CDR Action Initiation and the Complexity Curse

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February 2026

1 Introduction

Legislation to enable "Action Initiation" within the Consumer Data Right (CDR) regime passed the Australian Parliament in August 2024. An extension of "open banking", CDR Action Initiation would enable consumers to instruct service providers to conduct actions on their behalf, such as switching accounts between financial institutions.[1] Ultimately, Action Initiation is intended to foster the development of innovative and competitive services to lower costs and improve service options for consumers.

Yet, 18 months later, implementation of this feature of Australia's ambitious open data regime has yet to move forward. There are no draft rules, technical standards or accreditation processes on the horizon.

This article argues that the conceptual model for CDR Action Initiation, as currently designed, is incompatible with Australia's complex financial services regulatory regime. Key decisions have been deferred to future regulations, where drafters are likely to struggle to reconcile industry-level compliance obligations with the ambitions of Action Initiation.

2 Background

2.1 Regulatory complexity

There is growing interest in regulatory complexity, its causes and consequences. In its recent work on potential regulatory simplification, the Australian Securities and Investments Commission (ASIC) noted that "governments around the world are increasingly examining regulatory burden in their efforts to stimulate economic growth and improve business environments."

In addition to creating unnecessary compliance costs and inefficiency, regulatory complexity, when it manifests through policy expansion, undermines policy effectiveness by ex-

*This article reflects the personal views of the author and not necessarily that of any organisation with which she is affiliated. For a longer, more comprehensive version of this article, please contact the author.

[1] *Treasury Laws Amendment (Consumer Data Right) Act 2024.*

hausting the capacity of policy implementation and enforcement resources. Complexity also creates challenges for policy evaluation - that is, can we figure out whether the policy actually achieved its objectives? This is particularly problematic when there are multiple overlapping regulatory instruments with multiple regulators. The CDR, as an example, is now administered across four separate policy and regulatory bodies, with dedicated staff at each.

Some degree of complexity is unavoidable in regulating complex industries with multiple policy objectives. But when complexity results from layering of potentially conflicting regulatory frameworks, with unclear policy objectives and inconsistent conceptual models, the effectiveness of the regulation in achieving is likely to be undermined.

2.2 The Consumer Data Right

The CDR is a government-mandated data sharing regime, enacted in 2019 as Part IVD of the *Competition and Consumer Act 2010 (Cth)*. This article does not attempt to describe in any detail the CDR's regulatory, technical and operational structure, as there are many publicly available resources, including the relevant Australian government websites.[2]

The concept for the CDR originated with several public reviews and inquiries into improving competition in the banking sector.[3] The big data era of the 2010s was also focusing policy thinking on open access to data as the answer to most (or many) problems. In 2017, the Productive Commission's comprehensive study into improving digital data access and use set out a series of recommendations aimed at giving people more control over data held about them.[4] The PC recommendations encompassed the conceptual basis for what was ultimately adopted as the Consumer Data Right.

The key premises of CDR, like most other open banking regulatory regimes are:

- explicit consumer consent for sharing of specific data;
- standardised data transmission and access through APIs; and
- open, non-contractual data sharing relationships, with terms of access set within the regulatory framework rather than through bilateral contracts.

3 What is Action Initiation?

3.1 International context: payments

Based on the European and UK experiences, the concepts of open banking and open finance came to encompass not just data sharing, but providing services using API-based

[2]See https://www.cdr.gov.au; https://treasury.gov.au/policy-topics/economy/consumer-data-right.

[3]D Murray et al. *Financial System Inquiry: Final Report (Murray Inquiry)*. Nov. 2014; I Harper et al. *Competition Policy Review Final Report (Harper Review)*. 2015; House of Representatives Standing Committee on Economics. *Review of the Four Major Banks (Second Report)*. Apr. 2017.

[4]Productivity Commission. *Inquiry Report: Data Availability and Use*. Mar. 2017.

open standards. Action initiation in the form of payments was a key element of the original European PSD2 initiative and the United Kingdom's "Open Banking Read-Write API."[5] Open banking infrastructure has, in some countries, provided a platform for modernising payment systems or even moving from cash to electronic payments. In a 2024 summary report on global adoption of open banking and open finance, Cambridge University researchers reported that 55 countries have implemented "action initiation," although this appears to refer mainly to payments.[6]

(Note the terms "read access" and "write access" in the open banking context were coined to distinguish data sharing from payments. Read access is shorthand for data sharing—extracting and transmitting rows in a database based on an API GET statement. Write access is jargon for open banking transactions that result in changes to data held about a customer (writing to a database, or an API POST command). While to some extent this is only semantics, the read-write terminology may suggest that complex economic interactions can be reduced to mere database entries. As discussed later in this article, borrowing engineering concepts as a basis for regulatory design can lead to invalid assumptions and flawed conceptual models.)

