



3 September 2021

Kate O'Rourke
First Assistant Secretary
Consumer Data Right Division
Treasury
by email: Kate.ORourke@TREASURY.GOV.AU

Dear Ms O'Rourke,

Implementation of an economy-wide Consumer Data Right - Strategic Assessment

Thank you for the opportunity to comment on Treasury's 'Opt-out' joint account data sharing model.

This submission from the Financial Rights Legal Centre (**Financial Rights**) focusses on specific insights Financial Rights has with respect to general insurance, life insurance, non-bank lending, superannuation, retail groceries and loyalty schemes and government-held consumer data.

At a high level, any expansion of the Consumer Data Right (**CDR**) should be conducted in a way that prioritises consumer interests and use cases that are in the interest of consumers – beyond the simplistic approach that more products and more choices will lead to improved consumer outcomes. Our experience working with financially vulnerable consumers is that so many financial “innovations” in recent years have created significant harms for the people we assist including the emergence of, for example Buy Now Pay Later (**BNPL**), Debt Management Firms, and other “tech-washed” credit and financial service models.

In considering the potential sectors for CDR expansion, it is clear that for the CDR to be of genuine use to consumers, be safe and secure, and not exacerbate existing consumer harms in the financial services sector, the Government must prioritise other outstanding reforms before any expansion. This is not simply limited to pausing until the *Privacy Act* review is completed to address outstanding issues related to CDR consent but includes reforms in the specific, identified sectors that are needed in order for the CDR to be effective. These reforms include:

- finalising Treasury's General Insurance Disclosure Review and implementing effective standard definitions standard cover and component pricing regimes;
- ensuring that Accredited Data Recipients (**ADRs**) who develop use cases that involve financial advice or credit provision are captured by the Australian Financial Services Licensing (**AFSL**) regime or the Australia Credit Licensing (**ACL**) regime;

- applying the Design and Distribution obligations to financial products that emerge from the CDR;
- regulate BNPL and wage advance-like credit products;
- pass the Small Amount Credit Contract (**SACC**) reforms in line with the recommendations of the SACC Review to reduce the harm caused by predatory lending practices in the non-Bank sector; and
- responding to and implementing the recommendations of the *AHRC's Human Rights and Technology review* particularly with respect to the need to develop effective regulation to uphold human rights in the development and use of technologies and preventing the misuse of algorithms and artificial intelligence.

We have had the opportunity to read the submission from the *Consumer Policy Research Centre* and endorse their recommendations to improve the approach Treasury is taking to the development of the CDR, namely:

- Implement a sector-neutral, use case focused economy-wide roll-out
- Identify clear consumer-centric success metrics for the economy-wide roll-out of CDR
- Conduct a cost-benefit analysis identifying direct benefits to consumers
- Implement *Privacy Act* reforms to ensure the environment surrounding the CDR provides sufficient protection for consumers as their data is opened up
- Outline the process of auditing and enforcing the CDR regime
- Undertake comprehensive consumer experience (CX) testing
- Establish a Digital Ombudsman

We have also had the opportunity to read the *Australian Privacy Foundation's* submission and agree with the concerns outlined and support their key recommendations including:

- the need for Privacy Impact Assessments to be undertaken early enough to influence the design of the regime; and
- the urgent need for funding of consumer input in the development of the CDR regime.

On this latter point we recommend that if the consumer data right is to be developed with the consumer at the centre of its design, consumer representative organisations need to be resourced to be able to contribute to the process. Consumer organisations like our own already work under severely constrained and shrinking resource environments that need to prioritise front line service provision. However without consumer representative input, the CDR's design is likely to further industry interests that place profit before positive consumer outcomes. We recommend that the Government provides adequate resources to consumer representative organisations to participate in the CDR reform.

With respect to each sector raised in the consultation paper, we make the following general comments with further detail and additional specific recommendations in the body of the submission:

General insurance

There are opportunities to improve consumer outcomes by applying CDR to general insurance including through the automation of disclosure processes but significant work needs to be done to ensure that they are effective and it is done in a safe, secure and consumer centred manner with appropriate protections.

Life insurance

Life insurance as a risk management product is qualitatively different to general insurance and requires separate and specific consideration. We do not recommend proceeding with life insurance in the CDR expansion outside the sharing of product and compliance data. Any steps taken should be done so with great caution due to the fact that health data (including genetic information) – central to life insurance as a financial service - is a sensitive dataset under the *Privacy Act* and at risk of misuse, abuse and discrimination .

Non-bank lending

While on the surface non-bank lending seems to be a simple extension of the concept of Open Banking which is already being implemented, there are significant issues and potential harms that need to be considered and addressed before doing so. This is because non-bank lending is more likely to be used by more financially vulnerable Australians.

Superannuation

The problems with the superannuation sector with respect to product comparison, switching and consumer understanding of their superannuation and related products have been well established. Applying CDR to superannuation therefore has potential to drive more consistent data standards, help consumers identify better superannuation options and lead to a more competitive sector. There are already reforms afoot to address these problems and CDR has the potential to improve these solutions. If CDR were to be applied, consideration would need to be given to its form given the nature of superannuation as a compulsory product not a product to be bought and sold without good reason.

Retail groceries and loyalty schemes

There may be use cases for consumer purchasing data to be included under a CDR regime that could have positive impact for consumers – such as the use of product pricing information to inform purchasing decisions (in a Fuel Check or Grocery Watch model) and possible improved responsible lending and budgeting processes. However, there are a great many other uses that may lead to poor consumer outcomes that may outweigh the benefits.

Government-held consumer and other data

The most significant benefits to consumers from the access and use of data are likely to come from greater access to the data held by Government sources (including departments, agencies and Government owned organisations). Think accessing driving histories and property level data for the underwriting of risk in general insurance. Compliance data collected by financial service regulators too are also important sources of information for consumers to gain a better understanding of the value of the particular products or services.

