point that no other regular reporting would be required unless specifically requested of certain participants.

While agreeing with the importance and value of effectively leveraging the metrics API, we urge caution towards taking an approach that would eliminate other channels for mandatory reporting of data that falls outside the scope of the API. We also highlight that this proposal has not been widely socialised with consumer representatives (the consultation channel for Decision Proposals, the Consumer Data Standards GitHub instance, is largely frequented by the technical community and is not considered usable by most of our interviewees). While agreeing that the Consumer Data Standards’ metrics API is an essential data source, we question whether it has scope sufficient for reporting all metrics relevant to CDR participant compliance; and do not believe it can deliver all metrics that will be necessary for consumer outcomes measurement. Similar attention to how consumer-reported metrics are intended be collected and incorporated into the CDR evidence base are important if the scheme is to retain credibility with consumer representatives.

Opportunity 8:

Define and collect technical and CX metrics for CDR consent.

In consultation with business, industry and consumer representatives, there is opportunity to develop an agreed set of metrics suitable for gauging technical performance and consumer experience of CDR consent functions; to inform and improve CDR consent processes and to measure progress against intended consumer outcomes of the scheme.

As outlined under the previous recommendation, we believe that the Consumer Data Standards' metrics API will be an essential data source for capturing data about CDR performance; however we do not consider it can deliver all metrics that will be necessary for measuring the quality of consent in CDR. Similar attention to how consumer-reported metrics are intended be collected and incorporated into the CDR evidence base will be necessary if the scheme is to retain credibility with consumer representatives.

Metrics can deliver a robust and repeatable evidence base to gauge how well CDR – and CDR participants – are delivering on consumer consent mechanisms, including the policy intent of dashboards to provide consumers with consent oversight and management functions for consumers (box at right).

To ensure strong foundations for the regime, CDR must operate – and be seen to operate – so that consumer consent is meaningful and effective. Accountability for achieving this will be aided by having clear indicators and consistently interpreted metrics for CDR consent: not only in relation to the provision of consent, but also for managing that consent through time.

Why are consent metrics important for CDR consumer dashboards?

- Dashboards are a core consumer interface for CDR, offering the platform functionality whereby consumers can review, modify, extend, or withdraw CDR consents (via their ADR dashboards) and authorisations (via their DH dashboards).
- Metrics suitable for measuring how well dashboards deliver on their purpose of helping consumers identify and enact data sharing choices that are right for them are necessary to collect evidence on which to evaluate and improve the consumer experience of dashboards, as well as CDR consent more broadly.
- Consumers should be able to assume CDR dashboards from different services/providers, along with other CDR communications and interactions, will all reflect consistency in the meaning and clarity of consent information and available actions. In a well-functioning CDR, consumer dashboards will support consumers to operate with familiarity and act with confidence and self-efficacy when negotiating with disparate CDR data holders and recipients. Reliable standards that assist in navigating complexity within the consent schema can help achieve this.
- To leverage the value of dashboards for regulators and decision makers, they should have by-design utility for measuring consent quality and outcomes (ie, capability to capture and report data specified via CDR's metrics API).
- Dashboards are not federated – there is no consolidated platform for consumers to audit or review all active CDR consent. Reporting of consent metrics will ensure regulators at least have a birds-eye view of areas in which dashboards are functioning poorly or well.
- Some CDR participants may see dashboards primarily as a compliance issue and provide only the minimum functionality required by law. Other CDR participants will seek to extend or expand consumer relationships through these interfaces and optimise the consumer experience through intuitive and generous interfaces that allow consumers to exercise a greater range of actions. Metrics will provide important information about how well consumers comprehend consent in both models.
- Where businesses offering CDR enabled services do not have the skills or capacity to design dashboards, third party providers of RegTech offerings are likely to step into the gap, answering industry needs for both the minimum and full-service dashboard models – but not necessarily embracing inclusive design or holding the needs of diverse consumer groups as high priority. Again, metrics will provide important information about how well consumer interests are catered to.



Appendix 1:

Addressing consent challenges in CDR

Challenge 1: comprehension vs cognitive load

As our interviews suggest, and investigations such as the Farrell *Future Directions* report acknowledge,⁶² there is likely to be a significant comprehension gap for consumers that must be a key focus for how the CDR ecosystem evolves moving forward. For example, even where CDR consumers may be clear what data they're sharing with a FinTech, they may not entirely understand exactly where that data goes and how it is being used after they nominate and "Accept" consent choices.