3.2 The CDR Future Directions Report (2020)

Before the CDR's data sharing capabilities had even been fully implemented, the Australian Government commissioned the *Inquiry into Future Directions for the Consumer Data Right* (Future Directions Report) with a mandate specifically to recommend *how* (not *whether*) actions, such as payments should be incorporated into the CDR.

Around that time, the Australian Competition and Consumer Commission (ACCC) had published its report into mortgage pricing, which highlighted Australians' low motivation for switching mortgage lenders.[7] The CDR emerging infrastructure was seen as a potential means to facilitate mortgage switching, and so foster more competition to the large banks.

The resulting report unsurprisingly recommended that the CDR should be expanded to include action initiation, not limited to payments, with other potential actions suggested to include applying for a product, managing a product, closing a product or lodging a complaint. The Future Directions Report does not provide criteria or a cost-benefit analysis for these particular types of actions, but focuses more on the regulatory framework.

The report does, however, clearly flag that industry-specific regulatory requirements would need to be considered carefully prior to determining any specific action mandates. The Future Directions report concluded that: "Data Holders should remain subject to any requirements imposed on them by other regulatory regimes."[8]

[5] See https://standards.openbanking.org.uk/api-specifications/ and EU Directive 2015/2366 on payment services in the internal market, November 2015.

[6] S Juneja et al. *The Global State of Open Banking and Open Finance*. 2024, p. 52.

[7] Australian Competition and Consumer Commission. *Home Loan Pricing Inquiry*. Nov. 2020.

[8] Australian Government. *Inquiry into Future Directions for the Consumer Data Right*. Oct. 2020, Recommendation 4.19.

3.3 Legislative amendments (2024)

Exposure draft legislation to implement CDR Action Initiation was issued by the Treasury for public consultation in 2022.[9] Most submissions expressed cautious support for Action Initiation. However, other pointed out potential problems. One major CDR services vendor stated that "From our point of view, it seems like a solution is being created that does not address a clear problem."[10] A major telco provider echoed this sentiment: "No clear benefit has been identified; the cost to industry has not been estimated; and finally there appears to [be] no clear policy problem that needs to be addressed. The action initiation proposal appears to be a solution looking for a problem."[11] Nor were the regulators fully aligned. The ACCC, the primary CDR regulator, noted in its submission that "there will be significant complexity in the interface between CDR and sectoral regulatory obligations."[12]

Despite this feedback, as well as increasing concerns within the banking and energy industries about compliance costs of the CDR more broadly, the legislation was passed as part of the Labor Government's "CDR reset" package. The legislative framework is generic and not yet applicable to any particular industry or action, so more pointed debate was deferred. Potential regulatory conflicts had been highlighted by regulators and others, but these were left unresolved.

4 Action Initiation: regulatory architecture

4.1 Objectives and approach

The objectives of CDR Action Initiation legislation are set out formally as:

> Increasing functionality of the CDR to include action initiation empowers consumers to authorise, manage and facilitate actions securely in the digital economy. They would potentially be able to use the CDR to, for example, open and close an account, switch providers, apply for services or make payments where the CDR system extends to such actions. This will reduce complexity, time and cost for consumers looking to safely get better deals and services that meet their needs, unlock new business models, drive innovation and increase competition.[13]

The legislation itself is not particularly complex. It empowers the Minister to designate

[9] Australian Treasury, *Consumer Data Right - Exposure draft legislation to enable action initiation*, September 2022. https://treasury.gov.au/consultation/c2022-317468.

[10] Basiq, Submission to Treasury, https://treasury.gov.au/sites/default/files/2023-02/c2022-317468-basiq.pdf

[11] Optus, Submission November 2022 https://treasury.gov.au/sites/default/files/2023-02/c2022-317468-optus.pdf

[12] Australian Competition and Consumer Commission. *Consumer Data Right: Exposure draft legislation to enable action initiation*. Oct. 2022.

[13] Parliament of Australia. *Explanatory Memorandum: Treasury Laws Amendment (Consumer Data Right) Bill 2022*. 2022.

specific actions in specific industries, and authorises the government to issue rules that will specify the details of these actions and to which industry participants they will apply. As none of these steps have as yet been advanced, it is impossible, at this stage, to provide a view on how CDR Action Initiation will actually operate in a practical context. However, the basic construct creates obvious areas of potential conflict with existing regulatory frameworks.

4.2 Key participants in Action Initiation

The **CDR consumer**, defined in the existing CDR framework is anyone a person or business entity that holds an account that has CDR data associated with it. CDR data is currently restricted to certain data within designated banking, lending and energy products.

