

# Nominated representatives of non- individuals and partnerships in CDR

## Fact sheet

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### Version Control

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# 1. Introduction

## 1.1. Consumer Data Right

The Consumer Data Right (CDR) gives consumers greater control over their data, enabling them to access and share their data with accredited third parties to access better deals on everyday products and services.

A glossary of common terms is published on the [CDR website](#).

## 1.2. Nominated representative rules

Non-individuals and partners in a partnership can participate in the CDR by **nominating one or more representatives** to engage with CDR on their behalf.<sup>1</sup> The data holder must allow non-individual and partnership customers to nominate representatives in accordance with the **nominated representative rules**.<sup>2</sup>

The nominated representative rules are principles-based and non-prescriptive. They aim to provide flexibility for data holders dealing with a diverse range of non-individuals and partnerships. When implementing the nominated representative rules, we expect data holders to provide processes for their non-individual and partnership customers that are easy to use and minimise friction. These processes can accommodate existing industry processes and systems where possible.

## 1.3. This fact sheet

This fact sheet has been produced by the Australian Competition and Consumer Commission (ACCC). It assists data holders in dealing with non-individuals and partnerships under the [Competition and Consumer \(Consumer Data Right\) Rules 2020](#) (CDR Rules). This fact sheet is intended to apply to all sectors subject to CDR - currently banking and energy. Participants should read this fact sheet in conjunction with the CDR Rules.

This fact sheet does not cover:

- businesses that are supplied products in their capacity as individuals (for example, a natural person who is a sole trader and holds a bank account in their own name). Data holders must generally deal with these consumers as individuals under the CDR Rules.<sup>3</sup>
- accredited data recipients (ADRs). The CDR Rules do not prescribe how ADRs must facilitate data sharing for a non-individual or partnership.

This is general guidance only. It does not constitute legal or other professional advice and should not be relied on as a statement of the law. This fact sheet may contain generalisations. We welcome feedback on sector specific issues that may necessitate further guidance. We encourage participants to obtain their own professional advice regarding individual compliance matters to ensure they understand their obligations under the CDR framework.

<sup>1</sup> On 22 December 2020, the CDR Rules were amended to allow participation for non-individuals and partnerships. See section 1.4 for relevant implementation timeframes.

<sup>2</sup> Competition and Consumer (Consumer Data Right) Amendment Rules (No. 3) 2020 (Cth).

<sup>3</sup> Where, for example, a sole trader's account is held by a non-individual (that is, the business rather than an individual is the account holder), the data holder should enable consumer data sharing for these accounts under the nominated representative rules.

## 1.4. Implementation timeframes

### 1.4.1. Banking sector

Data holders must have implemented consumer data sharing functionality for non-individuals and partnerships for all 3 product phases by the following compliance dates:<sup>4</sup>

- Initial data holders (for NAB, CBA, ANZ and Westpac branded products): on and from **1 November 2021**
- Other data holders: on and from **1 November 2022**.

### 1.4.2. Energy sector

Data holders must have implemented consumer data sharing functionality by the compliance dates shown in Table 1.<sup>5</sup>

**Table 1: Compliance dates for consumer data sharing for non-individuals and partnerships in the energy sector**

Nature of sharing obligations	Affected participants	Compliance date
Consumer data requests on behalf of non-individuals that are not <b>large customers</b> (as defined in clause 8.1 of Schedule 4 to the CDR Rules)	Initial retailer	15 November 2022
	Larger retailer	1 November 2023
	Accredited small retailer	12 months after the day it becomes accredited
	Small retailer	May comply voluntarily from 15 November 2022
Consumer data requests on behalf of partnerships, or non-individuals that are <b>large customers</b> (as defined in clause 8.1 of Schedule 4 to the CDR Rules) <sup>6</sup>	Initial retailer	15 May 2023
	Larger retailer	1 May 2024
	Accredited small retailer	18 months after the day it becomes accredited
	Small retailer	May comply voluntarily from 15 May 2023 or later

<sup>4</sup> CDR Rules, Schedule 3, clauses 1.4 and 6.7.

<sup>5</sup> CDR Rules, Schedule 4, Part 8.

<sup>6</sup> These requests are considered complex requests under Schedule 4, clause 8.1.

## 2. Nominated representatives

### 2.1. What is a ‘nominated representative’?

A ‘nominated representative’ is able to give, amend and manage authorisations to disclose CDR data on behalf of a non-individual or partner in a partnership.

