

Experian Australia Pty Ltd

Level 6, 549 St Kilda Road

Melbourne VIC 3004

ABN: 95 082 851 474

**Exposure Draft – Treasury Laws Amendment (Consumer Data Right) Bill**

Experian Australia Response

7 September 2018

# Introduction

Experian welcomes the opportunity to be able to share feedback with the Australian Treasury (Treasury) in relation to the recent Exposure Draft.

Many of the G8 countries where Experian operates are launching Open Data initiatives, including Australia, the UK, and the US. Experian supports the adoption of an Open Data regime in Australia and encourages the Australian banking and financial services industry to become an early adopter of a Consumer Data Right (CDR). These initiatives will develop over time, and consumers will be at the centre of deciding how their customer account information with any given financial entities can be accessed, transferred, used and shared to their benefit.

We support the Exposure Draft’s approach in keeping the legislative framework broad, to ensure that the revised legislation is not only fit for purpose for the Open Banking regime, but is also future proofed for further adoption of this CDR across other industries and sectors. We note, and look forward to, the publication of the proposed Open Banking Rules by the ACCC later this month, and will provide a more thorough response to this draft, however we would like to take this opportunity to position some core areas of the Exposure Draft where additional context could add value in ensuring that the spirit of the proposed legislation is maintained and drives the greatest value to consumers.

# The concept of “equivalent” data exchange

The Exposure Draft recognises the importance of having a basis for ensuring that all organisations that are capable of providing data into the system do so, and references this under the need for organisations to be able to share ‘Equivalent’ data between each other. Experian fully supports the need for the Legislative Framework to provide a mechanism for ensuring that organisations are compelled to provide information, however we would recommend that this is clearly decoupled from a standard ‘Reciprocity’ framework, as has been adopted for other data exchange models such as Comprehensive Credit Reporting (CCR).

Experian believes that a ‘Reciprocity’ Model is fully appropriate to the CCR framework, which is based on a centralised bureau model feeding industry. In the case of the CDR, which is focused on the consumer being able to have full digital portability of their information at their request, the consumer should not be penalised for the inability of another organisation not being fully compliant with the new CDR. By way of an example, under a ‘Reciprocity’ model Organisation A would not be able to seek information from Organisation B unless they allowed Organisation B to seek information from them. In this instance, if a consumer went into Organisation A, they would not be able to request that Organisation B provide their information to Organisation A, and the end consumer would therefore potentially miss out on the benefits of Organisation A’s products and services as a result.

Experian would therefore recommend, that the legislation should focus on driving an organisation’s adoption and compliance to the CDR and that this should remain decoupled from the individual requesting capability of a consumer to ensure that the value to the consumer is optimised.

# The role of derived data in the CDR

Experian supports the intent of the Exposure Draft in relation to the role of value added customer data and aggregated data in so far as we believe third party intermediaries or other third parties such as Credit Reporting Bodies (CRBs) can add significant value to consumers and to ADIs through the creation of analytic or other tools to help share and interpret the data. However, we believe that these entities should not be compelled to transfer this data to other third parties or competitors. As previously articulated Experian agrees with the Treasury Report on Open Banking’s assessment that such mandated on-sharing of these services and associated data undermines competition, removes incentive to invest in building world class solutions to meet the needs of Open Data exchange, and ultimately delivers worse outcomes for consumers.

We do not think that the outputs of these capabilities (including but not limited to attributes, scores, or other behavioural trend categorisation) should be included as a data set which must then be forwarded on because this might disincentivise investment in such capability and create unfair advantage to competitors working on the same sort of value added services for consumers. We note that this was not necessarily the intent of the existing drafting, and recognise that additional clarity/detail will be provided in the impending Rules document, but would urge that the legislation recognises the value created by derived data, and the positive impacts that this has for consumers, and the need to protect this capability.

# Interaction with the Privacy Act

Whilst the Exposure Draft has considered the interaction between existing legislation (including the Australian Privacy Principles) and the new CDR regime at a high level, we remain concerned that there is a significant risk to the effectiveness of both regimes if this is not considered in further detail (in particular the interaction with Part IIIA of the Privacy Act).

Whilst again, we recognise that some of this will be reviewed in line with the more detailed rules being published we would also like to take this opportunity to reiterate the following issues:

**Credit Reporting Business**

Given the breadth of the definition of “credit reporting business” in section 6P of the Privacy Act there is the real possibility that certain accredited recipients (particularly intermediaries) may unintentionally fall within the definition.

A credit reporting business “is a business or undertaking that involves collecting, holding, using or disclosing personal information about individuals for the purpose of, or for purposes including the purpose of, providing an entity with information about the credit worthiness of an individual.”

Having regard to the definition of credit worthiness in the Privacy Act, the information exchanged in the proposed Open Banking regime is likely to be classified as information about the credit worthiness of an individual.

We therefore recommend that a regulation is made under section 6P(4) excluding any business of an accredited recipient who collects, holds, uses or discloses personal information about individuals in accordance with the Open Banking regime as not conducting a credit reporting business.

**Exclusion of CRBs as accredited recipients**

Additionally, so that there is a clear demarcation between the CDR regime and the credit reporting regime in Part IIIA of the Privacy Act, we also recommend that CRBs should not be permitted to be accredited recipients. However, this would not prevent a related body corporate of a CRB, which is itself not a CRB, from being accredited.

**Extension of the Privacy Act to all data recipients**

Experian supports the requirement that all accredited data recipients be subject to the Privacy Act. There needs to be a level playing field for all data recipients and the implementation of this recommendation will promote greater confidence in the new regime, give customers comfort that their personal information will be protected, and provide remedies if there is a privacy breach.

# Conclusion

As a firm believer in the power of customer data, and the benefit that this should bring to the consumers who are the rightful owners of this information, Experian is committed to providing products and services to assist individuals and corporations (as custodians of this information) to realise the opportunities that effective exchange of data holds. To this end, Experian is fully supportive of the move to an Open Data environment as set out in the Exposure Draft, and is already actively supporting this transition in a number of other markets globally, including the UK.

Experian welcomes the intent from the Exposure Draft to enable Intermediaries to play an active role in facilitating and assisting organisations in achieving the objectives set out, and believes that the global experience that we have gained in this area over the last few years can assist in a swift and effective transition.

Experian can offer through global experience and local market expertise a consultative approach with all stakeholders to help operationalise CDR in the Australian market. We look forward to supporting industry and the Government with this body of work. For further information on this submission, please contact Poli.Konstantinidis@experian.com.

# About Experian

Experian Australia Credit Services Pty Ltd is part of Experian, the world’s leading global information services company. During life’s big moments – from buying a home or a car, to sending a child to college, to growing a business by connecting with new customers – we empower consumers and our clients to manage their data with confidence. We help individuals to take financial control and access financial services, businesses to make smarter decisions and thrive, lenders to lend more responsibly, and organisations to prevent identity fraud and crime.

We have 16,500 people operating across 39 countries and every day we’re investing in new technologies, talented people and innovation to help all our clients maximise every opportunity. We are listed on the London Stock Exchange (EXPN) and are a constituent of the FTSE 100 Index.

Learn more at <http://www.experianplc.com> or visit our global content hub at our [global news blog](http://www.experian.com/blogs/news) for the latest news and insights from the Group.