# Open Banking and the Consumer Data Right

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# Venice, the birthplace of banks

*The Bank of Venice was the first national bank to have been established within the boundaries of Europe. The first bank was established in Venice with guarantee from the State in 1157.*

*According to Macardy this was due to the commercial agency of the Venetians, acting in the interest of the Crusaders of Pope Urban II. The reason is given elsewhere as due to costs of the expansion of the empire under Doge Vitale II Michiel, and to relieve the subsequent financial burden on the republic "a forced loan" was made necessary. To this end the Chamber of Loans was created to manage the affairs of the forced loan, as to the loans repayment at four percent interest and continued until the bank was caused to cease to operate during the French invasion of 1797.*

**- Wikipedia**

https://en.wikipedia.org/wiki/Bank_of_Venice

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# Background

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# Bank secrecy

*Otherwise known as bank–client confidentiality or banker–client privilege, the practice was started by Italian merchants during the 1600s near Northern Italy (a region that would become the Italian-speaking region of Switzerland). Geneva bankers established secrecy socially and through civil law in the French-speaking region during the 1700s. Swiss banking secrecy was first codified with the Banking Act of 1934, thus making it a crime to disclose client information to third parties without a client's consent.*

**- Wikipedia** https://en.wikipedia.org/wiki/Bank_secrecy

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# Banker’s duty of secrecy under English common law

- *Tournier v. National Provincial & Union Bank of England* [1924] 1 K.B. 461.
- A contractual duty – part of the banker/customer relationship.
- The duty extends beyond information obtained from the details of the customer's account.
- It includes any information that is obtained from the banking relations of the bank and its customer.
- The duty is not absolute. Per Bankes L.J., a banker could disclose information:
  - where disclosure is under compulsion of law;
  - where there is a duty to the public to disclose;
  - where the interests of the bank require disclosure; and
  - where the disclosure is made by the express or implied consent of the parties.

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# Anti-Money Laundering Laws

- *Bank Secrecy Act 1970* (US)
- FATF – Financial Action Task Force – founded 1979
- *Cash Transactions Reports Act 1988* (Cth)
- *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth)

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# Privacy Act 1988 (Cth)

Statutory obligations to protect privacy of personal information (individuals only)

General right to a copy of personal information held (individuals only) (Australian Privacy Principle 12)

Regulation of credit reporting (from 1992)

Initially restricted to “negative” reporting (defaults)

Now “positive” reporting is mandatory

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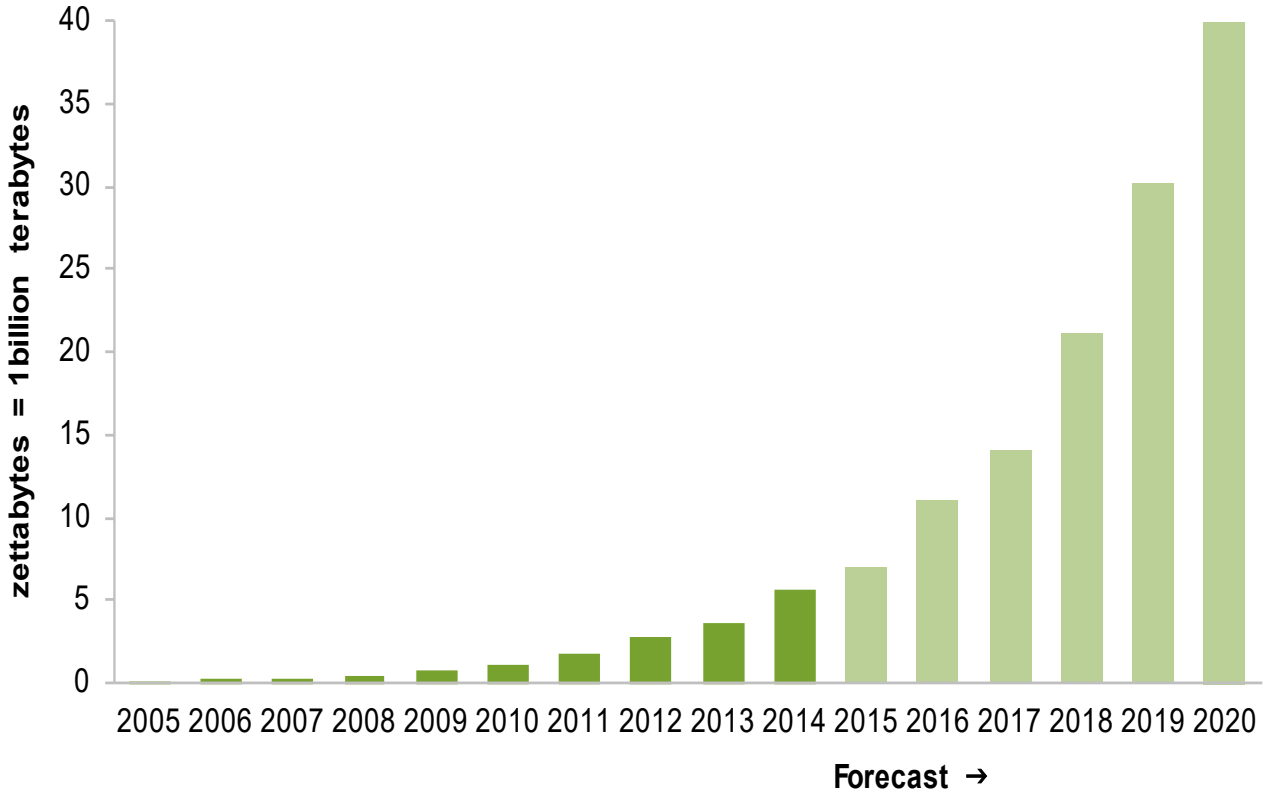
# Growth of data