To engage in CDR data sharing, a non-individual or partnership must nominate at least one individual who is at least 18 years of age as a nominated representative. If it does not have a nominated representative, the non-individual or partnership will not be able to share CDR consumer data.<sup>7</sup>

Once the non-individual or partnership has a nominated representative, the representative can manage authorisations and consumer data sharing arrangements on behalf of the non-individual or partnership.<sup>8</sup>

### 2.2. Sole traders

Sole traders can structure their accounts in different ways. While some may hold accounts in their capacity as individuals, other sole traders may set them up using separate business profiles.

Where an individual is operating a business as a sole trader using accounts set up in their capacity as an individual, data holders are generally required to enable consumer data sharing for the consumer using the CDR rules as they apply to individuals.

Where a sole trader holds accounts in their capacity as a business, they should be treated as though they are a non-individual and the provisions relating to nominated representatives will apply.

### 2.3. Who can be a nominated representative?

A nominated representative must be an individual who is 18 years or older.<sup>9</sup> The CDR Rules do not otherwise restrict who can be a nominated representative. However, in practice, we expect most nominated representatives will be employees or contractors of the non-individual or partnership.

Directors or partners are not automatically appointed as nominated representatives. No particular position within a business automatically takes the role of a nominated representative. Data holders are required to provide a service that can be used to nominate (and revoke nominations for) representatives (see section 2.5).

### 2.4. Selecting a nominated representative

The CDR Rules do not prescribe who within a business or partnership can select a nominated representative.

Data holders can use their existing systems and processes for dealing with their non-individual and partnership customers. For example, a data holder may already have arrangements in place with their non-individual and partnership customers that identify

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<sup>7</sup> CDR Rules, rule 1.13, note 3.

<sup>8</sup> CDR Rules, rules 1.13(1)(c)(i) and 1.13(1)(d)(i).

<sup>9</sup> CDR Rules, rules 1.13(1)(c)(i) and 1.13(1)(d)(i).

the individuals who are authorised to act as agents for the business and make decisions, such as who can transact on behalf of the business for particular business accounts. In these circumstances, the data holder may allow the existing agents to select nominated representatives.

## 2.5. Nominating a representative

Data holders must provide their non-individual and partnership customers with a service that allows the customer to:

- nominate representatives
- revoke those nominations.<sup>10</sup>

The data holder can provide this service as an online service or an offline service.<sup>11</sup>

This service should be easy to use and enable customers to nominate representatives or revoke those nominations in a timely manner. For example, a data holder may provide an entirely digital process through its online portal or mobile app that enables a customer to efficiently nominate a representative or revoke a nomination.

Data holders can incorporate a nomination process into existing processes to reduce friction for their customers. For example, while setting up a business account, a data holder may ask the business to select the permissions an individual will have for the account. This could include selecting permissions to permit CDR data sharing. If a data holder is using existing processes for appointing a nominated representative, the non-individual or partnership should be expressly informed about that process and agree to the appointment. It is important to note that the data holder must also provide a service to enable the non-individual or partnership to revoke the nomination and to nominate additional representatives.

### 2.5.1. What if a non-individual or partnership doesn't have a nominated representative?

If a non-individual or partnership does not have a nominated representative, it will not be able to share CDR consumer data. In this situation, the data holder can refer to the [Consumer Experience Standards](#) (CX Standards) for processes they can apply. For example, they can give instructions on how to appoint a nominated representative and share a non-individual's or partnership's data – see the [CX Standards for the authorisation flow](#). Examples that can be applied to these scenarios can be found in the '[Unavailable accounts](#)' section of the [Consumer Experience Guidelines](#) (CX Guidelines).

## 2.6. 'Nominated representatives' scope of authority

Not all nominated representatives are required to have the same scope of authority to authorise or manage the sharing of CDR data on behalf of the business. The nominated representative rules leave it open for data holders to agree with their non-individual and partnership customers on the scope of authorisations that different nominated representatives can give.

For example, Business ABC may wish to nominate particular staff but restrict them from being able to share data from specific business accounts. In this scenario, data holder XYZ

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<sup>10</sup> CDR Rules, rules 1.13(1)(c) and 1.13(1)(d).

<sup>11</sup> An offline service could be an in-writing agreement involving 'wet signatures'. See CDR Rules, rule 1.13(1)(c) and (d).

may offer business ABC the ability to tailor the scope of the authorisations to suit its needs. Data holder XYZ can provide this functionality alongside its existing processes for managing account permissions to reduce friction for its customers.

