quantium

03 February 2020

The Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

By email lodgement: ACCC-CDR@accc.gov.au

Dear Commissioners,

Consultation on Facilitating Participation of Intermediaries in the Consumer Data Right regime

Quantium welcomes this opportunity to comment on how best to facilitate participation of intermediaries in the Consumer Data Right (**CDR**) regime as published.

We first provide background about Quantium's interest in the CDR then provide our comments on facilitating participation of intermediaries in the CDR regime.

Background as to The Quantium Group

The Quantium Group (**Quantium**) is an Australian owned group of companies, with our head office in Australia and operations in the USA, UK, South Africa, New Zealand and India. Quantium is 17 years old. We currently employ around 800 people, making us the largest specialised data science and AI business in Australia. We work with iconic brands in over 20 countries across government, insurance, retail, banking, FMCG, health, property and consumer services.

As a custodian of valuable, commercially sensitive and customer data sets for leading Australian businesses, Quantium's business depends upon demonstrable and consistently reliable compliance with law and regulations, including as to bank - customer confidentiality. Maintenance by Quantium of the highest levels of business confidentiality is also critical to maintain digital trust of our data partners and our clients and their customers. Quantium delivers on this requirement through deployment of best practice frameworks, processes and technical, operational and legal controls and safeguards.

Quantium's comments on Facilitating Participation of Intermediaries in the CDR regime

Quantium's key submissions relate to:

1. the proposed treatment of Transformed Data (defined below) compared to CDR Data, and how Transformed Data should be managed by an ADR and/or an intermediary;
2. the obligations that should apply to holders of Transformed Data; and
3. the consent and notification obligations that should apply when CDR Data is transferred.

For the purposes of this submission our definition of "Transformed Data" is:

> *"CDR Data that has been adequately transformed from an individual's transactions into a score or other aggregation that has been modelled or aggregated to a significant degree such that it is not possible through any means, whether alone or in combination with other data, to reverse engineer, recreate or infer the original CDR Data"*

It is our recommendation that Transformed Data is not treated as CDR Data, and that instead it continues to be regulated through application of the existing Privacy Act requirements (to be strengthened in accordance with the Commonwealth Government's commitments). In our view this approach provides the following key benefits:

- the existing Privacy Act requirements already address and control circumstances in which information or an opinion (such as a score or another other inferred attribute or characteristic) about any individual is appended to any record relating to any individual who is identified or reasonably identifiable;
- the existing Privacy Act requirements are now well developed and are closely aligned to best international practice;
- the existing Privacy Act requirements are capable of further elaboration as and when required (for example, as standards and accepted practices for certification as de-identification controls and safeguards continue to mature); and
- a large number of use cases could be accommodated within the existing Privacy Act requirements and strengthened oversight mechanisms;
- more consumers could benefit from the CDR regime who would otherwise not be able to benefit, without attendant risks or detriment; and
- the adoption of this recommendation would accelerate the benefit realisation for consumers and organisations alike.

We also recommend that in circumstances where Transformed Data is passed on from an ADR to any third party who is not an ADR, the nature of the score, purpose and recipient/s of the score is clearly notified to the consumer and consent should be granted by the consumer before the Transformed Data is passed to the third party.

Quantium's response to consultation questions: intermediaries

1. *If you intend to be an intermediary in the CDR regime, or intend to use an intermediary, please provide a description of the goods or services you intend to provide to accredited persons or to CDR consumers using an intermediary. Do you intend (or intend to use an intermediary) to only **collect** CDR Data, or **collect** and **use** CDR Data? What value or economic efficiencies do you consider that intermediaries can bring to the CDR regime and for consumers?*

   Quantium intends to be an intermediary for our clients in the CDR regime to both collect and use CDR Data. Quantium expects to develop products and services based on CDR Data on behalf of our clients, in such a way that our clients do not require CDR Data but instead use Transformed Data derived from CDR Data.

   By example, Quantium may create a service for a telecommunications or energy client which collects and uses CDR Data to develop a "pays on time" score for a customer for the purpose of introducing additional discount tiers for customers that pay their utility bills on time.

   This "pays on time" score would require the collection of CDR Data, specifically a customer's past bank transactions with telecommunications, energy and other providers of consumer services that are billed on regular and predictable cycles. Customers that demonstrably "pay on time" can be offered additional discounts that reflect the reduced expected servicing and administration costs for the customer.