By 2020, there will be around 40 trillion gigabytes of data (40 zettabytes).

https://techjury.net/stats-about/big-data-statistics/#gref




*Source*: United Nations Economic Commission for Europe (2015)

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# Banking is increasingly digital

- Electronic account records
- Internet banking
- Decline of bank branches and use of cash
- Mobile apps
- Digital banks

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# “Screenscraping”

- Since early 2000s
- Widely used
- Give your login details to a trust third party service to get a download of your banking data or a “feed” of data
- Grey area – bank terms and conditions
- ePayments Code issues

illion BankStatements

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# Application Programming Interface (API)

- Without Open Banking regulation, some banks were already moving towards making their data available – e.g. Macquarie's open banking platform in 2017.
- These were unforced, market-based solutions.
- Concerns that change was not moving fast enough and that big banks had unfair bargaining power.

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LATEST NEWS: → UBank and Basiq partner on open

## Macquarie opens up API to third parties

Macquarie has become the first of the major banks to make its application programming interface (API) available to third party providers.

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INDUSTRY | 18 SEPTEMBER 2017

By: Tim Stewart – 1 minute read

Macquarie has launched its new 'open banking platform', which the bank says will give customers "control over the everyday banking data" as well as "the power to securely manage how they want to share it".

As part of announcement, Macquarie will now give "approved" third party providers access to its API via the bank's open developer portal and test sandbox, called devXchange.

"While consumers typically need to reveal their banking login details to use budgeting tools and similar services, Macquarie's open platform means customers will never need to give their login details to a third party, creating a more secure way to access these services," said a statement by the bank.

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# Open Banking and the Consumer Data Right

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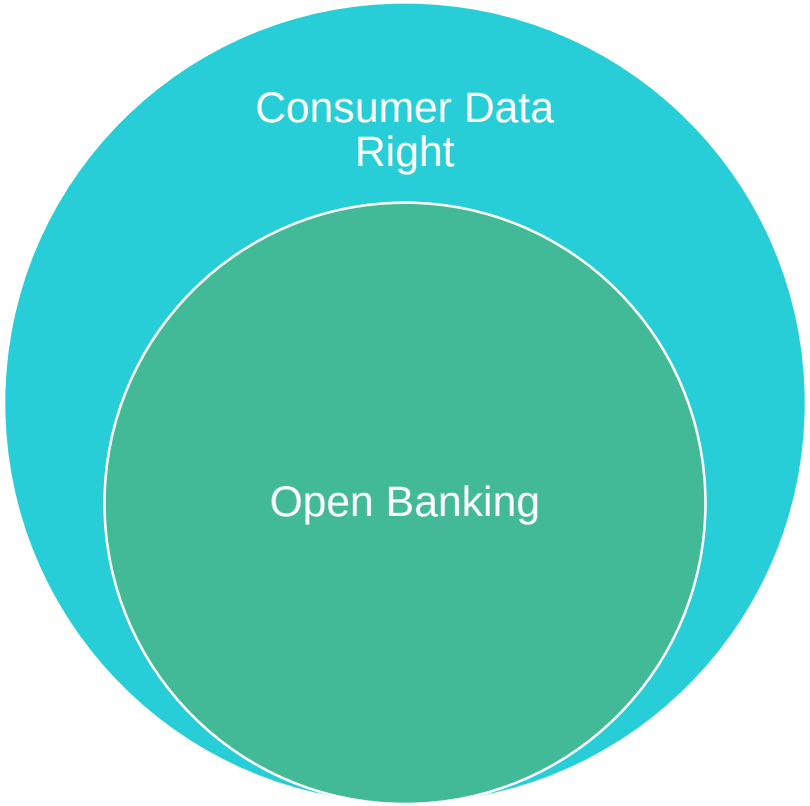
# Open Banking and the Consumer Data Right



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# Open Banking and the Consumer Data Right

- Open Banking is the application of the Consumer Data Right (**CDR**) in the banking sector.
- The CDR gives consumers the right to safely access certain data about them held by businesses. They will also be able to direct that this information be transferred to accredited, trusted third parties of their choice.
- The CDR will allow the consumer to access data about themselves in a readily usable form and a convenient and timely manner. It will also allow consumers better access to information on the products available to them.
- Both individual and business customers will be entitled to the CDR.
- The CDR will only apply in relation to specified data sets and specified classes of data holders.

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# Open Banking

Provides ‘read access’ to banking data to data recipients as directed by a consumer.

Uses standards that are developed and maintained collaboratively and openly licensed for anyone to access and use.

Only allows access to data with a consumer’s consent.

