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Senate Standing Committees on Economics
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by email: economics.sen@aph.gov.au

Treasury Laws Amendment (Consumer Data Right) Bill 2022

Thank you for the opportunity to comment on Treasury Laws Amendment (Consumer Data Right) Bill 2022.

The Financial Rights Legal Centre (**Financial Rights**) (like other consumer representative organisations) is not resourced to provide a thoroughgoing analysis of the current Bill nor are we able to provide substantive input into the large number of consultations on the Consumer Data Right (**CDR**). This is a critical flaw in ongoing development of the CDR and one that needs to be urgently addressed to ensure that the consumer is at the heart and centre of the *Consumer Data Right*.

This letter is therefore limited to raising the following two high level concerns with the current Bill and the intent to introduce action initiation processes to the consumer data right regime.

1. Action initiation has the potential to increase scam and fraud activity in the context of few, if any, consumer protections or redress mechanisms for scam losses

Introducing action initiation into the CDR raises the risk of fraud or misuse of data which can expose a consumer to harm. While action initiation in the CDR will not necessarily create new scam or fraud types it does introduce new opportunities for scammers, by increasing what is known as the “attack surface” for scammers and fraudsters to infiltrate and take advantage of.

Inadvertently handing control over your bank account and providing access to a scammer to initiate payments is a common form of phishing scam with significant consequences impacting thousands of Australians today.

Introducing action initiation via the CDR means that inadvertently handing control over CDR enabled service via phishing or other form of scams could mean losing a lot more than what can occur now since CDR enables access to multiple accounts.

This is a significantly increased threat being introduced into an economy that is already seeing huge and increasing losses to scam,¹ and which has a major gap in the consumer protections framework for scams – namely the loss of consumers protections under the ePayments code and lack of any requirement on banks and payment system providers to act and refund customers who lose money to frauds through no fault of their own.

The government has made a significant commitment to address the scams crisis under its Fighting Online Scams measure which includes introducing an SMS sender ID register, and establishing the National Anti-Scams Centre. This renewed focus is critical given the increasing losses from scams.

However there has yet to be any real commitment to addressing the large gap in the consumer protection framework as mentioned above – a gap that could potentially be filled by something similar to the UK industry code called the Contingent Reimbursement Model Code for Authorised Push Payment Scams.²

We understand that the action initiation regulations will apply only to the instruction layer of the process and that the CDR expansion to action initiation does not alter how the ‘action layer’ operates, with existing laws and practices that govern the performance of actions are intended to continue unaffected.

However this is the problem. There are few, if any, existing laws, practices, standards or consumer protections that oblige banks to detect or prevent scam activities such as impersonation, investment of phishing attack scams likely to be perpetrated against those engaging with the CDR.

Until this gap is filled, action initiation will simply make the problem worse.

We recommend delaying the introduction of action initiation until an effective reimbursement regime has been introduced to fill the current hole in consumer protections.

Looking at the Bill itself, we also note and support recommendations of the Australian Banking Association to amend section 56BZC to provide banks with the ability to apply a stronger scams approach to payments.

Action initiation introduces increased risks to the payment system by introducing a third party between the bank and the customer.

Section 56ZBC seeks to ensure that there is no discrimination against CDR action instruction, when a service provider fails to perform CDR actions when it ordinarily performs actions of that type. The EM states that

¹ ACCC predicts combined scams losses to reach \$4 billion in 2022: [ACCC, Scams Awareness Week 2022 empowers Australians to spot a scam](#), 7 November 2022

² UK Lending Standards Board. [The Contingent Reimbursement Model \(CRM\) Code](#)

This is not intended to prevent an action service provider applying extra security or other checks to CDR action requests on the basis that a third party is involved, provided it is consistent with existing practices.³

Existing practices could potential limit the bank’s ability to apply fraud protections that newly arise out of an action initiation request.

We agree with the ABA that this section should be amended to:

- allow Action Service Providers (**ASPs**) to refuse to act on a request that does not meet the ASPs scam, fraud or cyber risk appetite, and
- refuse an instruction where the ASP detects or determines an elevated risk to their customers and/or have not received confirmation from the customer of an instruction.

2. Action initiation will exacerbate consumer harms borne of an already weak CDR consumer protection framework

To date, the CDR has been implemented in such a way that the safety concerns of consumers – particularly vulnerable consumers - have regularly been trumped by measures intended to remove so-called “frictions” sought by the FinTech sector and other interested parties. This has led to weak protections for consumers under the current CDR rules.

This is the case, for example, with joint accounts and consent rules – where joint account holders are presumed to have provided consent and need to actively opt-out of sharing data when sharing occurs. Opt-out consent is counter to all privacy-by-design principles, inconsistent with the opt-in approach central to the objectives of the CDR and will likely lead to poor consumer outcomes regarding economic and domestic abuse.

Action initiation exacerbates the risks that rules like the joint account opt-out rule have created for consumers – namely it aggravates the risks of economic and domestic abuse arising out of the opt-out consent model by now allowing perpetrators to quickly, easily and efficiently make payments or initiate changes to accounts without the explicit and meaningful consent of a joint party.

We recommend that all rules applying to joint account consents, “trusted advisors,” consumer insights, and other relating to supporting vulnerable consumers be reconsidered, and strengthened once action initiation is introduced.

Furthermore, we note that Section 56BZA introduces an obligation that accredited persons must act efficiently, honestly and fairly when initiating CDR actions. We support this new obligation. However we believe it should extend to *all* accredited persons activities under the CDR regime including the collection, handling and use of CDR data under the read only-access regime – not limited only to initiating actions. This would be an important step in light of the over-reliance on consent and disclosure as the two key protections for consumers who engage with the CDR – one of the most complex regulatory regimes on the books.

³ Para 1.70 EM

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact Financial Rights on (02) 9212 4216.

Kind Regards,



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About Financial Rights

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