   In this case the CDR Data is used by Quantium to derive the "pays on time" score for the client, which may have several values (Always, Usually, Sometimes, Rarely, Insufficient Data). It is reasonable that this Transformed Data – the "pays on time" attribute – is no longer considered CDR Data and instead its use should fall under existing Privacy Act requirements that already address and control the circumstances in which information or an opinion (such as a score or another other inferred attribute or characteristic) about any individual is appended to a record relating to any individual who is identified or reasonably identifiable.

   If this recommendation is accepted, then the downstream organisation who receives the "pays on time" score does not need to be accredited.

   As another example, Quantium envisages a use case where this Transformed Data is provided to multiple third parties (e.g. banks) across an aggregator platform, such that the participants on the platform use this score to get the customer the best deal. In this instance, we would not expect each of

those participants to be accredited, or to treat the Transformed Data as CDR Data. Rather, our recommendation is that it be treated as personal information under the Privacy Act and be treated in a similar way to the name, address, credit score, etc.

In all instances however, we would expect that any transfer of Transformed Data to third parties is unambiguously and expressly consented to by the consumer.

2. *How should intermediaries be provided for in the rules? In your response please provide your views on whether the rules should adopt either an outsourcing model or an accreditation model, or both and, if so, and in what circumstances each model should apply.*

Quantium believes that where intermediaries are receiving any CDR Data, they should be accredited to ensure a consistently high standard is demanded of anyone dealing with the collection or use of CDR Data. This helps ensure the integrity of the CDR regime during its infancy, where any misuse of data or security breach could severely impact consumer willingness to share their data and damage the long-term viability of the CDR regime.

Where intermediaries or organisations are receiving Transformed Data (an example of this is provided in our response to Q1), we suggest that the existing Privacy Act requirements should apply and that an accreditation model is not required.

In possible scenarios where an organisation that receives Transformed Data is not subject to existing Privacy Act requirements, we suggest that rules allowing uses of Transformed Data should require the recipient to be an Australian corporation doing business from a place of business in Australia and to not be exempt from operation of the Privacy Act (i.e. not a small business operating under the SME exemption from the Privacy Act). We note that, with such requirements, other Australian laws including the Australian Consumer Law, would also operate in relation to the recipient organisation's uses of Transformed Data.

3. *What obligations should apply to intermediaries? For example, you may wish to provide comment on:*
   a. *if intermediaries are regulated under an accreditation model, the criteria for accreditation and whether they should be the same or different to the criteria that apply to the current 'unrestricted' level, and the extent to which intermediaries should be responsible for complying with the existing rules or data standards;*
   b. *if intermediaries are regulated under an outsourcing model, the extent to which contractual obligations should be regulated between accredited persons and intermediaries;*
   c. *if the obligations should differ depending on the nature of the service being provided by the intermediary.*

Quantium suggests that intermediaries are regulated under the same criteria that apply to the current 'unrestricted' level where those intermediaries are accessing CDR Data.

Where intermediaries are receiving Transformed Data in a way that is untraceable back to an individual (e.g. with the example where we score a "pays on time" score as described in our response to 1), we recommend that its use should fall under the existing Privacy Act requirements.

4. *How should the use of intermediaries be made transparent to consumers? For example, you may wish to comment on requirements relating to consumer notification and consent.*

In general, Quantium's view is that the touchpoints with end consumers in regard to CDR notifications be kept to a minimum and only where absolutely necessary, as there is a substantial risk of notification and consent fatigue.

Intermediaries could be treated in the same way where one company 'white labels' the products of another company. For example, if a retailer white labels an insurance product under their brand, there

is a notification at the bottom of the page that the insurance is underwritten by the respective insurance company. In the CDR context the same concept could apply (where the retailer would be the ADR and the insurance company would be the intermediary).

5. *How should the rules permit the disclosure of CDR Data between accredited persons? For example, you may wish to comment on requirements relating to consumer consent, notification and deletion of redundant data, as well as any rules or data standards that should be met.*

Quantium envisions several instances in which CDR Data may be disclosed between accredited persons.

We would like to comment on one specific instance, where Quantium may choose to act as an ADR on behalf of an organisation, ingesting the CDR Data for that organisation's customers and providing a score (Transformed Data) to that organisation. If the organisation later became an ADR, it may be more efficient for all parties if Quantum could pass on the CDR Data collected from the individual to that organisation. For a disclosure to be made in such circumstances, we recommend either that consent for this disclosure is obtained at the time that the original CDR was collected, or that consent is obtained at the later time and before the disclosure is made.