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# Policy development

**2014**: Financial System Inquiry (the **Murray Inquiry**) argues for the development of standards for accessing and formatting data and product information, which also address consumer privacy concerns to strengthen confidence and trust in the use of data.

**2015**: Competition Policy Review (the **Harper Review**) recommends that the Government consider ways to improve individuals' ability to access their own data to inform customer choices.

**2016**: Report of the House of Representatives Standing Committee on Economics' Review of the Four Major Banks (the **Coleman Report**) says there is a strong case for increasing consumers' access to their banking data and to banking product data and recommends that banks be required to provide open access to customer and small business data by July 2018.

**2017**: To develop these ideas further, in March 2016 the Government directed the Productivity Commission to report. *Data Availability and Use*, Productivity Commission Inquiry Report No. 82, 31 March 2017.

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# Productivity Commission report

- Extraordinary growth in data generation and usability has enabled a kaleidoscope of new business models, products and insights. Data frameworks and protections developed prior to sweeping digitisation need reform. This is a global phenomenon and Australia, to its detriment, is not yet participating.
- Improved data access and use can enable new products and services that transform everyday life, drive efficiency and safety, create productivity gains and allow better decision making.
- The substantive argument for making data more available is that opportunities to use it are largely unknown until the data sources themselves are better known, and until data users have been able to undertake discovery of data.

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# Productivity Commission report

- Lack of trust by both data custodians and users in existing data access processes and protections and numerous hurdles to sharing and releasing data are choking the use and value of Australia’s data. In fact, improving trust community-wide is a key objective.
- Marginal changes to existing structures and legislation will not suffice. Recommended reforms are aimed at moving from a system based on risk aversion and avoidance, to one based on transparency and confidence in data processes, treating data as an asset and not a threat.
- Significant change is needed for Australia’s open government agenda and the rights of consumers to data to catch up with achievements in competing economies.

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# Productivity Commission report

- Recommendations:
  - A new Data Sharing and Release Act, and a National Data Custodian to guide and monitor new access and use arrangements, including proactively managing risks and broader ethical considerations around data use.
  - A new Comprehensive Right for consumers would give individuals and small/medium businesses. This right would create for consumers:
    - powers comparable to those in the Privacy Act to view, request edits or corrections, and be advised of the trade to third parties of consumer information held on them
    - a new right to have a machine-readable copy of their consumer data provided either to them or directly to a nominated third party, such as a new service provider.
  - Creation of a data sharing and release structure that indicates to all data custodians a strong and clear cultural shift towards better data use that can be dialled up for the sharing or release of higher-risk datasets.

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# Government response to the PC report

- In November 2017, the Government formally responded to the PC Data Report.
- The Government announced that it would introduce a Consumer Data Right.
- Implementation of the Consumer Data Right would be prioritised in the banking, energy and telecommunications sectors, before being rolled to other industry sectors over time.
- Sets up Farrell Review to develop framework for Open Banking.

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# 2018 Farrell review

- Maps out the regulatory framework that should apply to both the CDR and Open Banking, including the responsibilities of regulators and those within the system.
- Makes recommendations on the scope of Open Banking, explaining which data should be affected and identifying the eligible participants.
- Deals with the safeguards required to maintain confidence in the system, including expanding certain confidentiality principles and remedies.
- Canvasses technical aspects of the data transfer mechanism, and gives guidance to enable Rules and Standards to be established.
- Deals with implementation issues and other matters that may need to be considered in future.

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# Why have Open Banking?

***"Power in the form of your own data.***

*This is the revolution coming to banking customers courtesy of the Consumer Data Right the Turnbull Government set in train in the 2017-18 Budget in which banking is the first industry to adopt it:*

- *Rival banks and lenders offering you competitive deals that knock your current deal out of the park.*
- *Products tailored to your needs and circumstances with intuitive interfaces.*
- *The customisation of services; you getting to play an active role in defining and determining what the future of banking is. Co-creators, if you will.*
- *Real-time budgeting, investment and financial advice through live chat, including robo advice.*
- *Personalised e-commerce apps that cover a full suite of payment options, including peer-to-peer lending.*

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# Why have Open Banking?

*All because you have been armed with your own data.*

*This shifts the paradigm - financial institutions no longer setting the rules and demanding customers adhere to their purposes, but customers making the demands, setting the rules and forcing banks to react.*

*Or watch as a new player seizes that opportunity.*

*Open Banking will be a game-changer."*

The Hon Scott Morrison, Treasurer
'Consumer powered competition in our banking sector'
Address to Australian British Chamber of Commerce
Sydney, 3 August 2018

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# Open Banking around the world

Bank for International Settlements (Basel) *Report on open banking and application programming interfaces, November 2019:*

- **Prescriptive approach** (EU, India, Australia) - requires banks to share customer-permissioned data, and third parties accessing such data to register with local regulatory authorities.
- **Facilitative approach** (Hong Kong, Singapore) – regulators issue guidance or recommendations instead of rules, and open API standards and technical specifications.
- **Market-driven approach** (China, US) – no explicit rules/guidance regulating bank sharing of customer-permissioned data with third parties.

