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Australian Payments Network (AusPayNet) thanks the Treasury and the DSB for the opportunity to respond to its *'Noting Paper 273 – Consent Review'* (**'Review'**) and provide our views on the preliminary change proposals, which could result in amendments in the Competition and Consumer (Consumer Data Right) Rules (**'CDR Rules'**)¹ and CDR standards.

AusPayNet supports the proposed simplification of the CDR consent flow, noting that this is a positive step towards harmonising with the consent flow in payment services such as PayTo. In line with this proposed simplification and harmonisation of consent flows, we agree with the proposed updates to r 4.11 of the CDR Rules, the removal of prescriptive authentication requirements, the enablement of consent bundling for related consent requests, and giving consumers greater control in managing their consent through appropriate dashboards.

About AusPayNet - Membership and role

AusPayNet is the industry association and self-regulatory body for the Australian payments industry. We manage and develop procedures, policies and standards governing payments in Australia. Our purpose is to enable competition and innovation, promote efficiency, and control and manage risk in the Australian payments ecosystem. AusPayNet currently has over 150 members, including financial institutions, operators of Australia's payment systems, merchants, and financial technology companies.

Context: Leveraging new payment services to support CDR consent flow

The recently released report on the *'Statutory Review of the Consumer Data Right'* (**'Report'**) thoroughly considered the consent journey and consumer experience. It found that there are 'opportunities for the CDR to capitalise on concurrent work being undertaken within payments systems, such as PayTo. Where possible, the CDR should work in conjunction with other initiatives to minimise potential friction points and reduce regulatory compliance for participants, with the objective to create more streamlined consumer experiences.'² It further states that in line with this finding, it encourages further review of CDR Rules (r 4.11(1)(c), 4.13(1), 4.22 and 4.25(1)) to enable payment initiation.³

As an example of an enabling payment service, PayTo gives consumers control over their consent to payment agreements.⁴ Using PayTo, they can authorise, view and manage recurring bills, subscriptions and memberships through a dashboard on their internet banking or mobile banking app.⁵ They can also authorise third parties to provide specific payments on their behalf.

¹ Competition and Consumer (Consumer Data Right) Rules 2020 ([link](#))

² Commonwealth Treasury, 29 September 2022, Statutory Review of the Consumer Data Right - Report, p 67 ([link](#)).

³ Ibid, p 71 ([link](#)).

⁴ New Payments Platform, accessed 6 October 2022, PayTo, ([link](#)).

⁵ New Payments Platform, Introducing PayTo, YouTube, accessed 6 December 2022 ([link](#)).

Responses

Q5. Do you have any views on what consent issues may need to be considered to support the CDR's expansion into action and payment initiation?

AusPayNet supports the DSB's focus on minimising the required interactions and providing lower levels of friction while still upholding the consent principles and the objects of consent in the CDR Rules. AusPayNet agrees with the DSB's finding that r 4.11 of the CDR Rules prescribes excessive requirements of interactions and information during the CDR consent flow. Similarly, r 4.13(1), 4.22 and 4.25(1) prescribe excessive requirements for other accredited persons (e.g. data holders) or particular actions (e.g. withdrawal of consent). These rules work together such that CDR consumers are likely to need to wait for data recipients to begin payment/action initiation and might not be able to initiate actions themselves or through third parties. Even with the proposed expansion of the definition of CDR consumer to include third parties,⁶ third parties would still be required to repeatedly give consent to authenticate themselves and to authorise action service providers to proceed with each of the next steps.

In our submission to the Treasury's Issues Paper on the '*Statutory Review of the Consumer Data Right*' ('**Submission**')⁷, we noted that the current eight-step CDR consent flow and the passive nature of the role the CDR consumer plays are counterproductive to the intended introduction of action initiation in CDR as envisaged by the final report of the '*Inquiry into the Future Directions of the Consumer Data Right*'.⁸

For these reasons, AusPayNet supports the DSB's preliminary proposal to revise r 4.11 to balance the goals of consumer protection and consumer experience. We suggest that r 4.13(1), 4.22 and 4.25(1) should also be revised as part of the Review, to support the CDR's expansion into action and payment initiation. AusPayNet also believes that the other proposed change to simplify or remove the authorisation step in the CDR consent flow when re-authenticating to extend consent would be an appropriate example of this rebalancing.

Q1. Do you agree with the preliminary proposals in this paper? If not, what changes or revisions should be considered?

Removal of prescriptive authentication requirements (One Time Password)

AusPayNet agrees with the DSB that the reference to One Time Password (OTP) in the CDR authentication standard should be removed due to the likely development of alternative authentication methods. For example, users of PayTo authenticate themselves in their banking channel through authentication methods (e.g. biometrics) that could provide greater security while making the OTP requirement redundant. Currently, banks are developing new ways for consumers to authenticate themselves, including through a digital identity service called ConnectID.⁹ AusPayNet suggests a technologically neutral approach in revising CDR Rules and standards so that they are future-proof.

⁶ Treasury Laws Amendment (Consumer Data Right) Bill 2022 ([link](#))

⁷ Australian Payments Network, 20 May 2022, Submission to 'Statutory Review of the Consumer Data Right (CDR)' ([link](#)).

⁸ Commonwealth Treasury, 23 December 2020, 'Inquiry into the Future Directions of the Consumer Data Right – Final report' ([link](#)).

⁹ Australian Financial Review, 31 August 2022, '*Banks Ready to Launch New Digital Identity Checking Service*' ([link](#)).

Enablement of consumer dashboards and consent bundling

AusPayNet agrees with the DSB that consumer dashboards provide an important mechanism for consent withdrawal and ongoing consent management. We also support, in principle, enabling the bundling of necessary and related types of consent within a dashboard. This proposed option has the potential to enable more streamlined consumer experiences for use cases requiring the consumer to authorise a payment agreement (such as PayTo) and provide CDR consents. Notably, the Report is supportive of amendments to r 4.10(b)(ii), which prohibits consent bundling.

Q3. If the proposed changes were made, are there any implementation or consumer impacts that need to be assessed?

We note that the Treasury and the DSB have developed consent principles to guide and assist the assessment of proposed amendments to the CDR Rules and standards. We understand that these principles have incorporated each of the elements described in the object statement in r 4.9 of the CDR Rules and are reframed to centre on consumer experience and desired consumer outcomes, providing utility in the performance of this Review.

It is essential for these principles to be used in the context of the object statement, noting that there is otherwise a material difference in the literal interpretation of the principle (i.e. consent is specific) and the object statement (i.e. consent is 'to be specific *as to purpose*'). In our Submission, we made the same distinction. The wording in the object statement provides an avenue for consent bundling of multiple payment activities (and related consent requests) because the consent is provided in relation to a *specific purpose* per r 4.9(d) of the CDR Rules. In comparison, the principle itself could be interpreted as requiring consent specific to each request type or action and, thus, is counterproductive to consent bundling.

Conclusion

AusPayNet appreciates the opportunity to respond to the Consultation and to contribute our insights from the perspective of the payments industry. We would also welcome the opportunity to engage further with the DSB on the issues raised in this submission. Please contact [REDACTED] if you have further questions.

Yours sincerely,



Andy White
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Australian Payments Network