



Consumer
Data Right

Australian Government

Collecting CDR data as an accredited person and holding it as a data holder

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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 share their data with accredited data recipients to access better deals on everyday products and services.

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

CDR is currently in place in the banking and energy sectors, with non-bank lending following as the next CDR sector.

1.2. Collecting and holding CDR data

An accredited person may collect CDR data and hold it as a data holder if certain conditions are met.¹ In these circumstances, the privacy safeguards applicable to a data holder would apply. This means the accredited person's use or disclosure of the CDR data would be primarily regulated in line with the requirements that would apply to data holders under the Privacy Act (to the extent it applies), rather than the CDR Privacy Safeguards.²

1.3. This fact sheet

This fact sheet has been produced by the Australian Competition and Consumer Commission (ACCC). It provides information about when a person may collect CDR data as an accredited person and hold it as a data holder.

This fact sheet does not constitute legal or other professional advice and should not be relied on as a statement of the law. It is the responsibility of each CDR participant to be fully aware of its obligations under the CDR regulatory framework. We recommend that CDR participants obtain professional advice on how the CDR framework applies to their specific circumstances. Any examples in this fact sheet are provided for illustration only; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

The ACCC welcomes feedback on this fact sheet via email to accc-cdr@accc.gov.au.

2. When can an accredited person hold data as a data holder in the banking and non-bank lenders sectors?

In the banking and non-bank lenders (NBL) sectors, an accredited person may hold data as a data holder if all the following conditions are met. The person:³

- is already a data holder in the relevant sector (i.e. for the banking sector, is an authorised deposit-taking institution, or is a relevant non-bank lender⁴); and

¹ These conditions are specified in clause 7.2 of schedule 3 for the banking and non-bank lending sectors, and 9.2 of schedule 4 for the energy sector.

² For guidance on the types of Privacy Safeguards that apply to a data holder, see [Chapter A of the OAIC's Privacy Safeguard Guidelines](#). For guidance on the obligations that apply to uses and disclosures by data holders under the Privacy Act, see Chapter 6 of the OAIC's [Australian Privacy Principles guidelines](#).

³ CDR rules, clause 7.2(1) of schedule 3.

⁴ For guidance on the definition of a relevant non-bank lender, see section 2.2.1 of our [Compliance guide for data holders in the banking and NBL sectors](#).

- is already subject to data sharing obligations under the CDR rules (see section 2.1 of this fact sheet); and
- has or will collect CDR data in accordance with a collection consent; and
- reasonably believes the CDR data in question is relevant to its supply of a product to a CDR consumer;⁵ and
- has either:
 - a. provided prior notification to the CDR consumer that it will hold the data as a data holder (i.e. before the data is first collected) (see section 2.2), or
 - b. asked for and received consent from the CDR consumer to change from an accredited data recipient of the data to holding the data as a data holder (i.e. where the recipient has collected or is collecting the data under an existing collection consent) (see section 2.3).

2.1. Who is already subject to *data sharing obligations*?

A person is considered subject to data sharing obligations under the CDR rules if:

- it is a data holder of some other CDR data
- data sharing obligations apply to the person in its capacity as a data holder of the other CDR data.

It is not necessary for all CDR rules to apply to the other CDR data - it would be sufficient for 1 or more CDR rules to apply. For example, some CDR rules may not apply for some datasets, or the data holder may have an exemption from certain obligations under the CDR Rules.⁶

It is also not necessary for data sharing obligations to have commenced for a particular data holder for it to meet this condition. An accredited bank or non-bank lender that will have product and/or consumer data sharing obligations is considered subject to data sharing obligations prior to the commencement of these obligations. This means they may rely on these provisions to hold data they receive as a data holder before these obligations commence.

2.2. How can an accredited person hold CDR data as a data holder by providing *prior notification*?

An accredited person can provide *prior notification* to a CDR consumer that it will collect CDR data as an accredited person and hold it as a data holder if any of the following apply:

- the person is supplying a product to a CDR consumer
- the person has received an application for a product from the CDR consumer
- the person is aware a CDR consumer proposes to apply for a product.⁷

Prior to the first collection of the CDR data relevant to supply of the product, the person must notify the CDR consumer that it would hold that data in accordance with its usual data holding practices for consumer data.⁸

⁵ For example, transaction data may be relevant to a mortgage assessment or an account comparison.