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# Open Banking around the world

- In the EU, open banking is implemented by the *Payment Services Directive 2* (**PSD2**) and *General Data Protection Regulation* (**GDPR**) which came into effect in 2018.
- In the UK, open banking is implemented through the Competition and Markets Authority (**CMA**) *Retail Banking Market Investigation Order 2017*. Commenced in January 2018.
- Prompted by the PSD2 and GDPR, governments in Hong Kong, India, Japan, New Zealand and Singapore have also put in place frameworks which will support Open Banking.

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# EU - General Data Protection Regulation (GDPR)

**Article 20. Right to data portability**

1. The data subject shall have the right to receive the personal data concerning him or her, which he or she has provided to a controller, in a structured, commonly used and machine-readable format and have the right to transmit those data to another controller without hindrance from the controller to which the personal data have been provided, where:

(a) the processing is based on consent … or on a contract …; and

(b) the processing is carried out by automated means.

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# EU - Payment Services Directive 2 (PSD2)

- FinTechs or ‘Third Party Providers (TTPs)' offering  specific payment solutions or services to customers must follow the same rules as the traditional payment service providers: registration, licensing and supervision by the competent authorities. PSD2 ensures that they can offer their services across the EU.
- Consumers who want to use such new services cannot be prevented by their banks from doing so. Any bank that offers online access to accounts must cooperate with FinTech companies or with other banks providing such services.
- Consumers and companies using these services will have to grant access to their payment data to third parties providing payments-related services (TPPs).
- These third parties may be payment initiation service providers (PISPs) and account information service providers (AISPs), or other banks.
- Consumers will be able to manage their personal finances more efficiently through applications that, for instance, aggregate information from their accounts held with different banks.
- In order to make that possible, banks must establish secure communication channels to transmit data and initiate payments.
- Does not apply to loan accounts (except credit cards) – unlike Australia

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# Read only or read/write APIs

- Read only – can access data but not initiate transactions (e.g. Australia)
- Read/write – can access data and initiate transactions and open accounts (e.g. EU – PSD2)

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# Layers of regulation

## Legislation

- The *Treasury Laws Amendment (Consumer Data Right) Act 2019* (Cth) (**CDR Act**) was enacted on 11 August 2019. The CDR Act amends the *Competition and Consumer Act 2010* (Cth), the *Privacy Act 1988* (Cth), and the *Australian Information Commissioner Act 2010* (Cth) to introduce a framework for the CDR.

## Designation Instrument

- The *Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2019* (Cth) issued in September 2019 designates the banking sector as subject to the CDR.

## CDR Rules

- The *Competition and Consumer (Consumer Data) Rules* (**CDR Rules**) to be made by the ACCC will provide detailed rules on how the CDR will operate. (ACCC has released proposed final rules – Minister to approve).

## Data standards

- To be issued by Data Standards Body (CSIRO Data61). Standards documentation has been published.

## Privacy Safeguards guidelines

- To be issued by the Office of the Australian Information Commissioner (**OAIC**). Draft released in October 2019.

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# CDR Act

- Sets up the framework for the CDR and how it will apply to different sectors of the economy.
- CDR Act amends the *Competition and Consumer Act 2010* (Cth), the *Privacy Act 1988* (Cth), and the *Australian Information Commissioner Act 2010* (Cth).
- Builds upon Australian Privacy Principle (APP) 12 - providing consumers and businesses with access to information about the transactions they enter into.
- Allows for Minister to designate sectors of the economy as participating in the CDR regime.
- The types of information that can be requested will be  set out in the instrument designating the sector, and clarified in the CDR rules made by the ACCC.
- ACCC is given power to make CDR rules, with the consent of the Minister, determining how the CDR applies in each sector.

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# CDR Act

- CDR Rules may be made on all aspects of the CDR regime including accreditation of an entity, use, storage, disclosure and accuracy of CDR data, the Data Standards Body and the format of CDR data and the data standards.
- Privacy safeguards to protect CDR data relating to an identifiable CDR consumer, including some information not covered by the APPs.
- The privacy safeguards provide minimum protections for the treatment of CDR data. They can be supplemented by the CDR Rules.

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# CDR Act

- A designated gateway may be designated by the Minister to facilitate the transfer of information between an accredited data recipient and the data holder.
- The Information Commissioner’s functions include those conferred on him or her under the CDR regime.
- The Information Commissioner (and the OAIC) will work with the ACCC in administering the CDR regime.

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# CDR Rules

- How data requests may be made –
  - product data request
  - consumer data requests made by CDR consumers
  - consumer data requests made on behalf of CDR consumers
- Accreditation
- Register of Accredited Persons
- Dispute resolution
- Privacy safeguards
- Data standards
- Schedule 3 – provisions for the banking sector (Open Banking)

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# Designation Instrument

- The *Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2019* (Cth) issued by the Treasurer in September 2019.
- Designates the banking sector as subject to the CDR.
- Defines “product” (deposits, loans, purchased payment facilities – and things offered or supplied in connection with)
- Specified classes of information –
  - Information about user of product
  - Information about use of product
  - Information about product
- Exclusion of some credit information
- Exclusion of materially enhanced information