General Insurance

Financial Rights has published research into applying the CDR to general insurance in its 2020 report *Open Insurance: The CDR and Insurance*:¹ attached the report to this submission: **Appendix A**. The *Open Insurance* report examines the use of consumer data in general insurance and the concept of Open Insurance through the lens of the consumer, rather than that of the industry – who unsurprisingly see things in very different ways to that of users of their products. The report examines consumer data sources in general insurance and the potential use cases of:

- consumer and product insurance data in insurance processes;
- consumer and other data sources held outside of the insurance sector (including government held consumer data) for insurance purposes; and
- insurance data used for non-insurance purposes (primarily in financial management).

The report goes on to identify key benefits and risks for consumers and the insurance industry.

In line with the current Strategic Assessment consultation paper questions, we have developed a summary of the key insights identified in the *Open Insurance report*: see **Appendix B**. In this we identify use cases along the life cycle of a general insurance product, from searching and purchasing an appropriate general insurance product through to claims handling, and seeking consumer data subsequently held by an insurer. We list these life events and use cases and identify:

- potential beneficial outcomes for consumers;
- key threats, risks or issues arising from the use of data;
- the consumer and product data needed;
- existing risk mitigants and recommended mitigation strategies; and
- other existing solutions already or potentially available.

The key points for consideration in assessing the application of the CDR to general insurance are as follows:

- **The lack of common definitions and standard cover needs to be resolved**

The lack of common definitions and variability of products will inhibit any effective implementation of Open Insurance. This variability is a barrier to conducting product comparison and would likely hinder the development of product data standards for CDR. This needs to be resolved. Treasury must finalise and implement its General Insurance Disclosure review (initiated in 2019) and introduce standard definitions in insurance and an effective standard cover regime as recommended.²

¹ <https://financialrights.org.au/wp-content/uploads/2020/12/Open-insurance-final-report.pdf>

² See recommendations in *Submission by the Financial Rights Legal Centre Treasury Disclosure in General Insurance: Improving Consumer Understanding, Discussion Paper, February 2019*.

- **Data standards for general insurance product data and other consumer data types used are variable, inconsistent and need to be addressed**

To be useful product data standards need to be clear and consistently applied. The general insurance sector is well behind other sectors in this regard and data standards need to be improved.

- **There are challenges with the application of CDR to general insurance for product switching and comparison purposes**

Distinct from the problem of standard definitions, other challenges to comparison and switching include the specificity of pricing to the consumer, the fact that some important attributes of insurance contracts may not be easily codified and the number of relevant attributes being potentially very large.

- **Existing problems in insurance comparison and switching could be addressed by CDR but are more likely to be exacerbated unless accompanied by strong protections**

The general insurance market is a complex confuseopoly with consumers manipulated not just by cut price, low coverage insurers taking advantage of the difficulties in effectively engaging with insurance but also one exacerbated by non-transparent, conflicted comparison websites that focus on price and mislead consumers. Unless these fundamental issues are addressed, CDR will simply replicate, perpetuate and exacerbate these problems leading to poor consumer outcomes and underinsurance through lack of effective coverage.

- **Use cases that veer into financial advice should require ADRs to obtain AFSLs and a strong liability framework**

The rise of FinTech/InsureTech applications providing advice to consumers (automated or otherwise), have real potential of leading consumers to make poor choices. Intervention is required from the start to ensure that such provider meet AFSL requirements. An effective liability framework should also be in place to mitigate risks to consumers arising out of poor advice and the Design and Distribution Obligations should apply to all new financial products created under the CDR.

- **CDR could be used to facilitate automated disclosure for certain non-insurance consumer data sources information required for quoting and underwriting**

CDR could improve information asymmetries, reduce claims denials based on non-disclosure and provide more accurate underwriting of risks, if CDR allowed consumers to provide disclosure information such as driving histories, insurance histories and other non-insurance consumer data. Consideration needs to be provided to extending the CDR to non-insurance consumer data sources as well as government data that can be incorporated into assessing risk in insurance, with appropriate consent and privacy protections in place.

- **Consent rules need to be strengthened**

Consent under the CDR must take into account balance of power issues with respect to those potentially vulnerable consumers who may have no choice but to provide their consumer data to insurers under an Open Insurance regime.

- **Safeguards need to be established to ensure no misuse of consumer data in the claims handling/investigation process**

Applying the CDR to data sources like telecommunications and banking data could be used in an insurance investigations. This raises the serious risk of misuse by insurers looking to go on fishing expeditions to find reasons to deny a claim. Given the expansive and voluminous nature of data sharing under the CDR this is an existing problem that will be exacerbated by the CDR. Safeguards need to be in place to prevent this from occurring. In addition, safeguards need to be in place to ensure CDR data sharing is not used to exacerbate the potential for inappropriate and discriminatory profiling.

- **Some datasets may not be suitable for CDR designation for general insurance**

We have reservations about the use and access some non-insurance consumer datasets in insurance processes above including health, medical and fitness data, criminal records, financial records and grocery, shopping or other retail spending data used to underwrite and risk profile based on inappropriate correlations leading to discrimination.

- **Telematic data must be considered consumer data**

If telematics – real time data derived tracking technology including driving statistics and health data via wearable health monitoring technology – is included in the CDR it must be considered the consumer’s data if the CDR and its promise to provide consumer control over their own data is to hold any water. Specific privacy and security standards need to be in place to ensure that this data is not misused or breached.

- **General insurance compliance data should be made available via CDR**

Relevant compliance data (such as claims ratios, number of breaches etc) collected and published by the Australian Securities and Investments Commission (**ASIC**), Australian Prudential Regulation Authority (**APRA**), and the Australian Financial Complaints Authority (**AFCA**) should be included within the scope of the CDR to assist consumers to better understand and be informed of the value of certain general insurance products and insurers. Much of this data is either not accessible to consumers, or kept in varying places (AFCA’s datacube³, ASIC’s MoneySmart website, APRA’s general insurance statistics) that require significant skills to dig through and find useful. This important information can go a long way to assist consumers in making more informed decisions by understanding each insurer’s claims-acceptance rates, average claim time, the number of claims-related disputes and policy cancellation rates. Integrating this into the data under the CDR has the potential to improve comparison and decision-making. Whether this compliance data is considered “Product Data” for the purposes of the CDR or government-held data, either way it needs to be made available under any CDR Insurance regime.