Previous CPRC research indicates poor comprehension of what is being agreed to in online consent is common, and that even where consumers feel coerced or confused about what they are sharing, they will continue to voluntarily enter data sharing arrangements.⁶³ There can be many contributing factors to this phenomenon, ranging from deliberate manipulation by businesses, through poor interface design, or the inattention or incomplete comprehension. We highlight that whereas for the entity seeking consent such transactions are core business, for the consumer each consent transaction is firstly, an infrequent exchange and secondly, one task among the many varied administrative and personal acts competing for cognitive attention in daily life.

This resource disparity (in terms of the attention each party is equipped to bring to the transaction) is often further compounded by information asymmetry, whereby consumers have access to less knowledge about a consent transaction than the business they are engaging with. Addressing these imbalances in consent relationships calls for greater responsibility to be apportioned to businesses to share information relevant to consent, and to do so in ways that align with the differing capacity and capabilities of consumers.

CDR discourages extraneous information links within the consent flow itself and prohibits their inclusion where this would reduce comprehensibility.⁶⁴ We suggest it might therefore be beneficial to draw on the growing evidence base associated with online provision of biomedical and other research consent, which places an increasing focus on how participant understanding of use cases and associated consent might be improved during pre-consent stages of the journey.

This may have similar potential to improve overall comprehension and informed consent in CDR transactions. For example, benefits have been demonstrated in the use of multimedia resources that allow people to step through what is being asked of them (and

explore what their consent choices mean) prior to the actual process for consent, and which also provide context for revisiting consent after it has been provided.⁶⁵

Balancing the provision of information necessary for informed consent with a manageable cognitive load is not easy, and there are numerous perspectives on how much friction it is reasonable or necessary for consumers to encounter. In the context of CDR, public submissions made to government consultation processes indicate that data holders, ADRs, and consumer advocates do not always agree on this issue within stakeholder cohorts, let alone find consensus across them.

To meet this challenge, it is important that CDR agencies such as the Data Standards Body consider investigating how data standards relating to the consumer experience and the technical requirements of consent can be effectively integrated; so that **processes for** and **quality of** consent are both being measured in ways that provide robust and repeatable evidence of how differing CDR consent implementations affect consumer outcomes and other government policy goals of CDR.

Challenge 2: complexity in the CDR consent model

Although the fundamental CDR consent model (page 11) is not in itself overly complex, our consultations have identified several areas with potential to unfold into significant complexity for consumers using CDR systems.

- **Understanding and navigating numerous different consent types to align consent permissions with consumer values, preferences and intention** – To provide better control for consumers in providing consent which is specific to purpose, CDR Rules specify a range of different consent types which ADRs must request as appropriate (page 12). This list may be expanded in future to include, for example, *insight disclosure consent* and *trusted adviser disclosure consent*, and other consent types necessary to enable write access or action initiation on consumers' behalf. While consumer advocates largely support the more granular control that different consent types provide consumers, they also warn that many will struggle to distinguish what different consents mean in the context of their data sharing.

- **Areas of non-intuitive consent terminology** – CDR makes a necessary technical distinction between ‘consent’ (ADR side) and ‘authorisation’ (DH side); however, consumers are likely to consider they have given ‘consent’ on both sides. Legal advocates warned us this has potential to exacerbate stress to consumers experiencing hardship – and may result more generally in avoidable process errors and delays in resolution where consumers are attempting to communicate about a CDR problem or complaint using terms that make sense to them, but which are technically incorrect. Complications with dispute resolution due to consumers’ incorrectly understanding or using consent terminology was also flagged in relation to the previous issue (consent types).
- **Proliferation of consumer dashboards** – Consumer consent for a single use case will involve provision of at least two dashboards (one each supplied by the ADR and a single DH), and potentially more if an ADR’s product offering involves requests for CDR data from multiple data holders. We have strong concerns about the burden of expectation on consumers to track and manage all their CDR consents over multiple dashboards, particularly once the CDR ecosystem matures to include cross sector use cases.
- **Inconsistencies in consumer dashboard functions and interfaces** – Consumer dashboards supplied by ADRs will show different information to those supplied by DHs, and the two types of dashboard are intended to perform non-identical consent functions. The DH dashboard, for example, cannot be used to manage consent permissions which are specific to the ADR-consumer relationship. This has specific impacts for joint account holders,⁶⁶ but is also likely to affect consumers more widely. There is a risk that some consumers may, for example, withdraw authorisation DH side in the mistaken belief that in doing so they are also withdrawing consent for an ADR to continue using any CDR data they have already collected from the data holder.