Accredited Action Initiators are third parties, such as fintechs or other platform operators, that have been accredited by the regulator (the ACCC) and authorised to initiate specified action requests on behalf of CDR consumers. Action initiators will be subject to an "efficiently, honestly, fairly" obligation in providing their CDR services, similar to obligations on financial service licensees under the *Corporations Act 2001*.[14] However, they will not have a best interest duty toward CDR consumers.

Action Service Providers are banks and other service providers that hold accounts for CDR consumers.Action Service providers would only be obligated to perform actions that they "ordinarily perform" in the normal course of their business.[15] They would not be required to provide a product or service that they don't currently offer, but would not be allowed to discriminate or treat CDR actions differently than those via their other channels.

4.3 Instructions and Actions: a new conceptual model

The central conceptual framework for mandated CDR Actions is depicted in Figure 1:

> Action initiation is made up of two parts: the instruction layer and the action layer. The instruction layer would sit within the CDR scheme and enable a consumer to give consent for a third party, known as an Accredited Action Initiator, to send an action initiation request to an Action Service Provider...The Action Service Provider would carry out the action in the action layer, which would be outside the scope of the CDR.[16]

The core assumptions behind this model are that the *instruction layer would sit within the CDR scheme* but the *action would be outside*. As this articles goes on to describe, neither of these are valid assumptions in many cases, from the perspective of meeting regulatory obligations.

[14] *Treasury Laws Amendment (Consumer Data Right) Act 2024*, Section 56BZA.

[15] *Treasury Laws Amendment (Consumer Data Right) Act 2024*, Section 56BZC.

[16] Australian Treasury. *Exposure draft legislation to enable action initiation in the Consumer Data Right: summary of proposed changes*. Sept. 2022, p. 1.

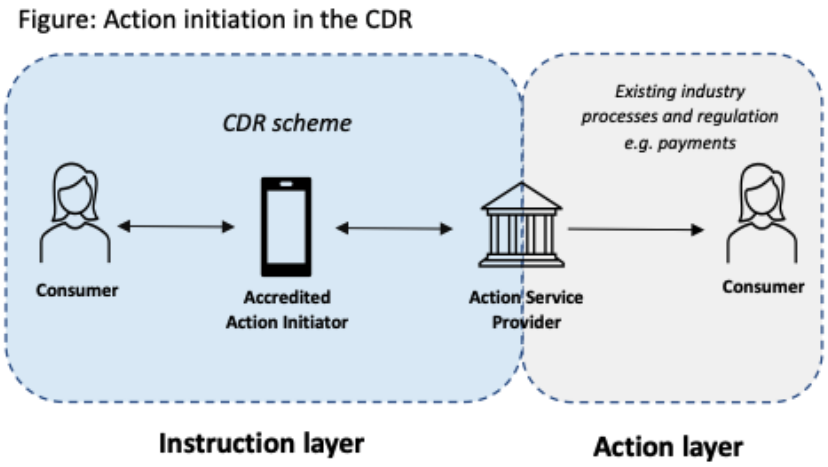

Figure 1: From Australian Treasury, *Exposure draft legislation to enable action initiation in the Consumer Data Right: summary of proposed changes*

Like read-write access, the instruction-action layer terminology in the legislation is borrowed from software engineering concepts, in which systems are comprised of distinct functional layers (such as presentation layer, services layer, data layer, etc.) that can be dealt with in a modular way without affecting other layers.[17] In this model, the end user only interacts directly with the top layer.

The premise of the layered conceptual model is that CDR Rules would define specifications for the interaction between the consumer and the Action Initiator, and between the Action Initiator and the Action Service Provider. The action layer would not be regulated by the CDR, but by existing industry-specific regulation. Action Service Providers would then accept instructions and apply their usual compliance and risk management measures to activities, screening for suspected fraudulent transactions or conducting a normal credit risk assessment.

Importantly, the legislation prohibits the CDR Rules from dictating *how* a service provider *processes* the instructions. This would seem to mean the Rules can't set criteria such as timeframes for completion of an action, or whether the action is conducted digitally, in a straight-through-processing manner, or with manual intervention, without encroaching on the action layer.

This instruction-action construct is fundamentally incompatible with the structure of financial services regulation, and potentially other industry-specific regulatory frameworks. It is based on an assumption that it is possible to cleanly separate consumer consent and authorisation (instruction layer) from service delivery (action layer). But as discussed later in this article, financial services conduct regulation applies to all customer interactions.

[17]See for example "Chapter 5: Layered Application Guidelines," *Microsoft Architecture Guide*, 2nd Edition, October 2009. https://learn.microsoft.com/en-us/previous-versions/msp-n-p/ee658109(v=pand, p.10)

Licensing applies to arranging services, not just executing them. Product conduct rules apply to distribution channels, not just product issuance. And financial crime rules apply to customer onboarding as well as ongoing service provision.