Life Insurance

While many of the insights identified in the Open Insurance Report apply to general insurance as a product, life insurance as a risk management product is qualitatively different and requires specific considerations and greater caution. These issues lead us to believing life insurance is not

³ <https://data.afca.org.au/>

necessarily appropriate to be included in the CDR expansion – outside of product and compliance data.

- **The key consumer dataset in life insurance – personal health data - is inherently more sensitive than general insurance**

Consumer data obtained, used and held by life insurers in the underwriting process is, in the main, sensitive data as under the *Privacy Act* – i.e. health records⁴ and genetic information⁵. This makes it less amenable to sharing due to the risks involved.

- **Other life insurance datasets are not suitable for CDR designation**

We have serious reservations – beyond the privacy and security issues of health, medical and genetic information - about the use and access to the following consumer datasets:

- fitness data, despite their current use, (there are incentives embedded in the use of fitness data that can lead to unintended harms⁶ and the data itself can be unreliable and subject to correlative misreading⁷);
 - criminal records;
 - financial records – particularly with respect to underwriting and risk profiling that may lead to discrimination;
 - grocery, shopping or other retail spending data used to underwrite and risk profile based on inappropriate correlations leading to discrimination
- **The use of consumer data sources external sources to life insurance in the underwriting and quoting process poses significant risks and could lead to significant harms**

It appears possible that life insurers could benefit materially in their underwriting from having access to some consumer data. However, there is the risk that greater access to data leads to more granular pricing, and potentially price optimization, inappropriate price discrimination and risk segmentation as well as discrimination based on the misuse or misreading of correlated information. For example correlative historical spending patterns from bank records, food data or grocery spending data could conceivably be analysed to assess risk in ways that could be inappropriate and discriminatory: see examples provided below under Retail groceries and loyalty schemes.

⁴ Section 6(1) of the *Privacy Act*.

⁵ See discussion and recommendations 9.1-9.4 relating to genetic information, Parliamentary Joint Committee on Corporations and Financial Services, *Life Insurance Industry Report* 27 March 2018;

⁶ See Victoria Palmer, An insurance discount for your fitness data is a bad deal in the long run, *The Conversation*, 4 October 2018 <https://theconversation.com/an-insurance-discount-for-your-fitness-data-is-a-bad-deal-in-the-long-run-103993>

⁷ LF Carver, Why life insurance companies want your Fitbit data, 24 September 2018 <https://theconversation.com/why-life-insurance-companies-want-your-fitbit-data-103732>

- **Some use cases identified in general insurance could be transferable to the life insurance sector while other use cases are not directly transferable nor desirable**

Product search and comparison may be useful for people to seek and purchase appropriate life insurance products – but there is a risk that people will lose coverage due to pre-existing issues if people are switching without appreciating the implications of that switch (e.g. differences in cover). Quoting, sales and underwriting use cases may not work since it may involve the sharing of sensitive health records.

- **Using CDR in life insurance claims handling processes will exacerbate inappropriate practices such as fishing expeditions to deny claims**

Life insurers obtaining open-ended access to medical records in the claims investigation or disclosure process has been a significant issue leading to fishing expeditions and poor consumer outcomes.⁸ Life insurance companies often ask applicants to sign over “full authority” to their medical records to assess both claims and cover applications.⁹ Given the expansive and voluminous nature of data sharing under the CDR this is an existing problem that *will* be exacerbated by the CDR. Safeguards would also need to be in place that prevent inappropriate and discriminatory profiling.

- **If telematic data collected by life insurers such as fitness data, is included in the CDR it must be deemed consumer data.**

As is the case with telematics in cars and general insurance¹⁰ telematic services providers rather than insurers hold the large volume of data and can have arrangements with users and insurers monitoring the activity. Where the data has been used for insurance purposes, it is likely (but not clear in all cases) that an aggregated measure is passed to the insurer. Whoever holds or maintains the data, it is ultimately consumer-created data that reflects an individual’s activity and therefore should be considered consumer data for the purposes of the CDR.

- **Any use of CDR to facilitate digital advice in life insurance (or in any other financial services context) must be in line with the AFS licensing requirements.**

The development of use cases that veer into the realm of advice (or digital advice¹¹) – particularly those related to algorithmic advice or reliance on artificial intelligence - raises significant questions with respect to appropriate Australian Financial Services licensing.

⁸ See Finding on Access to Medical Information and Recommendation 8.1-8.7, Parliamentary Joint Committee on Corporations and Financial Services, *Life Insurance Industry Report* 27 March 2018; Amy Bainbridge and Emily Clark, Insurers gaining 'open-ended access' to medical records slammed as 'unfair privacy breach,' ABC 24 Jan, 2019 <https://www.abc.net.au/news/2019-01-24/medical-records-handed-to-insurance-companies-over-mental-health/10720024>

⁹ Amy Bainbridge, Insurers gaining 'open-ended access' to medical records slammed as 'unfair privacy breach,' ABC 24 Jan 2019, <https://www.abc.net.au/news/2019-01-24/medical-records-handed-to-insurance-companies-over-mental-health/10720024>;

¹⁰ Outlined at page 32 in the *Open Insurance report*

¹¹ “Digital Advice” is the provision of automated financial product advice using algorithms and technology and without the direct involvement of a human adviser: see ASIC RG 255 *Providing digital*

- **Life Insurance compliance data should be made available via CDR:**

The data collected and published by the APRA detailed in part in its *Life Insurance Claims and Disputes Statistics*¹² should properly be included within the scope of the CDR. This important data currently available on ASIC's MoneySmart can assist consumers to make more informed decisions by understanding each insurer's claims-acceptance rates, average claim time, the number of claims-related disputes and policy cancellation rates. Integrating this into the data available under CDR has the potential to improve comparison and decision-making. Whether this compliance data is considered "Product Data" for the purposes of the CDR or Government held data, either way it needs to be made available under any CDR Insurance regime.