⁶ CDR participants can seek an exemption from certain CDR obligations under section 56GD of the Competition and Consumer Act.

⁷ CDR rules, clause 7.2(2)(a) of schedule 3.

⁸ CDR rules, clause 7.2(2) of schedule 3.

The Data Standards Body (DSB) has published CX guidelines and wireframes on providing prior notification to consumers about holding data as a data holder [here](#).

2.3. How can an accredited person hold CDR data as a data holder by asking for and receiving consent?

An accredited person who has collected or is collecting CDR data may hold the CDR data as a data holder if:

- the person is supplying a product to the CDR consumer
- the person has requested the CDR consumer to consent to it changing from an accredited data recipient of the CDR data to a data holder
- the person has informed the CDR consumer:
 - that if the consumer consents to that change, the privacy safeguards applicable to a data holder (rather than those applicable to an accredited data recipient) would apply to the person in relation to the CDR data
 - how the person will treat the CDR data⁹
 - why the person is entitled to request the consumer's consent to collect and hold their CDR data in this way
 - of the consequences of the consumer *not* giving their consent.¹⁰
- the CDR consumer has consented.

The DSB has published CX guidelines and wireframes on requesting consent from a CDR consumer to change from collecting and holding data as an accredited person to doing so as a data holder [here](#).

3. When can a person collect CDR data as an accredited person and hold it as a data holder in the energy sector?

In the energy sector, an accredited person may hold CDR data as a data holder if:

- the person is a retailer¹¹ and has collected CDR data in accordance with a consumer data request
- the CDR consumer is a customer of the person
- the CDR data is information about the customer, the sale or supply of electricity, or retail arrangements¹²
- the person reasonably believes that the CDR data is relevant to the arrangement¹³ with the CDR consumer

⁹ We note the DSB CX guidelines provides the following as an example: "We will handle this data according to our Privacy policy, which will replace the handling practices set out in our CDR policy".

¹⁰ The DSB CX guidelines provides the following as an example: "If you do not consent, then [consequence]."

¹¹ A retailer is a data holder of energy sector data that retails electricity to connection points in the National Electricity Market.

¹² For further information on these categories of data, see items 1, 3 and 5 of the table in section 12 of the of the [Energy sector designation instrument](#).

¹³ This refers to an arrangement under which electricity is sold by a retailer, or supplied in respect of connection points, for the premises of a person. For more information see definition of arrangement in clause 1.2 of Schedule 4 of the CDR rules, and section 5.1(1)(a) of the Consumer Data Right (Energy Sector) Designation 2020.

- the person has asked for the CDR consumer's agreement to hold CDR data as a data holder and the CDR consumer has agreed.¹⁴

3.1. How can an accredited person hold CDR data as a data holder in the energy sector by requesting consent?

When asking for consent to collect CDR data as an accredited person and hold it as a data holder, the person must explain:

- that the privacy safeguards applicable to a data holder (rather than those applicable to an accredited data recipient) would apply to the person in relation to the CDR data
- how the person proposes to treat the relevant CDR data¹⁵
- why the person is entitled to request the consumer's agreement to collect and hold their CDR data in this way
- of the consequences of the consumer not agreeing to this.¹⁶

As noted above, the DSB has published CX guidelines and wireframes on this process in a banking and NBL sector context [here](#).

There is substantial similarity between the requirements for asking for consent to hold CDR data as a data holder in the banking and NBL sectors and the energy sector. On that basis we consider these DSB CX guidelines and wireframes will assist persons in the energy sector as well.

4. What happens to authorisations and consents when a person collects CDR data as an accredited person and holds it as a data holder?

The intent is that accredited persons that become data holders of CDR data because they satisfy the conditions in clause 7.2 of schedule 3 or clause 9.2 of schedule 4 can continue to:

- collect CDR data under an existing collection consent and authorisation, and
- use or disclose the data as a data holder.

On that basis:

- relevant collection consents and authorisations remain current for the period consented to and/or authorised by the CDR consumer
- use and disclosure consents expire, however the relevant person can continue to use and/or disclose the data as they ordinarily would as a data holder.

¹⁴ CDR rules, clause 9.2(2) of schedule 4.

¹⁵ We note the DSB CX guidelines provides the following as an example: "We will handle this data according to our Privacy policy, which will replace the handling practices set out in our CDR policy".

¹⁶ CDR rules, clause 9.2(2)(iii) and (iv) of schedule 4.