4.4 Liability framework

A significant aspect of the Action Initiation legislation that is likely to cause problems in practice is its liability protection provisions. Section 56GC(1) of the amended *Competition and Consumer Act* provides that liability for "an action or other proceeding, whether civil or criminal" would be precluded as long as an Action Initiator or Action Service Provider follows the CDR Rules and any other law "prescribed by the regulations." So it appears, quite extraordinarily, that enforcement of financial services statutes to activities occurring within the instruction layer would happen only if the government chooses to opt them in for that particular action, via the CDR Rules.

At the same time, the legislative amendments include this provision:

> The CDR provisions are not intended to exclude or limit the operation of a law of the Commonwealth, or of a State or Territory, that is capable of operating concurrently with the CDR provisions.[18]

So, do the liability provisions effectively limit the operation of any laws that conflict with the CDR Rules, or not? What "capable of operating concurrently" means is not clear, but will no doubt be the focus of much analysis by legal practitioners.

Note that protection of CDR participants from liability (for both Action Initiators and Action Service Providers), only extends to the *instruction layer*. The distinctions between the stages of *transmitting an instruction*, *processing the instruction* and executing the resulting *action* therefore become quite critical. But this core conceptual issue is also left to the future CDR Rules to clarify.

The legislation does include a requirement for the Minister to consult with the primary responsible regulator for the declared CDR action before making that designation.[19] But whether the application of longstanding statutory provisions can actually be modified in this way through a subordinate legislative instrument is questionable. More regulatory complexity seems inevitable.

The following sections provides a very high-level overview of existing financial services regulation that will need to be considered in designating a CDR Action in the financial services sector.

[18] *Competition and Consumer Act 2010*, Section 56GCAB.
[19] *Competition and Consumer Act 2010*, S56AE(1)(c).

5 Financial services regulation: interactions with CDR Actions

5.1 Financial services licensing and regulation

Under the Corporations Act, very generally speaking, businesses offering financial products and services must hold an Australian Financial Services Licence (AFSL) from ASIC.[20] Financial products and services (other than credit) that have been mentioned in the context of CDR Action Initiation include bank accounts, savings accounts, certain payment products and services, and investments.

Licensees must meet an extensive set of financial, conduct and competency obligations, hold insurance and have processes for managing conflicts of interest, customer dispute and complaints. They must provide customers with a product disclosure statement that clearly set out features and fees for their products.

Financial services licensees are generally either advising or dealing in a financial product (or both). Dealing can involve issuing, applying, varying, or disposing of a financial product or arranging these activities for someone else. Any service that includes making recommendations to a consumer or business to invest or purchase a financial product or directly facilitating that investment is generally a form of advising or dealing. In addition, much more stringent compliance requirements apply to AFSL holders that provide personal financial advice, which generally means they may provide tailored product recommendations based on information about a client's financial situation and objectives.

There has been no suggestion that CDR Actions would be exempt from financial services licensing and regulation. So a CDR Action Initiator would need to determine whether and, if so, which type of AFSL they would need to initiate CDR instructions involving financial products, and how existing regulatory obligations would apply.

5.2 Proposed payments licensing regime

Payments as a CDR Action would require participants to navigate a wide range of complex and overlapping regulatory regimes, which are currently in a state of flux. Under the proposed "Tranche 1a" legislation in the Government's project to modernise the payments regulatory framework, a much, much broader landscape of payment products and service providers will be brought into financial services licensing.[21] Payment instruments will for the first time be defined as financial products, and providers of payment services including issuing, dealing and product advice will need to be licensed by ASIC.

CDR Action Initiators would appear to be payment service providers under most conceivable definitions of a CDR payment. At this point, it is not known what regulatory obligations will be imposed on payment service providers under the payments modernisation

[20] *Corporations Act 2001*, Chapter 7.

[21] Australian Treasury. *Exposure Draft: Treasury Laws Amendment Bill 2025: Payments System Modernisation – amendment of the Corporations Act 2001 (Tranche 1a).*

project, but it can be assumed that baseline AFSL obligations, such as product disclosures, insurance, dispute resolution and complaints procedures, and breach reporting are likely to apply.

The payments modernisation project also includes making the ePayments Code mandatory and strengthening its protections.[22] The ePayments Code covers matters such as allocation of liability for fraud and unauthorised payments and will be applied in some fashion to payment service providers. The forthcoming anti-scam framework may eventually be applied to payment initiation service providers.[23]

5.3 Consumer credit regulation

Consumer credit is subject to longstanding conduct and safety regulation including licensing of providers under the *National Consumer Credit Protection Act 2009* (NCCPA). Credit providers must hold an Australian Credit Licence (ACL) and meet a range of conduct and other compliance obligations including determining borrower suitability and affordability, disclosing all relevant rates and fees, and offering hardship assistance.