Non-Bank Lending

While on the surface, non-bank lending seems to be a simple extension of the concept of Open Banking already being implemented under the CDR, there are significant issues that need to be considered before doing so. This is because non-bank lending is more likely to service more financially vulnerable Australians, who have been locked out of other credit sources. It is also a sector where so-called financial innovations have led to significant harms. Buy Now Pay Later (BNPL) services, pay day loans, consumer leases, wage advance products, are all causing significant harm to the clients we work with on the National Debt Helpline. Many of these financial product and service providers do not have strong track records with respect to handling consumer data in ethical ways.

The risk of consumer harm from some forms of non-bank lending (such as pay day loans and consumer leases) have already been acknowledged under the law and have distinct regulatory frameworks with higher protections in place. Regulation of other "emerging forms" of non-bank lending (such as BNPL or wage advances) have not caught up with the increasing body of evidence of harm.¹³ Either way there are distinct and unique challenges with respect to the non-bank sector that need to be considered and in some cases resolved (such as regulating BNPL as a form of credit) before CDR should be applied to the non-bank sector broadly.

We make the following additional observations that require consideration.

- **The scope of non-bank lending needs to be considered in the context of differing levels of regulation, differing nature of regulation and**

Non-bank lending could realistically include:

- credit unions

financial product advice to retail clients August 2016, <https://asic.gov.au/media/0ylptfow/rg255-published-29-june-2021.pdf>

¹² <https://www.apra.gov.au/news-and-publications/apra-and-asic-publish-latest-data-on-life-insurance-claims-and-disputes-3>

¹³ See for example, ASIC REP 672 Buy now pay later: An industry update, 16 November 2020, <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-672-buy-now-pay-later-an-industry-update/>

- small amount credit contract providers (pay day lenders),
- medium amount credit contracts,
- SME business lending
- consumer leases;
- Buy Now Pay Later services
- Wage Advance services
- Peer-to-peer lending
- Neo-banks/digital banks/online lenders

In considering what should be included in the scope of a non-bank lending CDR, Treasury need to consider the differing level and nature of regulations in the sector. That is, acknowledging the different approaches embedded in regulation due to significantly higher risks involved in particular forms of lending such as pay day lending and the risks to vulnerable customers. Furthermore, the current poor data handling practices of non-bank lenders needs to be considered: including the heavy dependence on and use of screen scraping by non-bank lenders; and the abuse of data by some bad actors in the sector such as pay day lenders entering into customer accounts to identify where funds are low in order to market more pay day loans, leading to poor consumer outcomes and debt spirals.

- **The use of non-financial CDR data by non-Bank lenders can lead to significant consumer harms:**

A key use case for non-Bank lenders accessing non-financial CDR data sources is likely to be social scoring for credit provision. This has some marginal potential to improve financial inclusion but is also highly likely to lead to significant inappropriate price discrimination and risk profiling. While there may be some winners in this process, there are likely to be losers who will only be able to access credit at a higher cost. This will naturally impact upon poor socio-economic cohorts.

- **Privacy and security risks are similar to those identified in Open Banking but exacerbated in a non-bank lending context**

Many of the issues of concern already raised by consumer representatives with respect to the application of CDR to the banking sector equally apply to non-bank lenders. These concerns include the proposed opt out consent approach for joint account holders, the proposed lack of protections for CDR consumers when data is shared unaccredited “trusted advisers”, the proposed use of CDR insights, the loosened requirements with respect to marketing and the on-sale of personal data. However, we believe that many of these issues will be exacerbated if CDR is extended to non-bank lenders – due to the fact that a significant cohort of those using non-bank lending are more financially vulnerable Australians. We would recommend that these issues of concern should be resolved in favour of stronger privacy and security protection for consumers before applying CDR to the non-bank lending sector.

- **Non-bank lending data may be useful for other CDR sectors**

Access to non-bank lending data may provide further relevant information to CDR Banking participants who may be able to improve, for example, their responsible lending checks through

greater accuracy. Similarly CDR insurance may be able to use this data in the same way it would potentially use banking data: see comments on General Insurance.

- **CDR may improve some existing processes but also lead to exacerbated harms**

While CDR could enable a shift away from screen scraping which would be a positive move, enabling easier and quicker ways to undertake current problematic data handling practices needs to be addressed. For example, we are aware from our casework that some providers require the provision of passwords as part of a hardship application, and believe that some unscrupulous pay day lenders inappropriately use bank account passwords to look at customer account balances and market to them further unsustainable credit if they see that a bank account is low in funds. This is an example of a practice which, if allowed to continue to occur under the CDR, will actually make the situation easier and therefore more likely to occur. In other words – CDR is likely to exacerbate this issue if not mitigated. If CDR is extended to non-bank lending, such practices need to be explicitly prohibited under the rules. Allowing them to continue through either simple disclosure or consent to conduct such practices is not enough given the inherent imbalance of power between the non-bank lender and the consumer – that is the consumer having little choice to agree in order to obtain the credit, or not understanding the true implications and long term impact of agreeing to the practice.

- **The problems with an opt-out approach for joint account consent - as proposed – is worsened in the non-bank lending sector.**

We have already detailed the obvious problems with respect to the opt-out approach being proposed by the Treasury with respect to joint account consents.¹⁴ These issues are made worse if CDR is applied to non-bank lending since it could potentially lead to increased financial harm if perpetrators switch to higher cost credit.

Superannuation

The problems with the Superannuation sector with respect comparison, switching and consumer understanding of their superannuation and related products have been well established.¹⁵ Given these problems it is easy to see that applying CDR to superannuation, could potentially lead to more consistent data standards, help consumers identify better superannuation options and lead to a more competitive sector. There are already reforms afoot to address these problems and CDR has the potential to improve these solutions. If CDR were to be applied, consideration would need to be given to its form given the nature of

¹⁴ Joint consumer submission to Treasury re: Consumer Data Right Rules Update: Trusted Advisers & Joint Accounts https://financialrights.org.au/wp-content/uploads/2021/07/210723_TreasuryCDRRulesUpdate_FINAL.pdf

¹⁵ Productivity Commission Superannuation: Assessing Efficiency and Competitiveness Inquiry Report, 21 December 2018 <https://www.pc.gov.au/inquiries/completed/superannuation/assessment/report/superannuation-assessment.pdf>

superannuation as a compulsory product not a product to be bought and sold without good reason.