## 2.7. Approving the nomination of a representative

Not all partners in a partnership need necessarily approve the nomination of a representative. For example, a data holder and a business partnership customer may agree that all partners, a particular subset of partners or one particular partner must approve a nomination before an individual is recognised as a nominated representative.

## 2.8. Is the nominated representative considered to be the ‘CDR consumer’?

A nominated representative acts *on behalf of* a non-individual or partnership.<sup>12</sup> They are not the CDR consumer. The CDR consumer will be either:

- the non-individual legal entity; or
- a partner of the partnership that the account is held by or on behalf of.

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<sup>12</sup> CDR Rules, rules 1.13(1)(c) and 1.13(1)(d).



## 3. Authorising consumer data sharing

### 3.1. Authenticating a nominated representative

#### 3.1.1. Consent flow

The Consent Model in the CX Guidelines sets out an optimal process for a **consent flow** – that is, the steps a customer will take to move from a request to share data to their authorisation to share that data. Data holders' authorisation process should be in line with the Consent Model.

#### 3.1.2. Authentication

Before a nominated representative can authorise data sharing with an ADR, it must be authenticated (see 'Authenticate' section of the [CX Guidelines](#)).

The nominated representative is authenticated against the credentials held on the data holder's systems, in the same way that the authentication flow for an individual consumer is initiated in accordance with the Consumer Data Standards. The data holder can decide what credentials it considers appropriate - for example, the credentials could be the individual's personal profile or their business employee/representative's profile.

To be successfully authenticated, a nominated representative will need both:

- valid credentials for the business account (for example, because they are an employee authorised to transact on behalf of the business); and
- current status as a nominated representative.

Once a nominated representative has been authenticated, they can give, amend and manage authorisations for the data holder to disclose CDR data on behalf of the CDR consumer.<sup>13</sup>

### 3.2. After a nominated representative is authenticated

#### 3.2.1. Account selection

Once the nominated representative has been authenticated against their credentials on the data holder's system, the data holder can move the nominated representative on to the account selection step and present the relevant business accounts the nominated representative has the authority to share data from. The representative can then select an account they wish to share CDR data from.

#### 3.2.2. Profile selection

If the nominated representative's credentials or identifier gives them access to different customer accounts, the data holder may also choose to add a '[profile selection](#)' step or equivalent before providing the list of available business accounts. For example, a single customer ID may give them access to their personal bank accounts as well as the business accounts of their employer.

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<sup>13</sup> CDR Rules, rules 1.13(1)(c) and 1.13(1)(d).

According to the CX Standards, the ‘profile selection’ step should only be considered if it is an existing customer experience, and it should be as minimal as possible to avoid introducing unwarranted friction. Implementation examples can be found in the [‘Profile selection’](#) section of the CX Guidelines.

### **3.2.3. Unavailable accounts**

The [CX standards for the authorisation flow](#) also give options to use where a nominated representative is unable to access accounts for any reason. In those cases, a data holder may provide instructions or an explanation. Examples of these scenarios can be found in the [‘Unavailable accounts’](#) section of the CX Guidelines.

## 4. Managing authorisations

### 4.1. Consumer dashboard

A data holder is required to provide a consumer dashboard to a customer that is a non-individual or partner in a partnership. The customer's nominated representatives can use the dashboard to access and manage data sharing.<sup>14</sup> For a non-individual CDR consumer or partner in a partnership, only nominated representatives will be able to use the dashboard to manage authorisations. Hence, we consider that providing the dashboard to the nominated representatives in line with the functionality requirements in rule 1.15 will satisfy the requirement to provide a dashboard to the CDR consumer.

Where the CDR rules require a notification or information to be provided to a non-individual CDR consumer or partner in a partnership, we consider this could also be satisfied by providing the relevant information to the nominated representative.

While a data holder may provide a 'view only' dashboard to a non-individual or partner in a partnership who is not a nominated representative to enable them to obtain an overarching view of authorisations, our view is that this is not required to satisfy rule 1.15.

In the energy sector, a non-individual or partner in a partnership is not required to have online access to their energy account to be an eligible CDR consumer. If a CDR consumer does not have a consumer dashboard because they do not have online access to the relevant account, the data holder must offer a dashboard to the CDR consumer (or its nominated representatives). If they accept the offer, the data holder must provide a consumer dashboard. If they decline the offer for a consumer dashboard, the data holder should explain the consequences of this and any alternatives available (see [Compliance guide for data holders - energy sector](#) for more information).

