

**COMMUNICATIONS  
ALLIANCE LTD**



**Communications Alliance Submission  
to the  
Statutory Review of the Consumer Data Right**

20 May 2022

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## **Communications Alliance**

Communications Alliance is the primary communications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, platform providers, equipment vendors, IT companies, consultants and business groups.

Its vision is to be the most influential association in Australian communications, co-operatively initiating programs that promote sustainable industry development, innovation and growth, while generating positive outcomes for customers and society.

The prime mission of Communications Alliance is to create a co-operative stakeholder environment that allows the industry to take the lead on initiatives which grow the Australian communications industry, enhance the connectivity of all Australians and foster the highest standards of business behaviour.

For more details about Communications Alliance, see <http://www.commsalliance.com.au>.

## 1. Introduction

Communications Alliance welcomes the opportunity to make a submission to the Issues Paper released in conjunction with the Statutory Review of the Consumer Data Right (CDR) being undertaken by Ms Elizabeth Kelly PSM.

Communications Alliance and its relevant members have engaged in lengthy discussion with the Department of the Treasury throughout the process leading up to the designation of the telecommunications sector as one in which the CDR should apply.

Given the importance of decision making in this area and its impacts, we have made numerous submissions to Government on the topic and have written to the then-Minister, (as part of a broad industry coalition that also included the Australian Information Industry Association, the Australian Mobile Telecommunications Association, Internet Australia and the Internet Association of Australia) spelling out our views and concerns about the risks, costs and opportunities presented by the designation of the telecommunications sector.

Attempts to engage directly with the Minister were unsuccessful.

We have stated throughout our sector's whole-hearted support for the objectives of the CDR framework, and have focused on its potential applicability to the telecommunications sector, given the specific nature of existing data availability in our sector and existing arrangements for provision of such data by telecommunications service providers to their customers.

We see the Review as an important opportunity for all stakeholders to reflect on the achievements to date under the CDR framework and to seek a fuller, shared understanding of how the scheme should be managed, in order to maximise the benefits it may provide to consumers – but equally to avoid applying the CDR framework in ways which might generate little benefit, or even be counter-productive.

We believe that the Terms of Reference for the Review are appropriate.

We note that the Review process contemplates undertaking “targeted engagement” with representatives from industry and would welcome the opportunity to engage in such engagement with the Reviewer, along with our relevant industry members.

This submission represents the views of Communications Alliance's carrier and carriage service provider (C/CSP) members.

We do not seek confidentiality for this submission.

## 2. Recommendation

Drawing together the commentary in the preceding section and the thinking behind our responses to the questions posed by the Review leads us to the following recommendation. It is also, in part, a response to the broader consideration identified in the Issues Paper as to: *“Whether the CDR is the appropriate mechanism to deliver the broad range of potential benefits set out (in the paper).”*

We believe that the case for CDR in telecommunications has not yet been adequately made and that the Review should recommend to Government that the designation/rule-making process for the telecommunications sector be paused, to enable:

- further examination and stringent modelling of whether it would deliver a net-benefit;
- a better understanding of what CDR is – or is not – delivering in the first two designated sectors; and
- the exploration of alternative, lower-impact initiatives that might deliver projected benefits more effectively and efficiently.

### 3. Responses to Questions Posed by the Review

#### ***Question 1: Are the objects of the Act fit-for-purpose and optimally aligned to facilitate economy-wide expansion of the CDR?***

The objects outline in s56AA are simple and fit-for-purpose.

The problem that has become evident to the telecommunications sector throughout the consultations with Treasury, is that the Act does not require sufficient rigour within the process of assessing whether additional industry sectors should become subject to a CDR framework. These shortcomings are described in more detail in our response to Question 2.

#### ***Question 2: Do the existing assessment, designation, rule-making and standards setting statutory requirements support future implementation of the CDR, including to government-held datasets?***

The Government has stated regularly that it envisages the CDR framework extending economy-wide, over time, but also that each potential new industry sector will be assessed on its merits, in terms of its suitability to be designated for the CDR.

In the case of the telecommunications sector, the product set is very different to any other sector and the account holder may not be the end user of the service. Many telecommunications products effectively have no limit on use and the underlying network may be common across many brands. Comparisons are, therefore, often based on a range of other factors. Some consumers may be focussed on the cheapest product available, or how the product is sold and serviced (e.g., via retail stores or digital-only). Other consumers will consider a range of other factors, some of which are intangible, such as how a consumer feels about a particular brand – sentiment that could be based on the perceived customer service, the perception of whether the provider has ‘green’ credentials, what provider their family, friends and associates use, etc. Consumers already have easy access to concise and consistent product data, through information tools co-designed and agreed with our sector’s regulator, the ACMA and through the ACMA and Telecommunications Industry Ombudsman (TIO).