- **Scope of superannuation needs to be realistic**

The scope of superannuation is wide and consideration needs to be given as to whether the following elements could be realistically included:

- corporate funds
- industry funds
- public sector funds
- retail funds
- default MySuper funds
- small APRA funds
- retirement savings accounts
- insurance in superannuation products (eg TPD, income protection and other life insurance products);
- self-managed super funds (SMSFs)

- **Comparing super funds is currently very difficult**

Choosing between super funds is difficult. Funds structure and report fees and costs in complex ways. Levels of investment risk, past financial year returns, return targets plus a variety of other product features are reported inconsistently,. The Productivity Commission highlighted the lack of quality, accessible and comparable information on products as a key problem in the sector.¹⁶

- **Commercial comparison websites are available but are flawed**

There are a significant number of for profit comparison websites (including Canstar, Chant West and Morningstar) but they are designed to make money through promoted links, and can give the false impression of comparing the market by comparing different brands, when they may not cover all options available. Without any rules in place to prevent these practices, these issues will simply be replicated and perpetuated under an CDR-fuelled Open Super regime. The harms could also be exacerbated in an action initiation CDR world, where switching could be made quicker, when time and friction may be advisable since it involves the largest financial investment anyone holds.

- **Superannuation is not designed to be a product this is sold or actively changed unless there is a good reason to change**

¹⁶ Productivity Commission Superannuation: Assessing Efficiency and Competitiveness Inquiry Report, 21 December 2018
<https://www.pc.gov.au/inquiries/completed/superannuation/assessment/report/superannuation-assessment.pdf>

The Financial Services Royal Commission stated that:

*'Superannuation is not a product to be sold. It is a compulsory product. All employees must have a superannuation account. Too many employees have more than one account. Steps taken to induce persons to hold multiple accounts should be actively discouraged. And persons having existing arrangements should not be induced to change those arrangements unless there is good reason to make the change.'*¹⁷

That is to say that superannuation should not be treated like any other financial product to be bought, sold, and switched. However there are a significant number of reasons people should make a change – including poor value for money arising out of poorly performing funds, high fees, junk insurance products etc. The problem is though that:

*Ideally all employees would make informed and rational choices about their superannuation arrangements. But many employees are not, and will not become, engaged enough to make those decisions.*¹⁸

Any use of CDR or comparison and switching therefore needs to be focussed on ensuring improved consumer outcomes in having their superannuation in an appropriate fund that serves their needs – not to encourage switching for increased sales or volume opportunities for funds.

Furthermore, if switching veers into financial advice, CDR participants should be appropriately licensed with an AFSL.

- **Other comparison tools have been developed to help address key problems faced by Australian super consumers, which could be improved through the application of the CDR to super**

The YourSuper comparison has just been introduced which compares superannuation products based on their annual fees and net returns over six years.¹⁹ There's also a personalised version that you can access through MyGov. Non-MySuper products will be added to the tool in 2022. From September 2021, the tool will also list an assessment of funds performances by the Australian Prudential Regulation Authority (APRA). Funds will either be marked as "performing" or "underperforming". Until then, all funds will be listed as "not assessed". At this stage the tool does not compare insurance options, which vary considerably.

The tool was developed to help solve the problem of Australian consumers being stuck in an underperforming super fund. The YourSuper is tool projected to result in \$3.3 billion in higher member balances over ten years.²⁰ The government gives examples of a typical Australian entering the workforce in their 20s who could be around \$87,000 better off at retirement, while

¹⁷ Page 247, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry Final Report <https://treasury.gov.au/sites/default/files/2019-03/fsrc-volume1.pdf>

¹⁸ ibid

¹⁹ <https://www.ato.gov.au/YourSuper-Comparison-Tool/>

²⁰ https://archive.budget.gov.au/2020-21/factsheets/download/your_future_your_super_factsheet.pdf

someone aged 50 could be around \$60,000 better off at retirement. The tool has great potential and its scope and functionality could be improved through the application of CDR to Super.

- **Superannuation compliance data should be made available via CDR**

If it was decided that CDR be applied to superannuation, the data collected and published by the APRA in relation to superannuation should properly be included within the scope of the CDR. Other data currently available on MoneySmart can assist consumers to make more informed decisions. Integrating this into the data available under CDR has the potential to improve comparison and decision-making. Whether this compliance data is considered “Product Data” for the purposes of the CDR or Government held data, either way it needs to be made available under any CDR Super regime.

- **ATO held transaction data should be made available via CDR.**

Similarly, if CDR is applied to super, ATO data should be within scope, where appropriate. The ATO also collects account and transaction data, much of which is made available directly to consumers through MyGov.

- **Consumer data in superannuation should be used to improve outcomes for consumers not be used to increased profits**

Applying CDR to super may assist trustees obtaining more detailed customer data to improve their superannuation products, however we remain concerned about the market for on-selling customer data to third parties. There needs to be strengthened limitations around these secondary uses of data.

- **Insurance in superannuation should be considered in the CDR’s application to life insurance and the issues that apply to any consideration of that sector’s inclusion**

Most life insurance products are obtained through superannuation. While there are a set of consumer issues that apply to the provision of the products specifically through superannuation, any inclusion of the insurance in superannuation in the CDR needs to be considered with any considered expansion to life insurance more generally.

Retail Groceries and Loyalty Schemes

Financial Rights has less direct interaction with clients and their engagement with loyalty schemes and retail spending. We however do have some general insight into consumer’s spending habits given its relevance to responsible lending, budgeting, and the creation of money plans. While there may be use cases that could have positive impact for consumers – such as the use of product pricing information to inform purchasing decisions (in a Fuel Check or Grocery Watch model) and its potential for improved responsible lending processes, there are uses that may lead to poorer consumer outcomes.