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# Phased introduction of Open Banking

| Variables | |
|---|---|
| **Type of institution** | Big 4 banks first – others later. |
| **Product types** | **Phase 1** – savings accounts, term deposits, transaction accounts, card accounts.<br>**Phase 2** – home loans, personal loans, mortgage offset accounts.<br>**Phase 3** – business finance, lines of credit, asset finance, leases, deeming accounts, RSAs, farm management accounts, etc. |
| **Information types** | **Product data** – general information about products<br>**Consumer data** – information about a consumer's account and transactions |
| **Person requesting information** | Consumer or an accredited data recipient |

## Consumer data right rules – data sharing obligations, phasing summary table

| Data holders | Data sharing obligations | 1st stage: data disclosure commencement date - 31 January 2020 | 2nd stage: 1 February 2020 – 30 June 2020 | 3rd stage: 1 July 2020 – 31 January 2021 | 4th stage: 1 February 2021 – 30 June 2021 | 5th stage: 1 July 2021 – 31 January 2022 | 6th stage: from 1 February 2022 |
|---|---|---|---|---|---|---|---|
| **Initial data holders** (branded NAB, CBA, ANZ, Westpac) | *Product reference data* | Phase 1 | Phase 1<br>Phase 2 | Phase 1<br>Phase 2<br>Phase 3 | Phase 1<br>Phase 2<br>Phase 3 | Phase 1<br>Phase 2<br>Phase 3 | Phase 1<br>Phase 2<br>Phase 3 |
| | *Part 3: Consumer data requests made by eligible CDR consumers* | - | - | Phase 1<br>Phase 2 | Phase 1<br>Phase 2<br>Phase 3 | Phase 1<br>Phase 2<br>Phase 3 | Phase 1<br>Phase 2<br>Phase 3 |
| | *Part 4: Consumer data requests made by accredited persons* | - | Phase 1 | Phase 1<br>Phase 2 | Phase 1<br>Phase 2<br>Phase 3 | Phase 1<br>Phase 2<br>Phase 3 | Phase 1<br>Phase 2<br>Phase 3 |
| | *Part 4: Consumer data requests made by accredited persons (voluntary)* | - | Phase 2 | - | - | - | - |
| **Any other relevant ADI and initial data holder brands** | *Product reference data* | - | - | Phase 1 | Phase 1<br>Phase 2 | Phase 1<br>Phase 2<br>Phase 3 | Phase 1<br>Phase 2<br>Phase 3 |
| | *Part 3: Consumer data requests made by eligible CDR consumers* | - | - | - | - | Phase 1<br>Phase 2 | Phase 1<br>Phase 2<br>Phase 3 |
| | *Part 4: Consumer data requests made by accredited persons* | - | - | - | Phase 1 | Phase 1<br>Phase 2 | Phase 1<br>Phase 2<br>Phase 3 |
| **Voluntarily participating ADI** (subject to registration and satisfactory completion of testing) | *Product reference data* | Phase 1 | Phase 1<br>Phase 2 | Phase 1<br>Phase 2<br>Phase 3 | Phase 1<br>Phase 2<br>Phase 3 | Phase 1<br>Phase 2<br>Phase 3 | Phase 1<br>Phase 2<br>Phase 3 |
| | *Part 3: Consumer data requests made by eligible CDR consumers* | - | - | - | Phase 1<br>Phase 2<br>Phase 3 | Phase 1<br>Phase 2<br>Phase 3 | Phase 1<br>Phase 2<br>Phase 3 |
| | *Part 4: Consumer data requests made by accredited persons* | - | - | Phase 1<br>Phase 2 | Phase 1<br>Phase 2<br>Phase 3 | Phase 1<br>Phase 2<br>Phase 3 | Phase 1<br>Phase 2<br>Phase 3 |
| **Accredited ADI and accredited non-ADI** (reciprocal data holder) | *Product reference data* | - | - | Phase 1<br>Phase 2<br>Phase 3 | Phase 1<br>Phase 2<br>Phase 3 | Phase 1<br>Phase 2<br>Phase 3 | Phase 1<br>Phase 2<br>Phase 3 |
| | *Part 3: Consumer data requests made by eligible CDR consumers* | - | - | - | Phase 1<br>Phase 2<br>Phase 3 | Phase 1<br>Phase 2<br>Phase 3 | Phase 1<br>Phase 2<br>Phase 3 |
| | *Part 4: Consumer data requests made by accredited persons* | - | - | Phase 1<br>Phase 2 | Phase 1<br>Phase 2<br>Phase 3 | Phase 1<br>Phase 2<br>Phase 3 | Phase 1<br>Phase 2<br>Phase 3 |

# Consumer data right rules – data sharing obligations, phasing summary table

| Key |
| --- |
| For product reference data sharing: |
| **Required to share:**<br>- Particular phases of product reference data |
| For consumer data sharing: |
| **Required to share data from:**<br>- Accounts held in the name of an individual CDR consumer<br>- Open accounts<br>**May share the following data voluntarily:**<br>- CDR data that relates to a joint accounts<br>- CDR data that relates to a closed accounts<br>- CDR data that relates to direct debits<br>- CDR data that relates to scheduled payments<br>- CDR data that relates to payees<br>- CDR data that is "get account detail" or "get customer detail" (within the meaning of the standards |
| **Required to share data from:**<br>- Accounts held in the name of one CDR consumer in their name alone<br>- Open accounts<br>- CDR data that relates to a joint accounts<br>- CDR data that relates to a closed accounts<br>- CDR data that relates to direct debits<br>- CDR data that relates to scheduled payments<br>- CDR data that relates to payees<br>- CDR data that is "get account detail" or "get customer detail" (within the meaning of the standards |
| For *phase 1*, *phase 2*, and *phase 3* products, see Schedule 3, cl. 6.5 of the CDR rules. |