It seems highly likely that the CDR Rules would need to explicitly prescribe the NCCPA as one of the laws that would need to be met for the liability protection provisions of Section 56GC(1)(c) to apply. So any CDR Actions that are designated in relation to *instructions* for residential mortgage applications (or other retail credit applications such as for credit cards, car loans or personal loans) would need to be set out in the CDR Rules in a way that could meet NCCPA responsible lending and associated requirements.

As discussed later in the section below on mortgage switching, an Action Initiator in the consumer lending sector would probably meet the definition of a "credit assistance provider." A credit assistance provider may suggest a person apply for a particular credit product or assist them with an application for credit. Mortgage brokers generally must be licensed as credit assistance providers (Section 15B of the NCCPA). Unlike most other AFSL or ACL holders, mortgage brokers are required to act in the best interest of their clients; this would also apply to a CDR Action Initiator that performed credit assistance activities.

5.4 Design and Distribution Obligations (DDO)

The *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019* inserted new conduct requirements into the financial services laws applicable to most financial products and services as well as credit products.[24]

The DDO framework sets up a compliance process within financial institutions that attempts to hard-code product suitability governance in order to prevent mis-selling of harmful products. Financial and credit product issuers (with a few exceptions) must publish a

[22] Australian Securities and Investments Commission. *ePayments Code*. 2022.

[23] See Australian Treasury, *Scams Prevention Framework - Protecting Australians from Scams*, February 2025 https://treasury.gov.au/publication/p2025-623966

[24] *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019*.

Target Market Determination (TMD) which sets out the types of customers for whom the product would be suitable (as well as unsuitable). Other regulated entities that distribute financial and credit products to end-users must take steps to market and sell only to customers in the target market. There are draconian penalties, including pulling products off the market and ASIC product intervention orders, for distribution without a proper TMD or outside the pre-defined target market.

In practice, DDO requirements create a tight linkage between the product issuer and any distributors of the product, and makes their compliance process closely inter-dependent. A TMD might specify certain distribution channels–for example, that it is only appropriate for customers with a financial advisor. Each product distributor must report certain information to the product issuer regularly, including any customer complaints and any potential instances of mis-selling ("significant dealing") of the product outside the target market.

The DDO framework is structured around roles of product issuers and distributors, which do not necessarily correspond to Action Service Provider and Action Initiator roles or to the instruction-action construct. Some "instruction layer" CDR activity may constitute retail product distribution conduct that is subject to DDO compliance.

5.5 Anti-money laundering regulation

Anti-money laundering laws are recognised as a significant impediment to more automated switching of financial accounts, and early on, the Future Directions Report noted that requirements would need to be adjusted to accommodate some potential CDR Actions. In fact, streamlined rules were recently adopted and effective in March 2026.[25] Among other things, these changes simplify initial customer due diligence for customers a bank considers to be low-risk.

Even if KYC information could be standardised and provided as part of the CDR Action data set, a bank would not be able to rely on information provided via the Action Initiator without further changes to AUSTRAC rules. In particular, the requirements for reliance on KYC conducted by another party require among other things that:

- the third party must be an AUSTRAC reporting entity;
- the bank must have a written agreement with the third party, which must be regularly reviewed; and
- the bank must be able to assess the effectiveness of the third party's procedures on an ongoing basis.[26]

Because the premise of CDR Action Initiation is that *valid instructions* must be processed regardless of whether there is a pre-existing contractual and oversight relationship between

[25] *Anti-Money Laundering and Counter-Terrorism Financing Rules 2025*, Chapter 6.

[26] Australian Transaction Reports and Analysis Centre. *Reliance under customer due diligence arrangements (Reform).* 2025.

the Action Initiator and Action Service Provider, there would be no opportunity to administer an AUSTRAC-compliant arrangement. This would mean that the bank's KYC activities would need to occur outside the CDR consent and instruction-action flow.

5.6 Prudential regulation

A final area of potential regulatory conflict with the CDR Action Initiation framework is the prudential regulation of banks and other financial institutions by the Australian Prudential Regulation Authority (APRA).

APRA requires banks to maintain structured oversight and due diligence of their service providers, particularly those deemed to support "critical business operations." For banks, mortgage brokers are automatically considered to be "material service providers" under CPS 230.[27] It is unclear how a bank could comply with CPS 230 if it were required to accept mortgage applications from an Action Initiator with which it did not have a pre-existing contractual relationship.