To enact responsible choices about how they want to share data using CDR, consumers require consent platforms that allow them to exercise meaningful control over their data sharing choices, both in the first instance (initial in-app permissions for consent and authorisation) and through time (mediated via consumer dashboards).

In addition to the simple existence of mechanisms for expressing consent preferences, consumers need surety in the form of consent protocols (data standards) that offer confidence and security that data sharing is occurring in environments that are safe and secure and where those consumer choices will be respected.

To meet this challenge, we suggest robust and consumer-informed data standards addressing both technical and CX needs for CDR consumer dashboards are part of the ecosystem necessary to achieving consistency, accessibility, and validity of CDR consent mechanisms.

Challenge 3: legislative context

CDR is an ambitious reform that needs to work in complement with other frameworks and with the support of economy wide consumer protections to succeed. Without an effective, reliable consumer protection framework across Australia acting as a safety net for the CDR regime and data that may be transferred out of it, there is significant onus being placed on the CDR to effectively carry the weight where wider provisions are lacking.

In common with most consumer organisations that we have spoken to about CDR and consent, CPRC continues to stress the need for an Unfair Trading Prohibition and a General Safety Provision to be introduced to the Australian Consumer Law. We also suggest sustained attention to how current reform of the Privacy Act might serve as a mechanism to give Australian consumers more robust protection over personal data generated through online living.⁶⁷ For example, only those small businesses that are accredited data recipients within the CDR are covered by the Privacy Act for handling of personal information (within and outside of the CDR). Specific privacy safeguards have been written into CDR legislation which, within the context of CDR transactions, override Australian Privacy Principles.⁶⁸ Establishing stronger consumer protection at higher levels would help alleviate pressure on CDR to be the bastion of safeguards that consumers expect should extend to their data more broadly.⁶⁹

In the absence of effective economy wide safeguards, it becomes incumbent on CDR to provide more specific protections for consumers. One consequence of this is increasing detail and complexity being added into CDR Rules, not least in the scheme's consent framework. This threatens the uptake, operation, and sustainability of the scheme, making CDR increasingly difficult for consumers to understand at the same time as it adds intricacy to industry and regulatory responsibilities of participation.