Attachment 1 to this submission provides an illustrative summary of the diversity of telecommunications products in Australia; the types of customers who use them and the ways in which they use them. This is not intended to offer a comprehensive analysis of the marketplace and its customer cohorts, but rather to provide a useful scan of the diversity and complexity of the sectoral landscape, in support of the commentary immediately above.

Barriers to switching between providers are and have been low in our industry for over two decades, either through easy immediate access to a service using a new number, or via porting an existing number in a relatively short timeframe (subject to technology type). Thus, we believe, and have stated from the outset, that the ‘gap’ between current practice and the CDR objectives is narrower in telecommunications compared with the situation in the already-designated sectors.

We believe that this points to the need to consider a less burdensome approach to achieving the CDR objectives in the telecommunications sector, which may be achieved through closer engagement with the data currently provided to consumers and how its provision may be modified under any CDR designation, or that the CDR objectives may indeed be achievable without designation.

We acknowledge that the consultation with Treasury did result in some useful modifications to the draft designation for the telecommunications industry, including the removal of a raft of proposed quality-of-service data points and a paring-back of the scope and the proposed datasets.

We note that the general premise of implementing a CDR with the widest feasible dataset from the outset is, in our view, inappropriate. Instead, if implemented, the CDR ought to commence with a small dataset for which government has demonstrated consumer benefits will outweigh the attendant costs and which can be implemented efficiently and in a timely manner by industry. Only then and only once the expected benefits are indeed materialising ought the CDR proceed to the implementation of further datasets, subject to a positive cost-benefit analysis of those datasets.

Nonetheless, we believe that the assessment process did not weigh up the potential benefits of implementing CDR in telecommunications against the increased regulatory and operational burden that will flow from the designation.

During the consultation, telecommunications representatives consistently pointed to the heavy additional costs – including in relation to systems, business processes, staffing and regulatory management – that will be borne by the sector under a CDR framework. But the potential benefits to telecommunication consumers arising from designation were not quantified or demonstrated to be greater than the substantial costs.

In relation to the projected costs, the assessment, the government's assessment report and the analysis undertaken by Grant Thornton offered some heavily caveated estimates of the cost to industry of the additional regulatory and operational burden that designation would bring.

These estimates were differentiated between “small telco” and “large telco”. Neither category of telco was defined as to the size of the entity being described. Neither was the number of entities in each category estimated nor calculated.

While acknowledging these undefined variables, we nonetheless inferred from the Grant Thornton estimates that the cost to the telecommunications sector industry during the first two years of operation of the CDR framework could look like the following:

- Assume eight large telcos – 8 x \$5.58m build and run spend during first two years = \$44.64m; and
- Assume 150 small telcos – 150 x \$500k build and run spend during first two years = \$75m.

Under this scenario, the total build and run spend cost during first two years = \$119.64m

This is a substantial cost – the bulk of which will, ultimately, be borne by customers.

The costs and associated regulatory burden appear very difficult to justify, particularly given the government's inability to quantify any benefits that it hopes will be generated by the designation.

It is also disappointing that the government did not prepare a Regulation Impact Statement (RIS) – a step that was identified as necessary in the explanatory memorandum for the CDR Bill in 2019. Instead, Treasury took the alternative path of self-certifying the view that designation in the telecommunications sector would generate net benefits – thereby avoiding potential scrutiny of the step by the Office of Best Practice Regulation (OBPR) within the Department of Prime Minister and Cabinet.

In summary – the designation of the telecommunications sector has not been justified against the rules that are supposed to govern the expansion of CDR to additional industry sectors. The precise costs are unknown but will certainly be heavy. The potential benefits have not been identified or quantified.

It is also worth noting that the standard design process, that has already commenced for the telecommunications sector despite the rules not having been made, progresses at a pace unsustainable for and without the buy-in from our sector. Maybe contrary to the two previously designated sectors, the customer arrangements (e.g., single use service, or service with multiple end users), number of products and products covered by the CDR and the various technologies of how those are being delivered (fixed line, fixed-wireless, mobile, wifi, etc.) require substantial expertise and resources to be dedicated to the standards design

process – something that is difficult for providers at short notice, given projects and resources of such scale are often budgeted for years in advance.

It is also not clear how the standards design process within our sector will progress when it not yet clear which parts of our sector will be covered by the rules. For example, the draft rules (March 2022 consultation) considered a 'de minimis' approach that would exempt small providers (with a definition of 'small provider' yet to be determined).