6 Regulatory complexity and conflict in Action: potential use cases for CDR Action Initiation

6.1 Account switching

6.1.1 Bank accounts

A range of regulatory requirements are relevant in the case of opening or closing a bank account. Fundamentally, a bank account is a financial product, so a CDR Action that involved opening or closing an account, or instructing a bank to open, close or change aspects of a customer's account, would likely constitute arranging for the issue, variation or disposal of a financial product. The Action Initiator would therefore be required to hold an AFSL, even if they only provided "instruction layer" services. Which raises the question: should the CDR accreditor (the ACCC) have responsibility to check that a CDR Action Initiator held the required financial service licence for the activities it is proposing to conduct? What sort of regulatory endorsement is implied by an Action accreditation under the CDR?

Opening a bank account on behalf of a customer, including an *instruction* to open a bank account, would normally be subject to the DDO framework. The CDR Rules could simply override the DDO framework for CDR Action *instructions* and allow those instructions to occur without regard to a TMD. Alternatively, TMD-compliance information could be handled in the CDR instruction and consent flow. The typical TMD criteria for mass-market, transaction or savings accounts (such as minimum age requirements) may be relatively straightforward to incorporate into CDR consent screens. However, effectively merging DDO into the CDR Rules and Consumer Data Standards would require tight ongoing

[27] Australian Prudential Regulation Authority, *CPS 230 Operational Risk*, effective 1 July 2025, paragraph 50.

alignment between these two very different regulatory regimes.

The constraints on implementing potential CDR actions imposed by anti-money laundering rules would also be an immediate constraint. Would AUSTRAC be likely to issue an exemption for CDR Actions to allow KYC reliance? Would KYC requirements be incorporated into the CDR Rules? These are not straightforward issues to resolve. And there are questions about whether automated account switching services are even still needed, with many consumers now holding multiple banking account relationships, and features like PayID allowing payment portability.

6.1.2 Energy accounts

Energy account swithing is another potential use case for CDR actions where regulatory obligations create barriers. To open a new account for a customer, an energy retailer must obtain explicit, informed consent from the customer, in writing, after disclosing all relevant terms of the service contract.[28] The energy codes contain specific requirements for the transfer of customers to another energy provider, including timing of energy services and cooling off period. All of these obligations would appear to overlap the activities in a CDR *instruction*.

To research this idea, in 2024, the Data Standards Body led a series of desktop analysis workshops involving energy providers, CDR data recipients and energy regulators. The project report provided significant insights into how the energy account switching process could be further automated. However, the project participants concluded that: "without protection from compliance risks, retailers will not rely on consumer consents to switch plans."[29] Complying with both frameworks would require either exemptions to the energy codes, or via the CDR Rules overriding those codes.

6.2 Switching: residential mortgages

Increasing mortgage industry competition through easier loan switching was a key driver for the original establishment of the CDR. If mortgages were to be designated as a CDR action, industry structure and regulatory obligations would have significant implications across both *instruction* and *action* layers that would need to be resolved.

Most mortgages in Australia (upward of 75 per cent by some estimates) are now originated through brokers. Brokers generally operate on commissions from lenders. They typically have relationships with multiple lenders through contractual arrangements that set out not just remuneration, but also performance and compliance obligations. Brokers only deal with the panel of lenders they have agreements with, and have little incentive to do otherwise, as without a contract they wouldn't get paid.

How would the role of the broker change in a CDR-action world? One potential structure

[28] Essential Services Commission of Victoria, *Energy Retail Code of Practice*, Part 2; *Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019*.

[29] Data Standards Body. *Report: Energy Switching Experiment (Consultation Paper 368)*. Oct. 2025, p. 3.

is for a broker to participate as a CDR Action Initiator alongside its existing lender contractual arrangements, using the CDR as a convenient way of automating data exchange. However, mortgage application data standards and transmission channels between brokers and lenders already exist and are widely used for this purpose.[30]

An alternative format could be a CDR Action Initiator offering a mortgage comparison service funded by the potential borrower, rather than the lender. Although perhaps not acting as a traditional broker, the Action Initiator in this case would still need to be licensed as a credit assistance provider and to operate within NCCPA and DDO constraints in dealing with customers and submitting loan applications as CDR *instructions*.

This model also raises a number of difficult practical questions: Would all lenders be obligated to provide a binding quote decision for any borrower? How would consumer protection rules and target market criteria be applied and enforced where the lender and broker have no contractual relationship? Would Section 56GC(1) protect lenders from liability in processing valid loan application instruction where fraudulent borrower data was provided, or from complaints to the industry ombudsman? How would this comply with CPS 230 and APRA's expectations around outsourcing oversight?