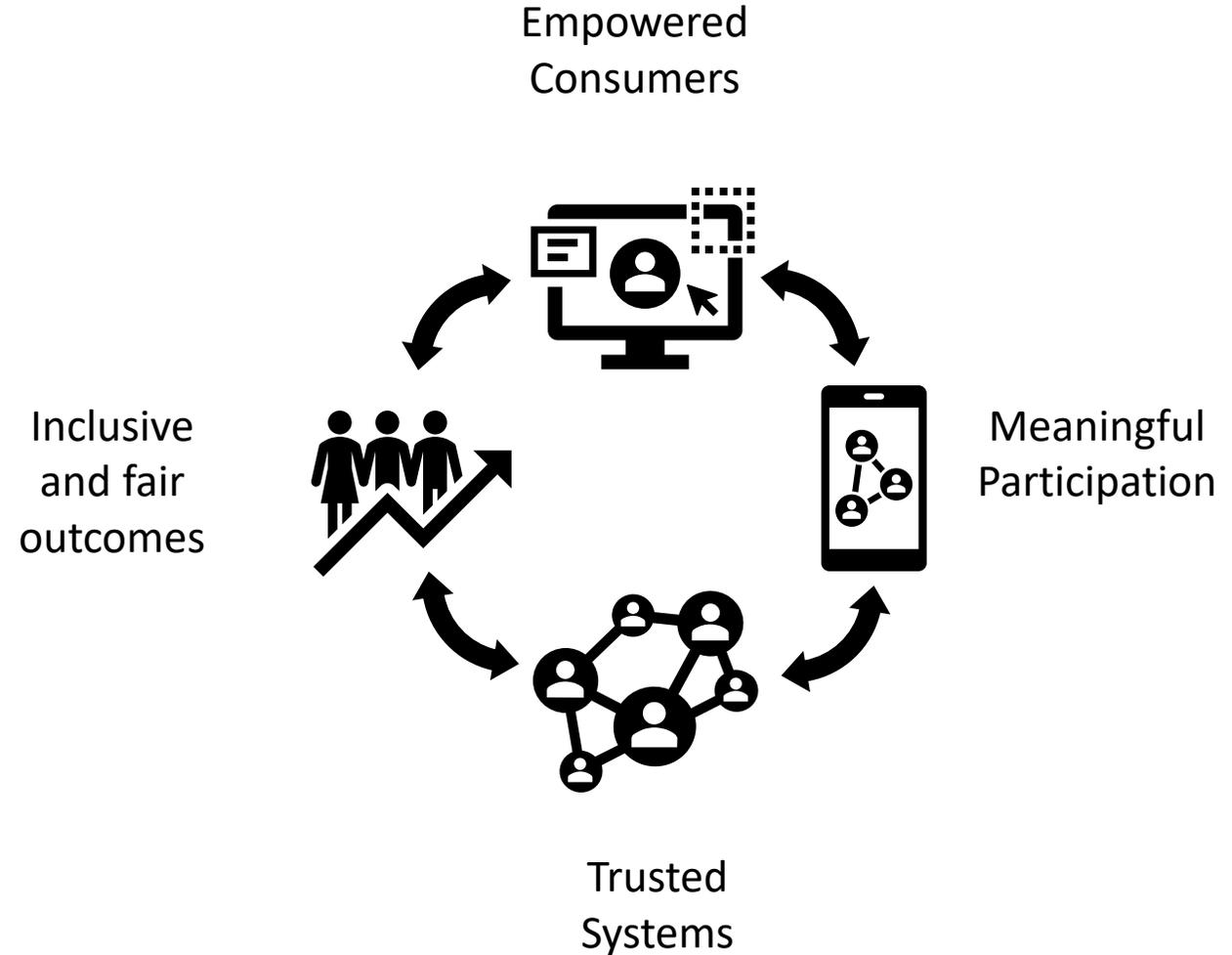
Strengthening overall safety of digital markets for consumers will offer a better response than over engineering – or weakening – CDR. Taking protections out of CDR without ensuring they exist elsewhere would jeopardise one of the key rationales for CDR's existence: to establish a robust and trustworthy mechanism by which consumers can give clear and traceable consent to transact their consumer data.

Cohesively aligning CDR reforms as part of the larger ecosystem of digital governance in Australia may also help to counter arguments from some industry stakeholders that the CDR regime adds burdensome costs (and protections) relative to the existing business models. ESG and other measures of effective policy increasingly recognise that sustainable healthy economic relationships are those which treat consumers and citizens respectfully; and that companies whose business model is predicated on collecting, refining and monetizing consumer data, without the full understanding and genuine consent of those consumers, should not be rewarded for this behaviour.

“No one needs to trade away the rights of their users to deliver a great product.

...

If a business is built on misleading users, on data exploitation, on choices that are no choices at all, then it does not deserve our praise. It deserves reform.” ⁷⁰



