



**Australian
Privacy
Foundation**

<http://www.privacy.org.au>

Secretary@privacy.org.au

<http://www.privacy.org.au/About/Contacts.htm>

6 May 2020

Treasury

By email: Data@treasury.gov.au

Issues Paper: Inquiry into the future directions of the consumer data right

This submission from the Australian Privacy Foundation (APF) responds to the Issues Paper: Inquiry into the future directions of the consumer data right.

General comments

Australia (and the world) is currently in the midst of the COVID-19 pandemic. This Issues Paper was released in March 2020 after Australia declared a pandemic on 27 February 2020. The pandemic has had a profound effect on business. The unemployment rate is likely to rise sharply. Many people have significantly slowed their spending. These are extraordinary times and the consumer data right and the future directions of this right is simply not a priority (and should not be a priority).

The consumer data right commenced in January 2020 and it has had no opportunity at all to be tested by people in any comprehensive or meaningful way. It is likely that the consumer data right will not be used in any widespread way until many months and probably years after the economy commences recovery following the current pandemic emergency. The APF is opposed to any expansion of the consumer data right until it has been used and

tested in a comprehensive way in banking. This is to ensure it is safe to use and delivers tangible benefits to consumers.

Finally, we also question any decision to make banks concentrate on open banking when the provision of banking services to vulnerable people in the pandemic is a much higher priority.

Concerns

The APF has been concerned throughout this entire consultation process that there are risks for people in using the consumer data right including:

1. That third party data holders will use the consumer data right to get access to customer bank information and mislead people into poor financial decisions. As demonstrated by the Financial Services Royal Commission, people can have a great deal of difficulty getting justice for poor financial advice and the damage can be substantial.
2. The data being obtained is more valuable than the service being promised which can mean the person receives little value for their data. The ACCC comprehensively demonstrated this problem in their inquiry into customer loyalty schemes.
3. Data breaches are a near certainty. It is not if but when. The current protections in place do not adequately protect people in the event of a data breach. The protections are inadequate because:
 - a. Compensation for loss is difficult to prove and obtain;
 - b. There is no process in place to automatically delete data and de-identified data can usually be re-identified;
 - c. There are no legislated or enforced security standards; and
 - d. There is little or no enforcement or fines for data breaches which means there is little incentive for security by small intermediaries that hold data.
4. The legislative protections for privacy in Australia remain inadequate. The ACCC has recommended reforms to the Privacy Act following the Digital Platforms Inquiry. Those reforms should be legislated.

People need to be sure that when they use the CDR that all participants are fully accredited and a member of an external dispute resolution scheme (EDR). Any inclusion of non-accredited parties presents a risk for consumers using the system. From a privacy perspective, non-accredited parties could cause the following harms:

1. People will not be able to easily follow the trail of their data. This is effectively a loss of control over their personal information which is inconsistent (and would be a breach) of the person's privacy.
2. The likelihood of a data breach would increase as security is likely to be poorer with small firms.
3. Consumers will not know how to complain or where (as this may not be clear)

Consumers must be confident that any party they deal with must be fully accredited, easily found and a member of an EDR.

International context

It is significant that the Issues Paper discusses the international use of open banking but provides no evidence of the proven benefits for consumers. The APF is not aware of any independent studies that demonstrate proven benefits for consumers. Again, it makes sense for Australia to do its own testing to ensure that the consumer data right delivers a benefit rather than a detriment for people.

Switching

There are widespread assumptions that "switching" is beneficial for consumers. This seems to be based on the assumption that cheaper is better. There are numerous examples where cheaper is not better. Comparing products only based on price is a poor approach to financial literacy and exposes people to a range of risks. Some examples:

- Switching to a non-bank lender with a lower interest rate who just varies the interest rate after a few months to be higher
- Switching to another lender only to work out that the costs to switch could never be recovered because when the Reserve Bank next cut interest rates, the lender only passed on part of the interest rate cut.
- Switching from a bank to a finance company for a car loan only to find that the finance company has very poor financial hardship processes and an aggressive repossession policy.
- Being convinced to consolidate debts with another lender only to pay a lot more over many years as short term debt has been turned into very long term debt
- Switching to a cheaper insurance product only to find there is less coverage

The APF remains concerned that encouraging switching without educating people about the risks is a poor approach. Further, the risks of data breaches increase as the consumer moves between different products and deals with intermediaries.

Read access

We recommend that read access could be improved by independent testing of usability.

Write access

We do not recommend proceeding with write access at this stage. Write access could be improperly used to cause serious detriment to a consumer. There are insufficient safeguards in place to protect people and this would need to be addressed before considering write access.

Consumer protection

As we have outlined above, there are still insufficient privacy protections in place for the consumer data right. Further protections are needed to ensure that people have genuine control over their personal information.

Conclusion

Future expansion of the consumer data right should be put on hold pending further testing and work on privacy protections which includes:

- A comprehensive review and implementation of privacy improvements as recommended by the ACCC
- Commonwealth human rights laws that cover privacy should be enacted
- A statutory tort for the invasion of privacy should be legislated as recommended by the ALRC
- The current implementation of the consumer data right operates for two years past the end of the pandemic and is independently evaluated at the end of the two years before any expansion
- The consumer data right includes a clear and automatic deletion of data and this process is audited.

If you have any questions please do not hesitate to contact Kat Lane.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Kat Lane', with a stylized, cursive script.

Kat Lane,
Vice-Chair
Australian Privacy Foundation
0447 620 694
kat.lane@privacy.org.au

About the Australian Privacy Foundation

The Australian Privacy Foundation (APF) is the primary national association dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues that pose a threat to the freedom and privacy of Australians. The Foundation has led the fight to defend the right of individuals to control their personal information and to be free of excessive intrusions. The APF's primary activity is analysis of the privacy impact of systems and proposals for new systems.

The APF makes frequent submissions to parliamentary committees and government agencies. It publishes information on privacy laws and privacy issues. It provides continual background briefings to the media on privacy-related matters. Where possible, the APF cooperates with and supports privacy oversight agencies, but it is entirely independent of the agencies that administer privacy legislation, and regrettably often finds it necessary to be critical of their performance. When necessary, the APF conducts campaigns for or against specific proposals. It works with civil liberties councils, consumer organisations, professional associations and other community groups as appropriate to the circumstances. The Privacy Foundation is also an active participant in Privacy International, the world-wide privacy protection network.