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# Timeline

| Date | Event |
|---|---|
| **8 May 2017** | Productivity Commission Data Availability and Use Inquiry Report released |
| **9 February 2018** | Farrell Review into Open Banking in Australia Final Report released |
| **1 July 2019** | Big 4 banks voluntarily provide access to product reference data for credit and debit cards, deposit accounts and transaction accounts (Phase 1 products) |
| **1 August 2019** | CDR Act passed |
| **1 February 2020** | • **Big 4 banks to provide product reference data (PRD) for credit and debit card, deposit account and transaction accounts (Phase 1 products)** |
| **1 July 2020** | • **Big 4 banks to provide access to customer data for credit and debit card, deposit account and transaction accounts (Phase 1 products) – deferred from 1 February 2020**<br>• Other banks to provide access to PRD for Phase 1 products **(?)**<br>• Big 4 banks to provide access to data for overdrafts, personal loans, business finance, leases, asset finance (Phase 3 products) **(?)** |
| **1 November 2020** | **Big 4 banks to provide access to data for mortgage and personal loan accounts (Phase 2 products) – deferred from 1 July 2020.** |
| **1 February 2021** | Other banks to provide access for Phase 2 products |
| **1 July 2021** | Other banks to provide access for Phase 3 products |

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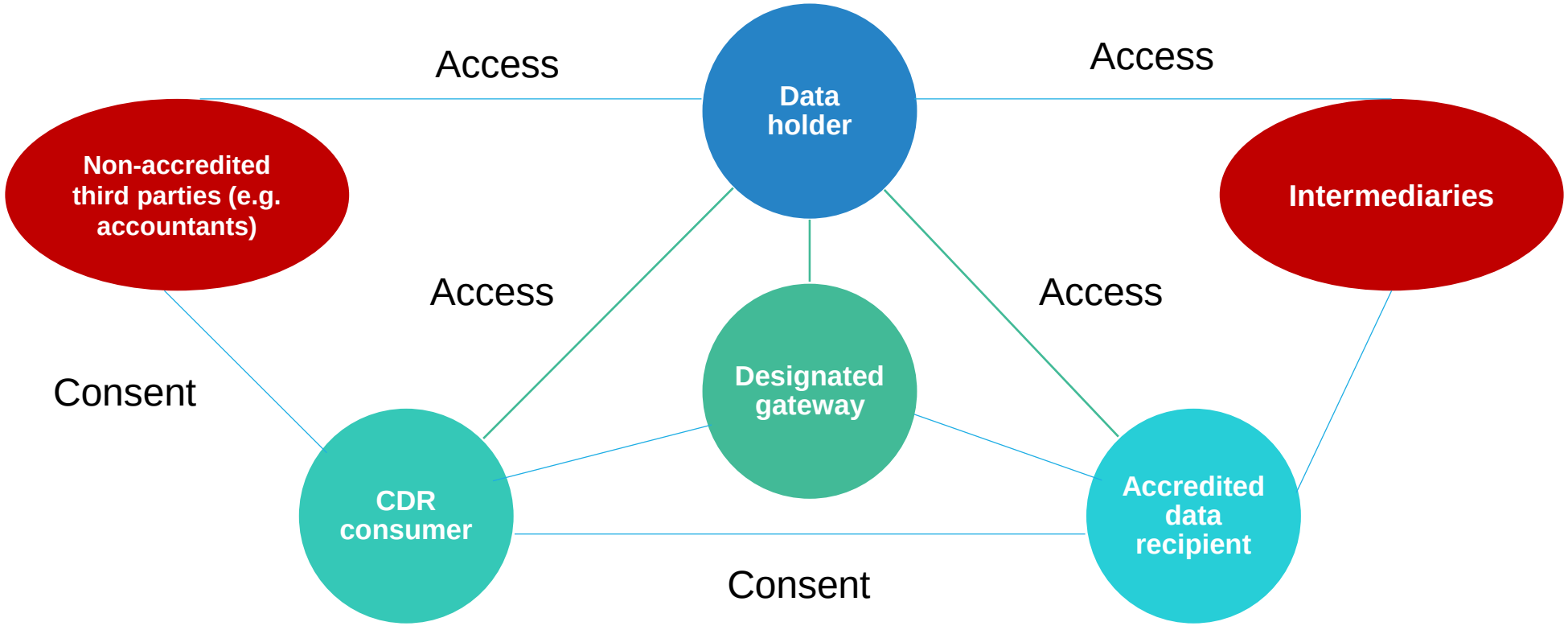
# CDR participants



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# CDR participants

- **Data holders** – original holders of the data that the CDR right applies to.
- **CDR consumers –** individuals or businesses who have the right to access the data held by a data holder and to direct that this data be shared with an accredited person
- **Accredited data recipients** – accredited persons who receive CDR data as a result of a disclosure made in accordance with the CDR Rules.
- **Designated gateway** – for some sectors, the Minister may designate a gateway to facilitate the transfer of information from a data holder to an accredited person or the consumer themselves.
- **Intermediaries** – third party service providers who collect or facilitate the collection of CDR data on behalf of accredited data recipients.
- **Non-accredited persons** – such as financial counsellors and accountants.