Endnotes

- 1 Joint regulator the OAIC (Office of the Australian Information Commissioner) describes consumer consent as “the foundation of the CDR system” <https://www.oaic.gov.au/consumer-data-right/consumer-consent-and-authorisation/>.
- 2 The view that it is acceptable to make use of consumer data without ongoing regard for the preferences of those consumers, is referred to as ‘data entitlement’. See, for example: F. Lee ‘Be a Data Custodian, Not a Data Owner’, *Harvard Business Review*, 7 May 2020 <https://hbr-org.cdn.ampproject.org/c/s/hbr.org/amp/2020/05/be-a-data-custodian-not-a-data-owner>.
- 3 For example, in a recent CPRC-commissioned consumer survey, 95% of respondents agreed that companies should give consumers opportunity to opt out of consumer information being collected, used and shared; and 94% agreed that companies should be open about how personal data is used to assess eligibility on products and services (Roy Morgan for CPRC, Data and Technology Consumer Survey report – April 2020, pp 5-6).
- 4 On consent as a process, and what this means for consent implementations and governance in digital systems, see *Building Consentful Tech* pp17-18 <http://www.consentfultech.io/wp-content/uploads/2019/10/Building-Consentful-Tech.pdf>.
- 5 A 2018 consent study conducted by Smartpipe and PSB Research found that when transparency about purposes and the full number of vendors in the data supply chain is delivered, only one in 10 consumers would give their permission for data to be used for personalized advertising. Cited in C. Wollen ‘Opt in, opt out – consent is what it’s all about’ *International Association of Privacy Professionals* 31 October 2018 <https://iapp.org/news/a/opt-in-opt-out-consent-is-what-its-all-about/>.
- 6 See, for example: M. Fisher ‘Why Investing in Consent and Preference Management is Vital in 2021’ *The Customer Institute*, 1 March 2021 <https://thecustomer.net/why-investing-in-consented-data-and-preference-management-is-vital-in-2021>; and D. Eldridge ‘There Should Be No Such Thing as “Data Entitlement”’ *Direct Marketing Club of New York*, 2 June 2020 <https://dmcnyc.org/there-should-be-no-such-thing-as-data-entitlement>.
- 7 Survey conducted in June 2020 by the World Federation of Advertisers. See: <https://yougov.co.uk/topics/resources/articles-reports/2020/06/01/data-ethics-anticipated-become-more-significant-cm>].
- 8 This list reflects the indicators previously identified for consumer issue *Comprehensibility and consent* in CPRC’s first report in this series. See: CPRC (2020) ‘Stepping Towards Trust’, p24.
- 9 Ibid.
- 10 Finding of a study which commissioned a team from the London School of Economics and Political Science to conduct a review of existing academic studies, combined with new qualitative research. See: Financial Services Consumer Panel (2018) *Consumer Panel Position Paper: Consenting adults? - Consumers sharing their financial data*, p3.
- 11 For example, to better clarify for consumers the distinction between ADR-side consent and DH-side authorisation (both of which are likely to be understood under the single umbrella term of ‘consent’ by consumers). Expanded consumer guidance on this topic could seek to make clear to consumers that if they want to cease all use of data in relation to a particular product, they need to withdraw relevant consents (plural) ADR-side, not just withdraw authorisation DH-side (which would only stop data flow for in relation to that consent & would not affect ADR being able to use data already collected for the purposes and remaining duration of ADR-side consent). It could also cover the implications for joint accounts, explaining to what extent consumers can and can’t exercise control over data sharing initiated by another party to a joint account.
- 12 See: S.Farrell (2020) [Future Directions for the Consumer Data Right](#), pp133-135 (*CDR Future Directions*; Recommendation 6.19).
- 13 For example, providing direction on how to nominate deletion of consumer data.
- 14 <https://www.consentfultech.io/>.
- 15 J. Im et.al. (2021) ‘Yes: Affirmative Consent as a Theoretical Framework for Understanding and Imagining Social Platforms’ *CHI '21*, Yokohama, Japan <http://eegilbert.org/papers/chi21-consent-im.pdf>.
- 16 “The social-technical gap is the divide between what we know we must support socially and what we can support technically.” M. Ackerman (2000) ‘The Intellectual Challenge of CSCW: The Gap Between Social Requirements and Technical Feasibility’, *Human-Computer Interaction*, 15:2-3, pp179-203 https://www.tandfonline.com/doi/abs/10.1207/S15327051HCI1523_5.