- **Real-time product pricing data is a key use case for consumers**

Product pricing data held by retailers both in gross form and in unit pricing form has the very real potential to assist consumers to make more informed purchasing choices. This was the aim of the failed Grocery Watch scheme and the NSW Fuel Check. Currently, there is no single source of information as to where a cheaper standard set of grocery items may be purchased. A national scheme relying on data obtained via the CDR could assist consumers in identifying

which stores in which areas had the cheapest groceries. It has long been in the interests of industry to prevent access to this information as they benefit from the inability of consumers to comprehend comparative price differences.

The information would also be useful for government in determining with greater accuracy the real cost of inflation.

- **Retail grocery data could provide greater insight for budgeting or responsible lending purposes but this needs to be weighed up with the risks of misuse.**

Access to spending/transaction data can already be obtained via the Open Banking regime. Applying the CDR to retail grocery data the potential to provide more detailed information and greater accuracy in the creation of budgets, money plans or even assist responsible lending checks. However it is not clear to us how much of a positive impact this could have on these processes.

On the other hand, purchasing and spending data could be used to inappropriately infer personal traits person through poor use of correlations. For example, the purchasing of folate could infer that somebody is pregnant or seeking to become pregnant which may impact upon the willingness of a lender to provide credit, or provide credit at a higher price. Lenders could also use spending data to identify individuals with certain traits, such as low self-control, and then target those individuals, via advertising or direct mail.²¹ Such correlations are open to being unreliable, misused or discriminatory.

The application of CDR to retail grocery data would essential make this ability quicker and easier to do. It is therefore important that if it is decided CDR be applied to this sector then the risks of misuse must be addressed.

We recommend that to ensure that these issues are addressed, the government needs to respond to and implement the recommendations of the AHRC's *Human Rights and Technology review* particularly with respect to the need to develop effective regulation to uphold human rights in the development and use of technologies and preventing the misuse of algorithms and artificial intelligence.

- **Loyalty schemes are already an example of the use of consumer data that directly “benefits” the consumer, even if that benefit is marginal**

Loyalty schemes are the rewarded use of consumer data. That is, consumers exchange loyal spending and the collection of that data for the provision of some reward such as discounts. Given that consumers are also able to join all loyalty schemes – a switching use case is not really clear.

Financial Rights is unconvinced of the value of that exchange, and has serious concerns with the practices of loyalty schemes including their role in encouraging spending for spending's sake and the lock-in effects upon competition. However, putting those concerns aside, we do not see how the collection of spending data could be shared for free with other parties in the CDR

²¹ Your Spending Data May Reveal Aspects of Your Personality, Association for Psychological Science, 17 July 2019 <https://www.psychologicalscience.org/news/releases/spending-data-personality.html>

without undermining the very business model relies on the value of that data to drive its business.

- **If CDR can be used to improve data handling practices of loyalty schemes then it should**

The ACCC have identified a significant number of concerns with respect to the data handling practices of loyalty schemes²² including:

- poor consent process including bundling of consent via click wrap agreements
- confusing and poorly design privacy policies
- not disclosing to consumers the sources of third party advertising, the sources of the consumer data used to inform that advertising, and the channels through which they may receive targeted advertising and how their consumer data may be used to generate leads; and
- lack of meaningful controls over the collection, use and disclosure of their data which.

If the application of CDR can assist in improving some of these practices – for example, through the application of unbundling consent (a key part of the CDR consent rules) - then we would support the application of CDR to this end.

Government held consumer and other data

Potentially the most significant benefits to consumers will come from greater access to the data held by Government sources (including departments, agencies and Government owned organisations).

This is particularly the case for general insurance risk assessment. There is substantial data provided by consumers to insurers during the process of quotation. However, for some of the most important data, there is a better government source that are currently not being accessed or not currently accessible. This includes:

- for motor vehicle insurance, data on licences, demerits etc
- for home insurances, property level data compiled by GeoScape

Making this data available would help reduce the dependence on the consumer disclosure with several benefits including:

- more accurate estimating of sum-insureds
- more accurate quotation, which can ultimately reduce average premiums
- reduced risk of inaccurate consumer disclosure.

²² ACCC, Customer Loyalty Schemes,

The improved ability of consumers to access and share such data is however not without risk. It could lead to greater use of sensitive information (such as medical histories and criminal histories) by financial services firms and associated privacy risks.

Furthermore, compliance data collected by regulators and ombudsman with respect to financial services firms and their products and/or services, is important information for consumers to gain access to understand the value of the product or service. This data should be made available to consumers via the CDR.

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact Financial Rights on (02) 9212 4216.

Kind Regards,



Karen Cox
Chief Executive Officer
Financial Rights Legal Centre
Direct: (02) 8204 1340
E-mail: karen.cox@financialrights.org.au

About Financial Rights

Financial Rights is a community legal centre that specialises in helping consumers understand and enforce their financial rights, especially low income and otherwise marginalised or vulnerable consumers. We provide free and independent financial counselling, legal advice and representation to individuals about a broad range of financial issues. Financial Rights operates the National Debt Helpline, which helps NSW consumers experiencing financial difficulties. We also operate the Insurance Law Service which provides advice nationally to consumers about insurance claims and debts to insurance companies, and the Mob Strong Debt Help services which assist Aboriginal and Torres Strait Islander Peoples with credit, debt and insurance matters.

Appendix B: General Insurance

Life events:

1. Product Search and/or comparison

CDR applied to the general insurance sector could assist consumers in searching for and comparing insurance products through greater accessibility, and potentially standardisation, of product data. For example, product data might be used by:

- comparators to provide information to prospective customers as to the features of the insurance products
- customers, who use the generic product data in conjunction with their current insurance policy data to conduct comparisons.