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# Regulators

| Minister | ACCC | Data Standards Chair and Data Standards Body | OAIC (Information Commissioner) |
|---|---|---|---|
| • Decides to designate sectors of the Australian economy that will be subject to the CDR.<br>• Considers the likely effect and regulatory impact, and consult with the ACCC and the Information Commissioner.<br>• Appoints the Data Recipient Accreditor, the Accreditation Registrar, the Data Standards Chair, and the Data Standards Body. | • Advises on what sectors should be added to the scheme.<br>• Writes CDR rules.<br>• Accredits new participants.<br>• Oversees data standards body.<br>• Enforces. | • Data standards will be made by the Data Standards Chair.<br>• CSIRO's Data61 has been appointed to perform the role of a Data Standards Body. | • Advises on privacy protections.<br>• Enforces privacy provisions.<br>• Handles complaints for breaches of the Privacy Safeguards. |

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# Reciprocity

- A consumer can direct an accredited data recipient to provide access to certain CDR data to the consumer or other accredited persons.
- This is known as the principle of reciprocity.
- Accredited data recipients are not just recipients – they are also data holders.

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# Data minimisation principle

- An accredited person collecting and using CDR data:
  - must not collect more data than is reasonably needed in order to provide the requested goods or services; and
  - may use the collected data only as consented to by the consumer, and only as reasonably needed in order to provide the requested goods or services.

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# Privacy protections

| | |
|---|---|
| **Targeted application** | The Consumer Data Right is only applied to data sets after consideration of privacy impacts has taken place. |
| **Advocacy** | The Office of the Australian Information Commissioner (OAIC) will act as a source of expertise and advocacy for privacy protection. |
| **Safeguards** | Minimum set of Privacy Safeguards for the Consumer Data Right, equivalent to the Australian Privacy Principles. |
| **Additional protections** | The ACCC may make additional rules regarding the transfer, holding and use of data within the system. The Data Standards Body may make technical standards to support the operation of the Privacy Safeguards and any further protections in the rules – e.g. information security standards. |

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# Privacy protections

| | |
|---|---|
| **Genuine consent** | CDR Rules say process for asking a CDR consumer to give consent must:<br>• comply with the data standards;<br>• be as easy to understand as practicable, including by use of concise language and, where appropriate, visual aids; and<br>• not include or refer to other documents so as to reduce comprehensibility or bundle consents with other directions, permissions, consents or agreements. |
| **A 'data safety licence'** | CDR will generally only permit data relating to identifiable consumers to be transferred to accredited data recipients (or the consumer themselves). |
| **Rights to withdraw or delete** | Consumers will be entitled to withdraw their consent to a data holder providing access to a data recipient. Data must be deleted upon any use permissions becoming spent. |

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# Privacy protections

| | |
|---|---|
| **Enforcement** | CDR Act provides regulators with extensive powers:<br>• Criminal penalties<br>• Civil penalties<br>• Compensation orders<br>• Infringement notices<br>• Injunctive orders<br>• Disqualification of directors orders<br>• Adverse publicity orders<br>• Enforceable undertakings<br>• Investigation and auditing powers<br>• Sectoral assessment/general inquiry powers<br>• Information sharing |

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# Privacy protections

| | |
|---|---|
| **External dispute resolution** | Consumers will have access to external dispute resolution arrangements, leveraging off existing sector specific schemes. The OAIC can also provide remedies. |
| **Direct rights of action** | The CDR Act provides a private right of action for breaches of the CDR (unlike Privacy Act). One or more breaches affecting multiple parties may support a class action. These rights will exist in parallel to any rights to alternative dispute resolution, and the ability for the ACCC and OAIC to grant remedies. |
| **Coverage** | Privacy protections apply to individuals and also legal persons (e.g. companies), unlike Privacy Act. Data recipients will be regulated even if they are small or medium sized enterprises (generally exempt from the Privacy Act). |

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# Open Banking data

- **Information covered**: The Designation Instrument defines 3 kinds of information (user information, product use information and product information). It excludes some types of credit information and “materially enhanced” information (the result of the application of insight, analysis or transformation of data to significantly enhance its useability and value in comparison to its source material inputs).
- **Bodies covered**: The Designation Instrument also sets out which bodies are data holders affected by Open Banking.
- **Products affected**: Deposits, loans and purchased payment facilities are specified in the Designation Instrument. Products are also classed into phase 1, phase 2 and phase 3 products in the CDR Rules for the phased introduction of Open Banking.
- **Required and voluntary data**: The CDR Rules distinguish between data that must be given on request (required) and information that may be given on request (voluntary). Data holders cannot charge for providing required information.

