

20 May 2022

Ms Elizabeth Kelly PSM  
c/- Secretariat  
Statutory Review of the Consumer Data Right  
The Treasury  
Langton Crescent  
PARKES ACT 2600

Via email: [CDRStatutoryReview@treasury.gov.au](mailto:CDRStatutoryReview@treasury.gov.au)

## Re: Statutory Review of the Consumer Data Right

Dear Ms Kelly:

Intuit QuickBooks welcomes the opportunity to submit a response to the Statutory Review of the Consumer Data Right.

As a long-time global leader in financial technology innovation, Intuit has been working for years to make digital financial life better for consumers, small businesses, and the self-employed. Underlying this innovation is the core tenet that consumers should be able to access their financial data in whatever format they wish or with whatever app they would like to use to better their financial life.

Intuit is pleased to have participated in every stage of the CDR journey, from the Productivity Commission inquiry into data availability and use in 2014; as the only Financial Management Software to be selected in the Testing and Assurance Phase in 2019; to the first FMS Accredited Data Recipient in 2020.

Intuit was also the first accredited participant by the UK's Open Banking Implementation Entity (OBIE) established in 2016 by the UK's Competition & Markets Authority to bring competition and innovation to the personal and small business current account markets.

### About Intuit and QuickBooks

Intuit is a global technology platform that helps our customers and communities overcome their most important financial challenges. Serving millions of customers worldwide with TurboTax, QuickBooks, Credit Karma and Mint, we believe that everyone should have the opportunity to prosper and we work tirelessly to find new, innovative ways to deliver on this belief.

QuickBooks Online is cloud-based financial management software. It is designed to slash the time small business owners and operators spend managing their business finances by helping with tasks such as: creating estimates and invoices; tracking sales and cash flow; managing

customers and suppliers; monitoring GST and making completing BAS much easier; understanding the company's performance, and planning ahead and budgeting.

With over 7 million small businesses using QuickBooks globally, QuickBooks Online is recognised as the leading online accounting application for small businesses.

Intuit appreciates the opportunity to participate in this important review. We believe that our extensive experience and expertise make us uniquely qualified to contribute to this process. If you would like more information or require assistance with any aspect of our response, please contact Simeon Duncan at [simeon\\_duncan@intuit.com](mailto:simeon_duncan@intuit.com) or Steve Kemp at [steve\\_kemp@intuit.com](mailto:steve_kemp@intuit.com).

We look forward to working with the Australian government on this vital programme to power the prosperity of all Australians.

Yours faithfully,

**Steve Kemp**

Head of Financial Institutions Partnerships, Australia and Emerging Markets

**Simeon Duncan**

Senior Manager, International Government Relations

## Question: Are the objects of Part IVD of the Act fit-for-purpose and optimally aligned to facilitate economy-wide expansion of the CDR?

No. Our opinion is that the objectives of Part IVD of the Competition and Consumer Act 2010 are not fit-for-purpose, as they are not optimally aligned to facilitate economy-wide expansion of the Consumer Data Right. This is of particular concern given that small businesses, which play a crucial role in our economy and whose competitive success depends on accessing high-quality data, may be disproportionately affected by the underlying legislative framework. Therefore, it is necessary to rethink the objects of Part IVD and explore more effective ways for the Consumer Data Right to be implemented in a way that genuinely benefits small businesses and other stakeholders throughout the economy.

Potential approaches that could help achieve this goal include exploring alternative models for risk-based data sharing or moving away from a prescriptive legislative model to something more flexible and adaptive. Regardless of which specific approach is chosen, greater attention must be paid to ensuring that the Consumer Data Right is well-designed and can successfully foster continued economic development across all sectors.

The current CDR regulations have been extended to parts of the economy that we don't believe were ever intended. This has meant that without recent rules amendments, accountants, bookkeepers and tax advisers were prohibited from receiving a small business CDR data - at the business's direction - as they were not accredited data recipients; while third-party apps for business services that are used for tasks such as lodging reports and taxes also fall outside this scope.

With recent changes, trusted advisers and third-party apps will be able to view 'CDR data'; however, not without the small business needing to annually refresh consents to disclose at the banks' end and consents to disclose will be required annually. Current rules require further amendment to ensure small businesses and consumers can securely and simply continue to share their data with their trusted advisors and third-party apps.

Open banking is rapidly gaining traction as a transformative force in the financial services industry. This trend can be attributed, in large part, to the emergence of new technologies and tools that have facilitated data sharing between customers and financial institutions. However, while these innovations are promising and hold great potential, the application of the Consumer Data Right to banking - indeed, every economy-wide sector - will only truly thrive when it can attract the support of consumers and small businesses. These key stakeholders need to reap the benefits of the CDR for it to succeed on a larger scale.