6. *Should the creation of rules for intermediaries also facilitate lower tiers of accreditation? If so, how should the criteria and obligations of new tiers of accreditation differ from the current 'unrestricted' accreditation level, and what is the appropriate liability framework where an accredited intermediary is used?*

Quantium doesn't support lower levels of accreditation at this time given the reputational risks described in consultation question 2.

Quantium's response to consultation questions: permitting CDR Data to be disclosed to non-accredited third parties

7. *If the ACCC amends the rules to allow disclosure from accredited persons to non-accredited third parties and you intend to:*
    a. *receive CDR Data as a non-accredited third party, please explain the goods or services you intend to provide, the purposes for which you propose to receive CDR Data, and how this may benefit consumers;*
    b. *be an accredited person who discloses CDR Data to non-accredited third parties, please explain the intended goods or services you intend to provide and how they may benefit consumers.*

Quantium doesn't expect to disclose CDR Data to non-accredited third parties. However, Quantium does expect to create Transformed Data from CDR Data and that Transformed Data (only) would be disclosed to non-accredited third parties.

For the reasons stated above, Quantium recommends that Transformed Data is not treated as CDR Data, but instead remains subject to existing Privacy Act requirements. We believe that it will be necessary for many use cases (including emerging ones) to rely on this recommendation in order to be commercially viable.

In addition, there will be many organisations which are not in a position to become accredited but who will have large numbers of customers that would benefit from the CDR regime. Quantium believes that it would be beneficial to permit organisations like Quantium to act as an ADR on behalf of such organisations (with two example use cases described in our response to Q1), and to provide Transformed Data to those organisation, so that the consumers of these organisations can quickly benefit from the CDR regime.

8. *What types of non-accredited third parties should be permitted to receive CDR Data? Why is it appropriate for those types of third parties to be able to receive CDR Data without being accredited?*

As outlined in previous responses, Quantium sees a use case whereby an organisation may utilise the services of an ADR to receive Transformed Data in order to make decisions. Our responses to Q1 and Q7 above further elaborate on this.

We also see the use case where certain professional firms (e.g. accountants) may require access to CDR Data (e.g. to assess tax returns). However, it would be impractical to expect these smaller professional firms to become accredited.

In our view, non-accredited third parties should be able to receive CDR Data where the consumer has provided consent to the non-accredited third party, and where the third party firm is an accredited organisation of an approved professional body (for example: Chartered Accountants Australia and New Zealand, CPA Australia and Institute of Actuaries of Australia).

These professional bodies are subject to appropriate regulation, with professional standards oversight, complaint, penalty and redress mechanisms already in place, to protect the consumers and businesses that currently provide them with very similar information as envisaged by the CDR.

9. *What privacy and consumer protections should apply where CDR Data will be disclosed by an accredited person to a non-accredited third party?*

As stated above, Quantium recommends that only Transformed Data be shared with non-accredited third parties, and not CDR Data. On this basis we believe that the relevant protections necessary are already adequately addressed in the Privacy Act 1988 (Privacy Act) and its Australian Privacy Principles (APPs) as well as the Australian Consumer Law.

10. *What degree of transparency for CDR consumers should be required where an accredited person discloses CDR Data to a non-accredited third party? For example, are there particular consent and notification obligations that should apply?*

When an accredited person is disclosing CDR Data to a non-accredited third party:

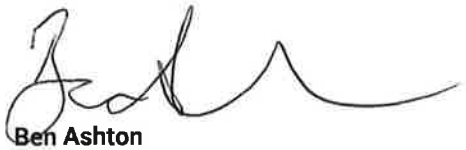
1. We envisage use cases where this data is being used for the benefit for the third party's customers. Please see our response to Q1 to explain the scenario, and response to Q7 to describe our views on consent and notification obligations
2. We envisage use cases where the non-accredited parties are smaller / individual organisations where becoming accredited may not be economical. Please see our response to Q8 for our views on this issue.

We again highlight our concern that notification and consent fatigue is an ongoing concern to participants within the CDR regime.

We appreciate this opportunity to present this submission to the ACCC and are keen to constructively contribute to further determinations of the framework and rules for the CDR system. We would welcome the opportunity to participate in industry consultations and to provide any detailed input or further clarifications as may assist

the ACCC. Please do not hesitate to contact me at [redacted] should you wish to discuss this further.

Yours sincerely,



Ben Ashton
General Counsel
The Quantium Group Pty Ltd