Potential use case/s:

- Find a suitable insurance product to cover your risks via a comparator or conduct comparisons of other products to your current insurance policy

Key potential benefits

Potential benefits for consumers

- Find suitable products that cover the risks that a consumer needs to be covered (or identified through the process)

Benefits for insurers/InsureTech sector

- Obtain new business

Key threats or issues arising from the use of data

Risks for consumers

- The key problems with comparison websites are perpetuated and/or exacerbated by the use of CDR. That is:
 - A focus on price can produce misleading results, since insurance pricing is currently very individual in practice, taking into account claims history and other individual risk factors associated with the person;
 - Focus by consumers on minor product features that are easily codified in CDR rather than on other important features including those that are not easily comparable; those that depend on consumer circumstance e.g. no-claims bonuses, and reputation for service, which is not incorporated in product data.
 - A focus on price rather than coverage facilitates a race to the bottom on coverage, as insurers with superior cover and claims handling services are outcompeted by cheaper and inferior offerings;

- Search results are largely taken at face value and many consumers assume the different policies and add-ons will work the same way or offer similar cover;
 - Limited transparency around commission and referral arrangements that potentially recommend inappropriate insurance products;
 - Some comparison sites give the false impression of comparing the market by comparing different brands, when in fact each brand is underwritten by the same insurer;
 - Use of simple icons can mislead consumers into believing the process is simple;
 - There is little evidence of consumers being influenced by the messages, pop-ups or advertisements.²³
- Switching without full consideration of coverage, exemptions, definitions and other features can lead to the loss of required coverage, paying for unneeded coverage or purchasing junk insurance products – a common form of underinsurance.
 - The rise of FinTech/InsureTech applications providing automated advice to consumers;
 - An error in the data or interpretation of the data could lead to a poor decision being made. For example, under Open Insurance a customer may provide incorrect data from their insurer to a third party who advises the consumer on the type of cover they obtain, what level of cover they obtain and/or what activities they are covered for.
 - Poor decisions may also stem from consumers incorrectly using Open Insurance applications. The likelihood of errors may be low; however, the consequences may be significant if they result in consumers being uninsured.
 - Open Insurance and CDR more broadly may lead to the development of new insurance products and applications. A risk is that some of these are not in the interest of consumers, or that some consumers inadvertently purchase insurance that are clearly unsuitable for them.
 - CDR and Open Insurance may facilitate new types of insurers entering the market for example, focusing on fintech solutions or niche segments. A risk for consumers is that new providers do not adopt the industry code of practice (which may lead to greater attention to whether the code of practice should be compulsory), or may be subject to lower levels of regulation and subsequent consumer protections.

Risk for insurers

- A risk is that it leads to consumers switching even when not in their best interest and a greater short-term focus by insurers. For example, it could lead to greater variation in pricing over time.

²³ For full details on the central issues with insurance comparison websites see the UK FCA research referenced from page 19 of *Financial Rights submission to the Senate Economics References Committee Inquiry into Australia's General Insurance Industry, February 2017* <https://financialrights.org.au/wp-content/uploads/2017/02/Submission-to-General-Insurance-Senate-Inquiry.pdf>

Consumer or product data needed

The set of product data could include:

- Insurer underwriter
- Insurer brand
- Insurance Type
- Insurance coverage - what is covered including limits
- Insurance exclusions - What exclusions apply under what circumstance
- Excess
- Premium
- Terms and conditions
- Customer eligibility requirements
- Other features such as choice of repairer

As detailed in Open Insurance²⁴ there are some key challenges with the application of CDR to general insurance for product switching and comparison purposes.

First, the price of the insurance contract is specific to the policyholder. Unlike most banking products (and products from other sectors) there are no standard prices and few, if any, 'fees, charges and interest rates.' The premium charged to each individual is a function of the characteristics of the individual and the particular assets/loss to be covered and consequently can be unique to each individual. Insurers develop rating models to determine pricing rates; however, this information forms part of the intellectual property by an insurer and is closely guarded.

Second, some important attributes of insurance contracts may not be as easily codified; that is, categorised in a standardised and systematic way. The main attributes of key banking products relate to rates and fees, which are easily codified, and features (e.g. insurance on credit card purchases), which are difficult to codify. Some insurance policy exclusions (e.g. whether flood is covered) and other attributes (e.g. dollar limits on jewellery and watches) may be codified; however, there are also important attributes that will be difficult to codify due to differences in approaches by insurers (e.g. for example, some insurers offer a safety net protection if the repair cost is more than the sum insured). Furthermore, how key features are determined may vary; for example, some insurers setting limits as a fixed amount and others setting them as percentage of the sum-insured.

A key element of this issue is the problem of a lack of standard definitions. Currently, with the notable exception of 'flood', different insurers may use different definitions for key policy terms in policy documents. This lack of consistency in definitions could be viewed as a barrier to

²⁴ Page 46

conducting product comparison and would likely hinder the development of product data standards for CDR. This would need to be resolved.

Third, the number of relevant attributes is potentially very large. While this provides a motivation for codifying to ease comparison it also adds some challenges. Even if all attributes can be codified, products may still differ in a large number of, albeit, small ways, and consequently comparisons may still be difficult.

There is also no set format for general insurance PDSs and TMDs. The PDSs produced by insurers vary greatly in style and organisation. If as a result of CDR, all the components of a PDS could be codified in it may enable third parties to produce standardised PDSs for comparison.

The product data comparison might be implemented with varying in levels of prescription. For example, potentially the standards could specify the list of pre-existing medical conditions and travel activities that may be covered or not covered.²⁵

Existing risk mitigants and recommended mitigation strategies

- Treasury must finalise and implement the general insurance Disclosure review and introduce:
 - Standard definitions in insurance
 - An effective Standard Cover regime²⁶
- ADRs that provide switching services that veer into advice should be licensed as a Australian Financial Service licensee
- An effective liability framework should be in place to mitigate risks to consumers arising out of poor advice;
- The design and distribution obligations, requires issuers of financial products to make a target market determination. .Treasury and ASIC need to ensure that these obligations are applied to those CDR use cases that fall within the scope of a financial product e.g. new InsureTech offerings, switching services that provide advice etc.

Other solutions available

- At least for home insurance market, the ACCC have recommended the development of a national home insurance comparison website – in line with that already in place in Northern Australia.²⁷

²⁵ For a comprehensive overview of data sources in general insurance see Open Insurance: The CDR and General Insurance <https://financialrights.org.au/wp-content/uploads/2020/12/Open-insurance-final-report.pdf>

²⁶ As outlined in *Submission by the Financial Rights Legal Centre Treasury Disclosure in General Insurance: Improving Consumer Understanding, Discussion Paper, February 2019*,

²⁷ Recommendation 18.7, *ACCC Northern Australia Insurance Inquiry, Final Report 2020*,

- An effective Standard Cover with a minimum set of core standards that meet community expectations below which insurers cannot fall and a complete set of standard definitions could improve current purchase and comparison activities.