To achieve this goal, regulators must work hand in hand with market forces, striking a balance between fostering an ideal regulatory environment and allowing market forces to drive the application of CDR to the banking, energy, telcos, and finance sectors forward at their own pace. The Consumer Data Right offers a good starting point by giving customers access to their financial data and empowering them to choose with whom they share it. Additionally, efforts should be made to expand outreach and education programs that help small businesses better

understand how their CDR works and how they can take advantage of its many benefits. By creating the right conditions for open banking adoption and growth, we can ensure its ultimate success as a force for positive change in the financial landscape.

## Question: Do the existing assessment, designation, rule-making and standard-setting requirements of the CDR framework support future implementation of the CDR, including to government-held datasets?

No. Consumer Data Right (CDR) authorities are set up to independently manage data standards, accreditation and rules. This has led to mismatches between standards and rules, and acted as an inhibitor to innovation. Because the rules are set independently from the standards, there is no overarching unique identifier between sectors to enable for cross-sectoral data sharing.

To have successful data sharing, there must be a common language that all sectors can use. This will allow small businesses access to the data they need to innovate and grow. CDR authorities must work together to create a single set of standards and rules that all sectors can use. Only then will we be able to see the full potential of the Consumer Data Right.

Having one central regulator overseeing Consumer Data Rights in Australia is in the best interest of consumers, data holders, and Australia's tech industry. By establishing a single regulatory body responsible for monitoring Consumer Data Rights implementation, we can ensure that CDR rules and data standards are consistent across different designated sectors. This will also allow Authorised Data Recipients to quickly adapt to these regulations, minimising their burden and ensuring that consumers have access to the same competitive benefits and insights from newly designated sectors as they do from existing ones. Furthermore, having a single regulator would help ensure a consistent approach to the global interoperability of Consumer Data Rights, enabling Australian consumers to take advantage of international standards for data protection.

The ability to verify interoperability between Data Holders and Data Recipients was limited in the initial phases of the CDR Ecosystem testing process. Expanding the test environment's scope would enable a more robust method of proving system stability before live integration. Live testing itself was highlighted as a risk during the implementation phase, yet for some participants, it is deemed a critical approach that doesn't always fit with preferred IT Policies & Procedures.

Personal and business data are set to become some of the most valuable assets in the global economy. There must be global interoperability standards to enable the free flow of this data between countries. The benefits of open data are well documented and include improved economic efficiency, better decision making, and more inclusive growth. The application of the CDR to banking has the potential to vastly improve financial inclusion and unlock a new wave of innovation. However, without global interoperability standards in place, the full benefits of these initiatives will not be realised. There is a risk that data will become siloed, preventing the kind of cross-border collaboration that is needed to drive innovation. Therefore, global interoperability standards are essential for realising the promise of open banking and open data.

Ultimately, by establishing a simplified regulatory framework for Consumer Data Rights in Australia, we can create a truly fair and transparent digital economy for all.

## Question: Does the current operation of the statutory settings enable the development of CDR-powered products and services to benefit consumers?

No, the current operation of statutory settings does not adequately enable the development of CDR-powered products and services to benefit consumers, particularly Australia's 3.6 million small business users. In fact, despite all the progress that has been made in developing frameworks for consumer data protection and privacy, much more still needs to be done.

Several issues need to be addressed to fully empower small businesses with the tools they need to thrive in today's data-driven world. For example, the refusal to consider business data and personal data differently from a risk standing means that small business users will have their operations disrupted and be no longer able to share data with apps that exist on their marketplaces, which makes it difficult for them to leverage technology platforms based on the Consumer Data Right effectively. Additionally, existing regulatory frameworks often lack clarity around how certain kinds of data should be treated, leading to confusion about what data can be shared and how ongoing management should occur.

With so many small businesses in Australia relying on the power of financial data to succeed, our regulatory framework must allow for developing innovative new products and services fueled by CDR. Unfortunately, the current setup does not fully support this goal. Actions such as restricting sharing of consumer data and limiting data disclosures have the net effect of stifling innovation.

Unless Australian small businesses are empowered under the CDR with the same rights to securely share their permissioned data with emerging technologies as they have today, the innovation that removes further friction from business processes and improves productivity will not be enabled under the CDR.