- 17 Sandbox environments are not unproblematic. One of the contributing conditions for 'regulatory capture' (the economic theory that regulatory agencies may come to be more dominated by the interests they regulate than by the public interest) is when regulators "become too friendly with the firms they are regulating", with sandbox environments identified as an approach that can potentially increase this risk. See: H. Sutcliffe (2020) [Trust & Tech Governance: Towards a more engaged, collaborative, communicative approach](#), p26. To mitigate against this, we emphasise a CDR sandbox environment must reach beyond being a technical playpen for industry and business participants and also find ways to be welcoming to less technically oriented stakeholders.
- 18 Opportunities, challenges and sensitivities of establishing data for good initiatives are discussed in more detail in our third report in this series: CPRC (2021) *Vulnerability, capability, opportunity: Understanding consumer vulnerability as a key to unlocking benefit from the Consumer Data Right*.
- 19 BEUC (2019) [Recommendations to the European Data Protection Board on the interplay between the GDPR and PSD2](#), p6.
- 20 Fingleton / Open Data Institute (2019) [Open Banking, Preparing for lift off – Purpose, Progress, & Potential](#), p36.
- 21 We note recent attention from within the department of Prime Minister and Cabinet seeking to encourage a culture shift within the Australian Public Service towards taking a stewardship approach to the regulatory environment, incorporating better "measuring, benchmarking and evaluating regulator performance, and streamlining and consolidating performance reporting at a whole-of-government level ... It's also about providing forums for regulators to learn and share best practice." See: S. Jenkins 'Regulator performance role to be established within PM&C' *The Mandarin*, 2 October 2020 <https://www.themandarin.com.au/141271-regulator-performance-role-to-be-established-within-pmc/>.
- 22 Diagram is a DSB-produced artefact. See: <https://www.notion.so/The-Consent-Model-a745ce0b0c644d6c83d262580b9467c6>.
- 23 For more extensive discussion of consent issues specific to joint accounts, see the second CPRC report in this series: CPRC (2020) *Joint accounts & the Consumer Data Right: Perspectives from Community Organisations and Consumer Advocacy*.
- 24 Fintech representative in conversation at ACCC-hosted CDR Roundtable webinar, June 2020.
- 25 See: *General CDR FAQs* <https://www.cdr.gov.au/sites/default/files/2020-06/CDR%20-%20Interagency%20FAQs%20-%20-%20ACCC%20lead%20draft%20-%28cleared%20by%20all%20CDR%20partner%20agencies%29-%20Updated%20May%202020.pdf>.
- 26 Competition and Consumer (Consumer Data Right) Rules 2020; rule 1.10A.
- 27 For interpretation of the FRIES consent framework in relation to digital contexts and data bodies: <http://www.consentfultech.io/wp-content/uploads/2019/10/Building-Consentful-Tech.pdf>; for examples of applying of consentful technology theory in practice, see: <https://www.consentfultech.io/references-building-consentful-tech>.
- 28 World Economic Forum (2020) *Redesigning Data Privacy: Reimagining Notice & Consent for human-technology interaction* http://www3.weforum.org/docs/WEF_Redesigning_Data_Privacy_Report_2020.pdf, p18.
- 29 Positive consumer experience of how consent operates in the CDR regime will clearly benefit consumers. However, the long-term value of consentful technology to the CDR regime is much greater. Doing consent well will support competition drivers by growing consumer trust in new CDR products and by offering protection against 'status quo bias' as those products become established. The potential for CDR to act as an enabler for consumers seeking agency against so-called loyalty taxes has been well documented as a use-case for the reforms. Robust consent mechanisms can help prevent CDR itself falling into similar ends, by ensuring consumers are given oversight over whether their product requirements *for the CDR product itself* might have changed before extending duration of a CDR consent. Whether CDR consent is done well in practice will rely on how CDR participants operating across a variety of business sizes and sectors choose to implement consent requirements for CDR data processes within production environments. In many instances, this is likely to mean RegTech and other TaaS (technology-as-a-service) providers will develop third party solutions to assist Data Holders and ADRs (Accredited Data Recipients) in meeting their legislative obligations. There is undoubtedly potential for good consumer outcomes here, but there are also risks to be alert to when the ADR, not the consumer, is envisaged to be the client for products such as CDR consumer dashboards.
- 30 See: object of Division 4.3 *Giving and amending consents; Competition and Consumer (Consumer Data Right) Rules 2020*.
- 31 Competition and Consumer (Consumer Data Right) Rules 2020: Part 4 *Consumer data requests made by accredited persons*; 4.9(a).
- 32 Competition and Consumer (Consumer Data Right) Rules 2020: Part 4 *Consumer data requests made by accredited persons*; 4.4(3)(b).
- 33 Competition and Consumer (Consumer Data Right) Rules 2020: Schedule 3, Part 4: *Joint accounts*; 4.4 and 4.5(2).