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- **Product data and consumer data**: The CDR Rules also differentiate product data (generic product information) and consumer data. There are required and voluntary categories of both product and consumer data.
- **Types of consumer data**: Under the CDR Rules, consumer data is divided into 4 kinds: customer data, account data, transaction data and product specific data. These categories are mainly relevant to what is required consumer data, and what is voluntary consumer data. Customer data has additional data fields for when the person operates a business. Some types of customer data are neither required or voluntary.

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- **CDR consumers**: Consumers must meet criteria to be eligible to request Open Banking data: at least 18 (if an individual), with an open account that is accessible online. These criteria are set out in the CDR Rules.
- **Joint accounts**: There are special provisions in the CDR Rules relating to joint accounts. Data holders have to provide a service for joint accounts to jointly make data requests, and to authorise accredited persons to access their data and revoke these authorisations, and also for the account holders individually to revoke these requests or authorisations.

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- **Older data**: The Designation Instrument specifies 1 January 2017 as the earliest day applicable for beginning to hold information. In the CDR Rules, account data is excluded from required customer data if it relates to a direct debit authorisation where the account is open, but the direct debit occurred more than 13 months ago, or to a direct debit authorisation where the account is closed. Transaction data is excluded from required customer data for open accounts when it is more than 7 years old, and for accounts closed more than 24 months ago, or where it is more than 12 months old on an account closed for less than 24 months.
- **Transitional provisions**: There is a phased introduction of Open Banking. The big 4 banks start earlier. There is a matrix in the CDR Rules explaining the timeframes for the rollout of Open Banking, depending on the institution and the product types (phase 1, 2 and 3 products).

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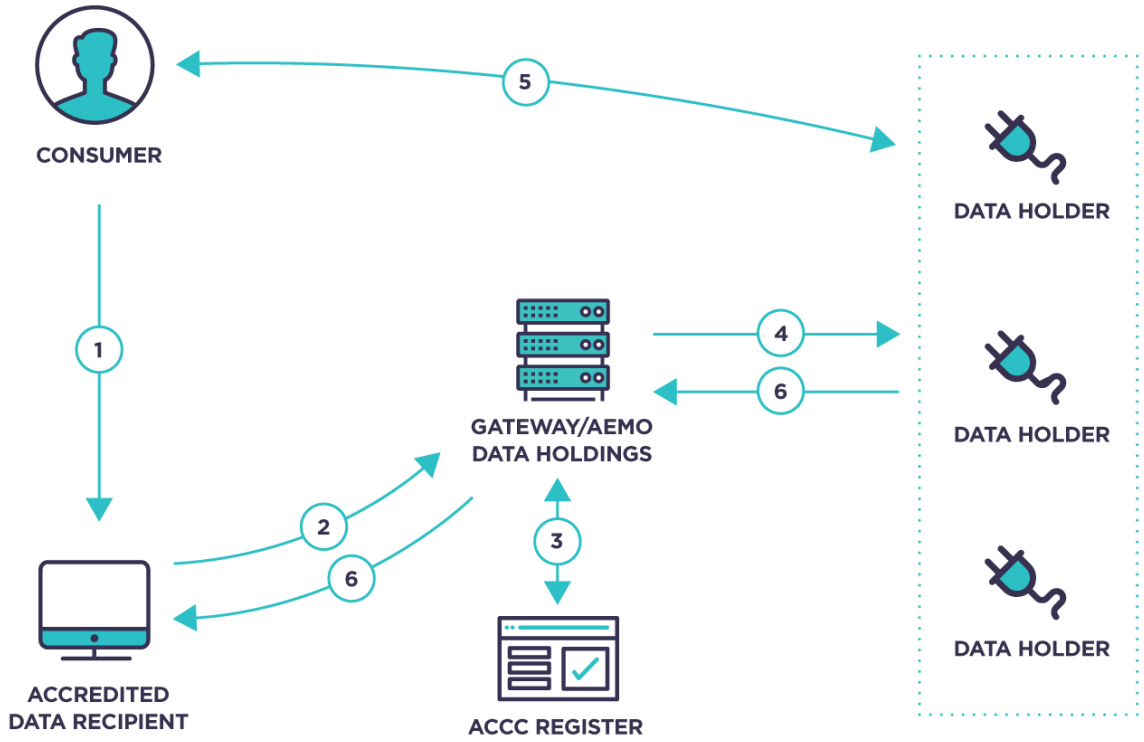
# Future extensions of CDR

- Next sector: energy.
- ACCC published a discussion paper on the best energy data access model in February 2019.
- On 29 August 2019, ACCC announced the Australian Energy Market Operator (AEMO) “gateway model” had been chosen as the preferred data access model, with details outlined in a paper.
- Under this model, AEMO provides data on consumer’s current electricity arrangements from their current provider to trusted third parties when authorised by the consumer.




1. The consumer consents to an ADR obtaining their data.
2. The ADR contacts the gateway, seeking to access the consumer's data.
3. The gateway authenticates the ADR using data previously obtained from the ACCC's Register.
4. The gateway identifies which data holder(s) hold the consumer's data and provides transaction details to them.
5. The process of authentication and authorisation occurs in accordance with any requirements in the CDR energy rules. The gateway's role in this process is to be determined.
6. The consumer's data is shared with the ADR via the gateway.

Source: Australian Competition and Consumer Commission