To remedy this problem, we need to rethink our approach to consumer data rights to unlock the full potential of CDR-powered tools and services. This can be achieved by increasing transparency around data practices, simplifying regulations around consent and use, and education programs to ensure that business owners understand how they can use consumer data in a safe and compliant manner. Australia's small businesses will be better positioned to thrive in today's increasingly competitive landscape with these steps in place.

It is essential that any definition or understanding of disclosure considers the business reality faced by many accounting software providers (ASP). As a platform, Intuit Quickbooks does not disclose data; instead, the subscriber retains the right to disclose their data to external third parties they trust or cease the disclosure of data if they choose.

Today, our small business customers can direct their banking data to their ASP. Our customers can then use their ASP's platform to share their financial data with third parties of their choice, including many app partners integrated into the ASP.

Treasury's intention for the rules to facilitate current consumer practices of the permissioned sharing of their data with trusted third parties to receive advice or service and increase convenience and control for consumers is a good one and deserves support. However, it doesn't

encompass the agency small businesses in Australia currently enjoy and depend upon to run their businesses.

Intuit supported in principle amendments to the CDR Rules to allow a consumer to consent to an accredited person disclosing a consumer's CDR data to a person within a specified class (referred to as 'trusted advisers'); however, there are three remaining concerns:

1. The changes do not reflect the current real-world use of non-professional advisers by small businesses and introduce significant friction to the consumer's existing experience;
2. The changes place onerous audit responsibilities on ASP ADRs; and
3. The prescriptive nature of the designated professional classes constricts the CDR regime's ability to foster innovation as new use cases emerge.

While we understand that the Consumer Data Right rules are intended to be 'iterative' and evolve with community expectations, unless either the classes of 'trusted advisor' or definition of 'insight disclosure' is expanded, the Rules run the risk of preventing new use cases from similarly evolving due to the exclusive prescription of certain classes of professions as Trusted Advisors.

When it comes to the CDR, small business consumers ought to be trusted to obtain the advice and services they need. They should be free to share their data with whomever they wish without being restricted by unfair terms and conditions and allowed to decide whether or not to share their data. We can create a fairer, more innovative, dynamic economy by ensuring that small business consumers have the same agency inside the CDR regime as they currently do outside it.

New and emerging use cases, including ag-tech, MedTech and regtech, will not develop sparked by CDR-enabled innovation due to those sector's advisors not fitting the prescribed class.

Finally, by providing alternative and more economical pathways to participation within the CDR regime, we expect that more digital financial service businesses will participate and innovate and that new products and services will be developed and offered to Australian consumers and small businesses.

## Question: Could the CDR statutory framework be revised to facilitate direct to consumer data sharing opportunities and address potential risks?

Yes. The Consumer Data Right gives consumers more control over the data collected about them. At its core, this right is based on the idea that consumers should be able to access and use the data that is held by businesses in key sectors, such as banking and telecommunications. This direct-to-consumer obligation lies at the heart of the Consumer Data Right, as it plays a crucial role in ensuring that this right works effectively and equitably for all consumers.

In their report on Data Availability and Use, the Productivity Commission argued that a direct-to-consumer obligation is critical for giving effect to a comprehensive consumer data right. They noted that direct-to-consumer obligations would help to empower individual consumers and increase competition between businesses to provide better products and services to customers. Overall, it is clear that direct-to-consumer obligations are essential for implementing a robust and equitable Consumer Data Right.

Consumer trust, business operability, and consumer participation are central to the success of the Consumer Data Right. To ensure the CDR is successful, processes and rules must be designed with modern business operations in mind. Recognising existing protections in place, ensuring consistency and interoperability with existing regulatory and legislative requirements, and minimising business and consumer disruption will be crucial to its future success.

The CDR is designed to give consumers greater control over their data and increase competition and innovation in providing financial services. Consumer data is a valuable commodity, and businesses that hold it are responsible for ensuring it is appropriately protected. The Privacy Act 1988 (Cth) sets out strict requirements for handling personal information, including consumer data.

We believe that business CDR consumers should be trusted to obtain the advice and services they need with the freedom to share their data if they desire. It should not be the responsibility of the Rules to dictate to business CDR consumers with whom they may legally conduct business. If the Government has concerns about how a consumer's data is managed after the directed and permissioned sharing by an ADR, we suggest that with reform, the Privacy Act is better placed to manage those risks.



## Question: Are further statutory changes required to support the policy aims of CDR and the delivery of its functions?

Yes. Central to the success of the CDR will be consumer trust, business operability, and consumer participation. We recommend that processes and rules be designed with modern business operations in mind.