In 2023, industry participants were invited to consider the potential process flow and high-level technical specifications for use of the CDR infrastructure and framework for submitting a loan application to refinance a customer's existing mortgage. The project provided insights into potential regulatory conflicts and complexity that would arise. Participants were confused about how the new process would align with existing industry practice, and felt compliance challenges would be significant. "From a compliance perspective it is unclear if this use case would effectively be a brand new channel or an extension to the existing broker channels that already exist in the lending industry." In fact, they concluded that "CDR compliance costs are anticipated to be higher than technical implementation costs."[31]

One (perhaps the only) country that appears to have made progress in using open banking infrastructure beyond payments or account data sharing is Brazil. Brazil's payment system Pix is widely viewed as one of the most successful implementations of API-based open-banking payments worldwide and the government is now moving to introduce *credit portability* for personal loans into its open banking framework.[32]

Brazil has handled potential conflicts with its consumer credit regulation and other conduct aspects of credit portability by incorporating relevant consumer protections directly into the open banking rule. This was probably helped by a much less complex regulatory structure including the fact that the Banco Central do Brasil has responsibility for both open banking and for consumer credit regulation. In addition, the mandate to participate applies only to the original lender, whereas for prospective lenders participation is volun-

[30]Data standards for mortgages have been developed and issued by LIXI, an industry-owned non-profit organisation, since 2001. See https://lixi.org.au.

[31]Data Standards Body. *Simple Account Origination Experiment: Exploring CDR-enabled Mortgage Refinancing*. June 2024.

[32]Banco Central do Brasil. *Resolução Conjunta n° 15 de 28/11/2025*.

tary.

6.3 Payments

Following on the success of countries like Brazil and the United Kingdom, some participants in Australia see payments as the preferred initial use case for Action Initiation.[33] Others have cautioned that payments are highly complex; there are many industry actors and roles, different interlocking public and private regulatory frameworks and operational ecosystems. There has been, to date, virtually no public discussion about how CDR payments would actually work.[34]

Australian consumers are spoiled by choice for making payments. In addition to contactless debit and credit cards, this includes real-time account-to-account payment system (the NPP) with nearly universal bank account coverage and its consumer-authorised, real-time debit functionality (PayTo). "PayTo already allows for similar payment initiation functionality and covers similar use cases (e.g. making fast payments and moving funds between institutions)."[35] Understanding where CDR payments could fit in to this landscape is challenging.

It will also be challenging to fit payments into the *instruction-action* model. The CDR Rules and Consumer Data Standards would need to specify how CDR payment instructions are created, authorised and transmitted to the consumer's bank. This includes clarifying where the "instruction" ends and the "action" begins. For example, are fraud and AML screening measures, and customer authentication and authorisation (such as by biometric in-app), part of the instruction (governed by the CDR regulatory regime) or the action (governed by the payments regulatory regime)? Despite the directive against addressing *how* CDR Actions are executed, it seems likely that the Rules would also need to specify the means of execution and settlement–most likely the NPP, or else establish protocols for how the payment method is selected.

In its submission to the Action Initiation legislation, the CDR regulator, the ACCC warned that "the interaction of action initiation with relevant sectoral frameworks will be particularly complex in relation to payment initiation."[36] Given the proposed payments reforms currently underway, it seems that CDR payments initiators will need to have an AFSL, potentially observe DDO and AML requirements, and be bound by the conduct and liability provisions of the ePayments Code, and potentially have some obligations under the forthcoming industry scams codes.

[33]Payments provider Zepto, for example, called for payments to be prioritised as the first action type designated under the legislation, "Submission on CDR: Exposure Draft Legislation to Enable Action Initiation," 24 October 2022.

[34]For example, there was only a brief acknowledgement, in the context of stakeholder submissions, in the recently released final report from the Australian Payments Plus on the future vision for account-to-account payments. Australian Payments Plus, *Public consultation on the future vision for account-to-account payments in Australia: Findings Report*, November 2025.

[35]Fintech Australia, *Submission to Treasury: CDR Exposure Draft Legislation*, October 2022, p.6

[36]Australian Competition and Consumer Commission. *Consumer Data Right: Exposure draft legislation to enable action initiation*. Oct. 2022.

Furthermore, for payments, the relevant regulation is not only government-issued; private-sector contractual regulations apply to participants within each separate payment system. This may include standards for customer authentication and authorisation, and other conduct that may be considered part of the CDR *instruction layer*.

Liability for fraud and scams would pose particular difficulties. The ePayments Code places liability for unauthorised payments on the bank in certain circumstances. Would Section 56GC(1) override this established allocation of responsibility for any CDR payment instruction that complies with the CDR Rules?

7 Discussion: implications for policy

The CDR Action Initiation framework is aimed at creating new avenues for industry competition and more efficient services for consumers by opening up aspects of service provision to third parties. In contrast, as the preceding discussion illustrates, existing industry regulation is generally aimed at protecting consumers or the prudential safety of industry participants. The Action Initiation framework places significant burden on the drafters of the future CDR Rules to reconcile these competing regulatory frameworks.