- 34 Competition and Consumer (Consumer Data Right) Rules 2020; Schedule 3, Part 4: *Joint accounts*; 4.13(4) and 4.16(3).
- 35 Competition and Consumer (Consumer Data Right) Rules 2020: Part 4 *Consumer data requests made by accredited persons*; 4.9(f).
- 36 In situations where a consumer's consent agreement with an ADR spans multiple consent types or has been amended at different times (eg, if the consumer exercises choice to add accounts, data types or consent types; or extends the duration of consent on an ADR's CDR service offering), consumers will be required to separately revoke each consent that applies. In practice, this is likely to affect how easy it is to effectively withdraw consent. For example, consumers might withdraw a collection consent with the intention that none of their data will continue to be used; without realising the ADR still holds valid consent to use and disclose data obtained up to that point.
- 37 See: S.Farrell (2020) [Future Directions for the Consumer Data Right](#), pp138-146.
- 38 Competition and Consumer (Consumer Data Right) Rules 2020: Part 4 *Consumer data requests made by accredited persons*; 4.9(c).
- 39 As part of requesting consent, CDR Rules require consumers to be informed - in generic terms - where their CDR data *may be* handled by outsourced providers. [Competition and Consumer (Consumer Data Right) Rules 2020: Part 4 *Consumer data requests made by accredited persons*; 4.11(3)(f)]. However, there is no requirement to inform the consumer of the *actual* ways that their data is disclosed to or handled by outsourced providers. In terms of quality of consent, this is primarily a matter of lessened agency for consumers rather than (necessarily) heightened risk. Third parties handling CDR consumer data in ADR-ADR relationships must still abide by CDR obligations, including in relation to privacy and data security. However, if there is no requirement to notify consumers of the actual involvement of these third parties – for example by making this evident on consumer dashboards – the agency of consumers to make their own assessments over the level of comfort they have with that provider handling their data is diminished. For the ACCC's response to a recommendation of the CDR Privacy Impact Assessment that such information should be made obvious to consumers via dashboards, see: ACCC (2020) [Consumer Data Right Rules Update 1 to Privacy Impact Assessment Agency response](#), against Recommendation 5.
- 40 DSB CX Working Group, Noting Paper 157: CX Standards Following v2 Rules; item 7 (refer table 3: DH obligations).
- 41 Competition and Consumer (Consumer Data Right) Rules 2020: Part 4 *Consumer data requests made by accredited persons*; 4.9(b).
- 42 Competition and Consumer (Consumer Data Right) Rules 2020: Part 4 *Consumer data requests made by accredited persons*; 4.9(e).
- 43 Competition and Consumer (Consumer Data Right) Rules 2020: Part 4 *Consumer data requests made by accredited persons*; 4.11(1) and (2).
- 44 As one interviewee explained: "If generating enthusiasm for CDR is entirely driven by commercial market interests, there is a risk of compounding disadvantage to consumers who are already experiencing marginalization, vulnerability, or digital exclusion; particularly where these consumers are not considered to be 'high-value' customers".
- 45 Competition and Consumer (Consumer Data Right) Rules 2020: Part 4 *Consumer data requests made by accredited persons*; 4.9(d).
- 46 Competition and Consumer (Consumer Data Right) Rules 2020: Rule 1.8(a).
- 47 Competition and Consumer (Consumer Data Right) Rules 2020: Part 4 *Consumer data requests made by accredited persons*; 4.11(3)(c)(i).
- 48 This is confirmed by recent advice published on the CDR support portal, which states: "ADRs are not required to present the historical range on dashboards under rule 1.14, but the CX Guidelines recommend that they do." <https://cdr-support.zendesk.com/hc/en-us/articles/900004420006-Date-for-collection-of-consumer-historical-data>.
- 49 Competition and Consumer (Consumer Data Right) Rules 2020: Part 4 *Consumer data requests made by accredited persons*; 4.23(b). We have previously addressed this issue as a data standards opportunity in CPRC's second report in this series: CPRC (2020) *Joint accounts & the Consumer Data Right: Perspectives from Community Organisations and Consumer Advocacy*, p6.
- 50 Even in domains where measures of consent have been iterated to a higher level of maturity (such as patient consent for medical treatment; or consent required for human research participation and data use), it has not always been well-recognised that the perspective of those giving consent is of paramount importance when considering whether a consent process was 'good' or not. In the domain of clinical medical research, for example, while "trial-specific, condition-specific and more generic measures" of consent do exist, reviews of consent literature indicate the operationalisations of informed consent variable and "are collected through a variety of mechanisms—some reported by the participant themselves; others not." See: Gilles et.al. (2018) 'Patient reported measures of informed consent for clinical trials: A systematic review', PLoS ONE 13(6): e0199775. <https://doi.org/10.1371/journal.pone.0199775>
- 51 Ibid.
- 52 Australian Competition and Consumer Commission *CDR rules expansion amendments - Consultation Paper* (September 2020), p41.