Recognising existing protections in place, ensuring consistency and interoperability with existing regulatory and legislative requirements, and minimising business and consumer disruption will be crucial to its future success.

### A Business Consumer Disclosure Consent

The inclusion of a Business Consumer Disclosure Consent (BCDC) enables business consumers to instruct an ADR to share data with third parties for business purposes, including unaccredited third parties such as ecosystem apps, trusted advisers and informal advisers.

A BCDC would provide businesses with more control over digitally interacting with their business data. A Business Consumer Disclosure Consent would strengthen this concept by subjecting it to the regulatory scrutiny already present for accounting software providers, who are well-positioned for managing these obligations due to their existing privacy and other corporate legislative requirements.

ASPs ought to be able to retain the BCDC data for as long as business consumers choose. While record-keeping obligations may be for a finite period, business consumers often want their data longer, e.g. to depreciate high-value access, gain insights into their business performance, or track growth and trends.

It should be the business consumer's decision as to how long the ASP can use their CDR data, providing they can request deletion or de-identification at any time.

### Better defined 'derived data.'

Extending ill-defined terms such as 'derived data' onto financial management software platforms, already providing essential productivity and compliance-related services to small businesses through consumer control of data, will have significant detrimental effects when the focus needs to be on enhancing consumer control and business productivity.

Without a limit on when CDR data ceases to be classified as 'derived data', there is a potential conflict for accounting software businesses between record management to enable their small business customers to meet their legal obligations and CDR data and derived CDR data deletion requirements.

For example, when Intuit collects CDR data on behalf of a customer, it becomes derived CDR data as it is incorporated into our customer's QuickBooks accounting records. However, for transactions to be entered into a business ledger, the small business operator, employee, or trusted advisor reconciles/verifies pending transactions and may assign those transactions to

categories, append notes or correct details. Under the current proposed CDR rules amendments, despite the reconciliation and addition of new information to the ‘raw’ CDR data, because the ledger data now contains CDR data, it is subject to and must be dealt with under the CDR regime. This can easily lead to a scenario where all a business CDR consumer’s accounting information is treated as CDR data. Given that such accounting data must sometimes be kept and shared with a wide range of business and regulatory stakeholders (e.g., directors, shareholders, ATO, ASIC, and ASX, to name a few), we do not believe that the reconciled ledger entries of a business CDR consumer should be considered CDR derived data.

Because ledger entries are not raw data from an accredited data holder but user-entered, reconciled transactions, one acceptable limit to ‘derived data’ is to treat ledger data as a CDR insight. This would enable a safer and more efficient way for consumers to share insights obtained from their CDR data to receive goods and services and comply with their taxation or regulatory obligations.

## A 7 year collect and use consent period for business consumers.

Existing rules require a business’ financial records to be retained for a minimum of five years from the date of lodgement of the tax return or longer in certain circumstances, which is an essential regulatory consideration for ASPs and our customers. Given the increasingly complex regulatory landscape for accounting, banking and finance operators, encouraging consistency will be crucial to enabling business operations while applying necessary oversight and compliance mechanisms.

Intuit supports seven-year “use” consents and 12 months “collect” consents for ADH to ADR transfers for business purposes. However, we recommend that upon annual re-authentication of the “collect” consent, the business consumer be given the option to renew or auto-renew the “use” consent for a further seven-year period from that date.

ASPs are concerned that the current drafting of the Competition and Consumer (Consumer Data Right) Rules 2020 could limit ASPs to only use de-identified data “according to a current use consent”. Once CDR data is de-identified per a valid de-identification consent, the time limitations established under this rule should not apply to de-identified CDR data.

## Reasonable steps

The most significant barrier to business CDR consumers’ participation in the open banking regime is the requirement that an ADR cannot disclose CDR data to a trusted adviser unless it has taken reasonable steps to confirm that the person to whom the data is to be disclosed is a member of a class of trusted advisers set out in the CDR Rules (rule 7.5A(3)).

As long-time participants in open data and the development of Australia’s Consumer Data Right, we believe that any regulatory framework for this area must consider the need to protect and empower individual consumers without limiting the potential of new technologies. Specifically, we believe that human interaction should not be restricted or limited by the CDR rules but instead should focus on mechanisms for regulating and standardising machine-to-machine processes. By providing an informed consent experience that clearly explains their rights and responsibilities, it

will be easier to facilitate the free flow of data within the framework of the Consumer Data Right. Ultimately, with these fundamental principles in mind, we believe that the CDR can successfully promote innovation and benefit consumers across all industries with these basic principles in mind.