The use cases described in this article illustrate how conflicts between these regulatory objectives can create unmanageable legal and compliance risks for regulated entities, or undermine effectiveness of existing regulatory frameworks, or both. There are options to resolve these risks and conflicts, but they will require changes either to existing industry-level regulations or to the CDR Action Initiation conceptual model.

In summary, the preceding analysis shows that:

- The architecture of an *instruction layer* that exists solely with the CDR Rules, outside of existing regulatory frameworks, is not likely to be workable in all but the simplest of use cases.
- It will be impossible to cleanly separate instructions from actions in a regulatory context, without creating even more regulatory complexity.
- It is not feasible to replace current bilateral contractual arrangements with provisions in CDR Rules that allow non-contracting parties to interact compliantly, due to the complexity of the existing regulatory requirements for regulated financial entities.
- Establishing separate liability frameworks under the CDR for regulated activities will create confusion and conflict with industry codes and other existing liability frameworks.

7.1 Options for resolving regulatory conflicts

There are a limited set of options to resolve regulatory conflicts that would arise with CDR actions and these will differ across specific action types. At a high level, the options boil down to:

1. Provide exemptions within existing consumer protection and other applicable regulatory regimes.
2. Incorporate specific consumer protections and contractual provisions between participants into the CDR Rules and Consumer Data Standards.
3. Relax the non-discrimination requirement on Action Service Providers where they have conflicting regulatory obligations and effectively allow them to opt-out of CDR Actions where conflicts arise.

With respect to the first approach, exempting activities from regulation only when they are part of a CDR instruction-action flow would seem to undermine the policy objective of the industry regulation. For example, AUSTRAC could provide exemptions for KYC or ASIC for DDO for specific CDR switching use cases. This would naturally raise the question of why these provisions are considered essential in other, non-CDR contexts.

The second option would introduce significant additional regulatory complexity. It would require the CDR Rules and Consumer Data Standards to maintain alignment with the underlying industry regulation regimes as they change over time. Regulated entities would essentially face two sets of compliance obligations for the same action type–within CDR and outside CDR.

The third approach essentially admits defeat–for example, banks would be able to refuse to process CDR instructions with third parties where they do not have a distribution contract and therefore cannot comply with DDO or KYC requirements. This effectively negates the competition objective for the whole exercise, while still imposing the infrastructure costs on mandated entities.

7.2 Implementing Action Initiation

The Action Initiation legislation is generic and conceptual. It does not disturb any specific regulatory frameworks or liability models until applied to a specific action. The difficult policy decisions and operational analysis are left to the Minister and the CDR Rules.

Principles-based legislation that leaves technical implementation details to regulators and regulations to work out later can often be a good solution because it provides flexibility and relies on expertise housed at the most relevant level of government or industry. However, in this case it is not just technical details that are lacking, it is that a clear policy problem and desired outcome has not been articulated by the Parliament.

It is highly likely that direct regulatory conflicts, such as those summarised in this article, would be raised by the relevant regulator at the consultation stage. This will result either in the Action Declaration being substantially modified, or by changes (such as tailored exemptions) to the industry-level regulation. This could prove very challenging. In fact, the ACCC previously highlighted that key issue will be "whether the delineation of regulatory responsibilities between the ACCC and relevant sectoral regulators is clear, in circumstances where the action itself takes place outside the CDR."[37]

[37] Australian Competition and Consumer Commission. *Consumer Data Right: Exposure draft legislation*

As a result, implementing the policy decisions and Rules drafting for CDR Action Initiation would be a significant, multi-year regulatory undertaking, potentially requiring new teams to be established within each of the relevant CDR regulators. Consulting on amendments to industry-specific regulation will take time and resources and may require legislation in some cases.

8 Conclusion

It should be no surprise that no forward momentum on Action Initiation has yet emerged. Any serious examination of specific CDR Action use cases would reveal to regulators that the conceptual model is unworkable without major modifications, due to regulatory conflicts and complexity. This is leaving aside any consideration of the practical cost-benefit equation for CDR Action Initiation in particular use cases.

So what can be done to further the genuine policy objectives of CDR Action Initiation? In summary, start with identifying the specific problem for consumers that can't be addressed with existing tools and infrastructure, before building new infrastructure or modifying existing regulatory architecture. For example, if access by third parties to initiate payments is a barrier for certain important payment use cases, then take up that issue directly with the payment system operator and if necessary, the payment system regulator, to make changes to access conditions within the rules and standards already applicable to that product or industry.

Good policy should start from a clear articulation of the problem to be addressed and the rationale for regulatory intervention, and reflect a comprehensive consideration of existing regulatory and policy tools. CDR Action Initiation, as set out in legislation, does neither. It is a superficially appealing solution to an undefined set of problems.

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