- 53 S.Farrell (2020) [Future Directions for the Consumer Data Right](#), p 133.
- 54 Ibid, pp134-135.
- 55 For example, joint account in-flow election was highlighted by one stakeholder we spoke to as an example of something that has added complication to the CDR consent flow without there being a compelling case that it solves a problem for consumers, ADRs, or data holders. Similarly, the recent shift away from the AEMO gateway model as the preferred authorisation model for energy data is another example where a sandbox environment to test assumptions and practical challenges may have avoided significant time investment in an unsuitable/undesirable technical model.
- 56 Minutes of the CDR Banking Advisory Committee, 11 February 2021: “The DSB noted that since the last Advisory Committee in December, there has been a significant revamp of the CX artefacts on a new platform that they are using. They are porting the artefacts over from what was previously a PDF and have done this in response to community requests to assist with requirement discoverability and compliance recommendations.”
<https://consumerdatastandards.gov.au/2021/03/minutes-11-feb-2021/>
- 57 Fingleton / Open Data Institute (2019) [Open Banking, Preparing for lift off – Purpose, Progress, & Potential](#), p4.
- 58 Ibid, p37.
- 59 Ibid.
- 60 For example, this may occur where one joint account holder is exercising coercive control over another account holder; or due to shortfalls or CDR non-compliance occurring in the process or mechanisms used to establish or manage consumer consent or authorisation. For additional scenarios where technically valid consent may not accurately reflect consumer intention, see CPRC’s second report in this series.
- 61 Data Standards Body Technical Working Group, *Decision Proposal 145 – Strategy for Reporting and Metrics*.
- 62 S.Farrell (2020) [Future Directions for the Consumer Data Right](#), p145: “Tracking and managing consents and authorisations is likely to be a key difficulty for consumers when using the CDR in the future as usage grows.”
- 63 Nguyen and Solomon (2018) *Consumer data and the digital economy*, Melbourne: CPRC, p31.
- 64 Competition and Consumer (Consumer Data Right) Rules 2020: Part 4 *Consumer data requests made by accredited persons*; 4.10(1)(b).
- 65 See, for example: H. Soni, et. al. (2018) ‘Current State of Electronic Consent Processes in Behavioral Health: Outcomes from an Observational Study’ AMIA Annual Symposium proceedings, *AMIA Symposium vol. 2017*, pp 1607-1616 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5977724/>; and H. Antal, et. al. ‘A cognitive approach for design of a multimedia informed consent video and website in pediatric research.’ *Journal of biomedical informatics* vol. 66 (2017): pp 248-258 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5381728/>.
- 66 JA2 has no relationship with the ADR so has no means to withdraw a use consent initiated by JA1 in relation to their joint account data (ie, they have no power to stop use of CDR data already collected), they are only able to withdraw CDR authorisation DH-side.
- 67 Priority areas for privacy reforms previously highlighted by CPRC (which we note are within the Terms of Reference of the recently launched Privacy Act Review) include: a) Updating the definition of personal information to include technical data and any other identifiers; b) Introducing direct rights of action for individuals; and c) Introducing a statutory tort for serious invasions of the Privacy Act. These are discussed in more detail in CPRC’s 2019 *Submission to Australian Treasury consultation on ACCC Digital Platforms Inquiry Final Report*, pp. 17-18.
- 68 See: Division 5; Treasury Laws Amendment (Consumer Data Right) Act 2019.
- 69 The potential for consumers to become confused or misled as to what level of protection applies to their data has also been highlighted by community legal centres: “One of the key aims of the CDR is to create a safe and secure environment in which consumers will be able to trust and have confidence that they will be able to transfer or port their data from one data holder or participant to another. However the CDR legislation will facilitate non-accredited parties obtaining CDR information, leaving these consumers, who were led into a system on the promise of higher privacy protections, vulnerable to the lower privacy standards of the APPs. We strongly believe that legislative change will be required to address these risks [including] amending the Privacy Act and the APPs to ensure that the same strong protections under the CDR apply to all consumer data.” - Financial Rights Legal Centre & Consumer Action Law Centre (2019) *Submission to the Select Senate Committee on Financial Technology and Regulatory Technology* Submission, p7.
- 70 Tim Cook (CEO, Apple) – introductory session address at *CPDP 2021: Enforcing Rights in a Changing World*, Computers, Privacy and Data Protection Annual Conference, Brussels, January 2021.