



**Verifier Submission
4 September 2018**

Exposure Draft Treasury Laws Amendment (Consumer Data Right) Bill 2018

The Hon Josh Frydenberg MP, Treasurer
Paul McCullough, First Assistant Secretary, Structural Reform Group
The Treasury,
Langton Crescent, Parkes ACT 2600

By email: data@treasury.gov.au

Verifier Pty Ltd

**Submission to The Treasury on Exposure Draft Treasury Laws
Amendment (Consumer Data Right) Bill 2018**

About Verifier

Verifier is a permission-based private data exchange platform for regulated markets that applies renowned Privacy-by-Design principles, respecting the information security needs of consumers and income data providers. Our clients include banks and non-bank financial institutions.

Lisa Schutz is Verifier's founder and CEO. Lisa was instrumental in founding the RegTech Association in 2017 (a sister organisation to the FinTech Association) and is currently a director of that Association. She was awarded the inaugural *FinTech Leader of the Year* in the Women in Finance Awards of 2017.

Purpose of Verifier's submission

Verifier welcomes the opportunity to make this submission in respect of the Exposure Draft Treasury Laws Amendment (Consumer Data Right) Bill 2018 (the **Exposure Draft**).

We note specifically the goals expressed in the *Final Report* of the Review into Open Banking in Australia, published on 9 February 2018, being the creation of a system that:

- is customer focussed
- promotes competition
- encourages innovation, and
- is efficient and fair.

The purpose of our submission (and therefore the focus of our submission) is to advocate for the implementation of regulation that is efficient and fair and which embodies competitive neutrality.

Verifier's specific recommendation: prohibit screen-scraping

A fundamental shortfall of the Exposure Draft is that it does not address the practice of "screen-scraping".

Our strong view is that the government should follow the lead of the European Commission's revised Payment Services Directive (PSD2), which (from mid 2019) prohibits accessing data through the use of screen-scraping techniques.¹ France, the UK, Germany, Luxembourg and Poland have finalised implementation of PSD2 and a number of other EU member states are working towards implementation.²

Competitive neutrality:

There is a compelling public policy basis for our recommendation that screen scraping be prohibited. That is, in order to facilitate market efficiency, regulation should not create a competitive bias in favour of particular products or providers within a given market segment.

One of the principles of "good" regulation is that it should not impose competitive disadvantages – it should embody competitive neutrality. If screen-scraping is not prohibited by legislation, there will be a "race to the bottom" by those who use the "back door" to avoid the significant regulatory burden (including costs) of accessing and sharing CDR data in the transparent and informed consent driven model contemplated by the data right. A consequence of this would be to create a data access and sharing environment that lacks both competitive neutrality and appropriate protections for CDR data.

Verifier's recommendation:

We strongly recommend that screen scraping be prohibited by the Exposure Draft.

Other matters

We note that there is very little of the detail about the data right and the access to and sharing of CDR data in the Exposure Draft. The detail is left to the "rules" and the "data standards" to be made under the legislation. Therefore, our comments are high level, as follows:

1. Draft rules and data standards (at least the initial minimum set) should be published for consultation as soon as possible.

¹ European Commission – Fact Sheet. *Payment Services Directive (PSD2): Regulatory Technical Standards (RTS) enabling customers to benefit from safer and more innovative electronic payments* MEMO/17/4961, Brussels 27 November 2017

² <http://www.hoganlovellspayments.com/PSD2#>



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2. There are a number of matters that should be clarified and enshrined in the legislation itself (not left to the rules or standards) in a way that is simple and unambiguous. The matters that should be clarified and simplified include:
 - The right for “persons” other than natural persons to access their CDR data. To aid clarity, our view is that references to “consumer” in the Exposure Draft (including all of the definitions) should be changed to “customer”.
 - A positive obligation on CDR data holders to provide CDR data on request by the data subject – and to provide it to the subject or an accredited third party in machine readable form if requested. This seems to be a matter that has been left to be dealt with by the “rules”.
3. The Exposure Draft requires CDR data recipients to be accredited. The Exposure Draft creates a Data Recipient Accreditor that is a government body or a monopoly (if a single private entity were to be appointed). Accreditation can be a lengthy process, and potentially a bottleneck. This may not be conducive to facilitating access to and sharing of CDR data. In our view, consideration should be given to a federated model, under which multiple (and competing) accreditation registries would update one central register, rather than creating an accreditation bottleneck.

Finally, we would be happy to discuss any aspect of our submission with you or your staff. Please contact me in the first instance.

Sincerely
Lisa Schutz, CEO
Verifier