#### 4.1.1. Tailoring the dashboard view

The CDR Rules leave it open for a data holder to decide how it will present the consumer dashboard to nominated representatives. For example, the data holder may choose to provide:

- one identical dashboard view for all nominated representatives to view or access an authorisation given on behalf of the non-individual or partnership
- each nominated representative with a dashboard view of all the accounts for which the nominated representative can authorise CDR data sharing on behalf of the non-individual or partnership.<sup>15</sup>

### 4.2. Withdrawing an authorisation

Data holders must offer CDR consumers (or nominated representatives who act on their behalf) 2 options for withdrawing an authorisation to disclose CDR data:<sup>16</sup>

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<sup>14</sup> CDR Rules, rules 1.15(1) and 1.15(2A).

<sup>15</sup> This example represents a desirable solution where a data holder enables a non-individual or partnership to tailor the scope of the authorisations that different nominated representatives can give.

<sup>16</sup> CDR Rules, rule 4.25(1).

- through the data holder's consumer dashboard; or
- by using a simple alternative method of communication that the data holder makes available to withdraw an authorisation.

#### **4.2.1. Status of existing authorisations on revocation of nominated representative status**

Non-individuals and partnerships may have authorisations in place that last beyond the time for which an authorising individual is a nominated representative. This is because the CDR consumer that has granted authorisation is the business, not the individual representative.

A data holder cannot decide to end an authorisation because the authorising nominated representative has their status revoked. Data holders should work with their customers to ensure continuity of any ongoing authorisations.

For example, a data holder may choose to have a default arrangement where any nominated representative or a select group of nominated representatives can view and manage all existing authorisations through the data holder consumer dashboard, and removal of a nominated representative does not affect authorisations they have previously given.

A data holder is neither required nor authorised to disclose the consumer data of a non-individual or partnership that has no nominated representatives.<sup>17</sup> This means a data holder should cease sharing data from an account when the last nominated representative is removed.

However, we recognise that there may be circumstances where an ongoing authorisation remains in place after the last (or sole) nominated representative has been removed from an account. In these circumstances, our view is that a data holder would not be in breach for continuing to disclose data in accordance with a valid authorisation. This is because the business is the CDR consumer (rather than the nominated representative), and the ongoing authorisation was put in place on its behalf.

In circumstances where a business consumer is removing all nominated representatives, our view is that the data holder should encourage the business consumer (and/or the departing nominated representative) to withdraw all active authorisations. Alternatively, the business consumer may elect to appoint a new nominated representative.

#### **4.3. Transfer of authorisations between nominated representatives**

When a specific individual is made a nominated representative, an authorisation given by that individual cannot be transferred to (or amended or withdrawn by) a second nominated representative. This is because the [data standards](#) tie an authorisation to the Pairwise Pseudonymous Identifier (PPID) of the 'identity'. The 'identity' is the specific individual or role that established the authorisation. It is not possible to transfer an authorisation to another identity that has a different PPID.

However, the data holder may be able to support the transfer of ownership of the identity's specific PPID to another identity. This would also transfer authorisations given by the original identity.

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<sup>17</sup> CDR Rules, rule 1.13, note 3.

The specific mechanisms used for the transfer are up to the data holder. This is because existing authorisation and permission structures for business customers vary significantly between data holders, and these differences are sometimes a competitive differentiator.

It is important to note that, when deciding how to implement authorisations for non-individual, or partnership CDR consumers, an ADR may not be aware that an authorisation was given by a nominated representative. They may not have the same structures around transferring consents and may not have provided equivalent mechanisms for the transfer of account ownership.

#### 4.4. Vulnerable customers

If a data holder determines that any person, including a nominated representative, is at risk of harm, they may refuse to<sup>18</sup>:

- make a disclosure,
- ask for an authorisation or an amendment to an authorisation.

These provisions apply where the data holder considers it necessary to prevent physical, psychological or financial harm or abuse. Information relating to vulnerability can be very sensitive. Consistent with the CDR Rules, data holders should consider whether a particular action would create a real risk of harm or abuse to any person (whether or not they currently identify as vulnerable). Please refer to our knowledge article on [Vulnerable customers](#) for more information.

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<sup>18</sup> CDR Rules, rules 3.5 and 4.7.