**Question 3: Does the current operation of the legislative settings enable the development of CDR-powered products and services to benefit Consumers?**

At a base level, we believe it is reasonable to assume that the provision of CDR data to consumers in a uniform or near-uniform, machine-readable format will make it easier for consumers to use product and service-comparison websites.

Many such websites existed pre-CDR, however, and many have flourished without the benefit of CDR's outputs.

The Issues Paper as well as the process preceding designation assert that the CDR would improve products or even deliver new products, e.g., "personalised products and services" (p. 5, Issues Paper), for consumers. This is, in our view, an unjustified assertion and unlikely to materialise. We have not seen any evidence for this assertion and have also not been provided with a clear rationale that withstands commercial scrutiny.

The more complex question is whether more sophisticated, potentially cross-sectoral, products and services will emerge because of CDR being more widely adopted.

Similar to the above, we have not been provided with or identified ourselves any use-cases in this category for the telecommunications sector.

We have argued in previous submissions to government that a post-implementation study be undertaken, looking at the results of CDR in the banking and finance arena and the extent of adoption amongst consumers, as one means of assessing whether the framework spawns useful new products and/or services.

The Act should require government to conduct such a study, and thereby provide some guidance to other industry sectors – and indeed to government – on whether the potential benefits of CDR in Australia will materialise.

**Question 4: Could the CDR legislative framework be revised to facilitate direct to consumer data sharing opportunities and address potential risks?**

In our response to the government decision to designate the telecommunications sector for CDR, we argued that the implementation of the framework should be done via a least-cost methodology that would, at least, reduce the impact of the designation and improve the chances of the framework producing a net-benefit.

One of the ideas that we explored with Communications Alliance members and with other stakeholders, including government, was to utilise the unique nature of the telecommunications sector and the services it already provides.

The vast majority of the Australia adult population (and a large proportion of school-age children) carry and use a smartphone on a daily basis.

We began looking at the potential to harness the power of such devices by designing a mobile app that would link to the user's telecommunications products-set and usage data.

The app could then be interrogated by the user and generate data outputs as requested (both human-readable and machine-readable), which the customer could use to compare offers in the market and/or could pass to prospective alternative suppliers to enable those providers to craft a competitive offer to the customer.

If the government were to decide to pause the implementation of CDR in the telecommunications sector, this idea could be further explored and developed – potentially offering a more beneficial, user-friendly and industry-friendly path forward.

***Question 5: Are further legislative changes required to support the policy aims of CDR and the delivery of its functions?***

We do have a question as to whether or how CDR will address the issue of privacy for multi end user services. Should only the customer have access to all data, for example? Should an end-user have access to their data? How do we determine age of end-user to know if they are of an age to receive data when providers do not have data on end-users? Should end-users be able to see other end users' data on the same account?

For any questions relating to this submission please contact John Stanton on 0434 318777 or at [stanton@commsalliance.com.au](mailto:stanton@commsalliance.com.au).

## 4. Attachment 1

Type	What is being consumed	Who is consuming it	Inclusions vs unlimited	Comments
Fixed location	Fixed wired services include: nbn, Optus, Telstra, TPGT, others Fixed wireless Mobile broadband as either main communication path or as backup	Customer – NB: not always the end user End users at that location Guests	Most broadband services are unlimited Fixed wireless can have data limits	Generally post-paid, but can be post-paid and paid in advance for set fee part of contract inclusions
Mobile	Mobile based technologies (e.g. 4G, 5G, etc.) Wi Fi (Fixed location based which may at home/office or public/private Wi-Fi)	Customer – NB: not always the end user End users on the account Wi-Fi access consumed as a guest Guests	Mostly unlimited calls and SMS within Australia Data usu. Unlimited and subject to speed throttling upon reaching a defined limit. Some access charges for certain numbers, such as premium services and international calls	Either prepaid or postpaid. Customer may or may not receive a bill (e.g., a customer on an unlimited set fee per month paying via direct debit may not receive a bill and no billing records kept).
Mobile roaming	Mobile based technologies (e.g., 4G, 5G, etc.) Wi Fi (Fixed location based which may at home/office or public/private Wi-Fi)	Customer with services using a non-Australian Public Number	Subject to contracted arrangements with home service provider	Are these clearly out?
Data only services	Fixed wired services include: nbn, Optus, Telstra, TPGT, others Fixed wireless Mobile Broad Band (MBB)	Mostly business and enterprise customers, some consumers use also MBB	Business and enterprise subject to negotiated contracts. MBB used by all categories of customers	Negotiated contracts excluded



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