2. Quoting and sales

To obtain an insurance quote, consumers need to provide the insurer with information to enable the insurer to assess the risk. CDR could be used by customers to port their data obtained by a previous insurer to a new insurer.

CDR may also assist in finalising the sales process. For example, following acceptance of a quote, the insurer could, on the customer's behalf notify, the existing insurer of the lack of renewal.

Potential use case/s:

- Obtaining quotations for potential new insurance products
- Automating disclosure for certain information required by insurers to quote and underwriting

Key potential benefits

Benefits for consumers

- reducing the effort and cost for customers and insurers in develop quotes;
- improving the quality and accuracy of information provided;
- reducing the risk of customer's providing the insurer with incorrect disclosure information (which may affect their claim)
- accessing consumer data including insurance histories for free without having to pay \$22 for a MyInsurance Report from the Insurance Reference Service or working through the complex process of obtaining this information from individual insurers
- Lower prices borne of lowered administrative costs for insurers

Benefits for insurers/InsureTech sector

- Reduction of asymmetry and increasing insurer confidence of insurers that they have received accurate information.
- CDR and data standardization applied to disclosure information should make it easier for insurers to verify data provided by customers and thereby confirm the suitability of the cover for the customer
- administrative savings including:
 - reduced call times in call centres;
 - speedier quotes online, via the phone or otherwise;
 - decreased quoting and sales/"on-boarding" times and processes;
 - greater certainty that information is complete and accurate;

- fewer claims assessments and investigations borne of non-disclosure and fraudulent activity; and
- improved customer experiences
- reducing the administration costs of correcting information;
- improving the inaccuracy of disclosure information.

Key threats or issues arising from the use of data

Risks for consumers

- Privacy and security concerns: Obtaining personal financial data via an automated disclosure process raises a number of privacy, security and confidentiality questions;
- There remains significant questions with respect to the accuracy, consistency and comprehensiveness of insurance claims data collected across the insurance industry and held by the Insurance Reference Service.
- Insurer's improved access to data will lead to more granular pricing, with higher premiums for higher risks and/or some consumers finding it difficult to obtain cover. That is price discrimination (or price optimization) and inappropriate risk segmentation.
- While it will be the consumer's choice to provide the data, consumers may feel compelled to, as not providing data can provide a negative signal to insurers.
- The cost savings to insurers from more efficient process may not in fact be passed on to consumers.

Risks for insurers

- Lack of common data standards: there are significant variations in the data that is collected by insurers from customers for risk assessment. There is also significant variations in the way consumer data held by state governments and independent bodies is recorded and held
- Data accuracy: there remains questions with respect to the accuracy, consistency and comprehensiveness of insurance claims data collected across the insurance industry.
- Insurers are currently not obligated to validate the disclosure information during the sales and underwriting process – this should lead to consideration of the extent to which insurers should be obligated to validate the information provided when it is in the consumer's interest and the information can be obtained.

Recommended mitigation strategies

Insurers could be obligated to validate the information provided when it is in the consumer's interest and the information can be obtained

In line with the privacy and security provisions of the UK's MyLicence regime, and with some extant mitigants under the CDR the following needs to be put in place:

- Consent to share any disclosure data should be voluntary, express; informed; specific as to purpose; and time limited; and easily withdrawn, in line with rule 4.9 of the Consumer Data Right

- Consumer should be clearly informed what information will be shared and what information will not be shared.
- The data disclosed needs to be limited to the information genuinely required by insurers to provide a quote and comply with data minimization principles (that is limiting data collection to what is required to fulfill a specific purpose).
- Insurer use of disclosed data needs to be limited to the purpose of providing an insurance quote.
- Disclosed data will only be retained if a policy is purchased in order to administer the policy.
- Disclosed data needs to be deleted upon redundancy, or de-identified or anonymized once a use case expires, such as the end of period where a quote is valid.
- Disclosure data of a main driver and any other drivers should not be shared with one another nor provided in any documentation.
- Security standards and controls need to be in place to ensure disclosed and retained data is not accessible to insurer employees unless strictly required to meet the use case.
- Controls should be in place to ensure any updating of information required is done so in a safe and secure manner.
- Safeguards put in place to ensure people can correct data.

Consideration needs to be given to establishing a mechanism for the explicit price monitoring of insurance premiums.

We recommend that forms of disclosure such as criminal and medical records are not appropriate or acceptable to be included under the CDR. There remain significant sensitivities with respect to the sharing of criminal and medical records both of which are considered sensitive information under the *Privacy Act*. It is also debatable how relevant this some of this information is to insurance underwriting, how consistent its use is with social justice objectives, and to what extent exposing people to increased financial risk, for example, because they have had a past insolvency event, or committed an unrelated offence, is in the public interest.

Other solutions available

There are already some bespoke agreements in place to share government held consumer data with insurers. For example: in NSW, insurers can access the demerit point status of a driver via the Service NSW online portal when obtaining Compulsory Third Party Insurance. This disclosure of demerits points is permitted under the regulations²⁸ which provides that:

- a CTP insurer can enter into an agreement with Service NSW for the disclosure of demerit points recorded against a person's name, provided the person provides their consent;

²⁸ cl. 112 and 113 of the *Road Transport (Driver Licensing) Regulation 2017*

- before entering into such an agreement, Service NSW must consult with the Privacy Commissioner; and
- the agreement may provide for the payment of a fee by the CTP insurer to Service NSW.

NSW RMS provides an online Driver Licence Check (DLC) service to authorised organisations, such as heavy vehicle operators, to assist them to fulfil their duty of care responsibilities concerning road safety as well as to encourage the promotion of good driving practices.²⁹ DLC is a web-based application that can be used for organisations to confirm driver licence and demerit point status of drivers engaged, or intended to be engaged, to drive vehicles for their organisation. Each enquiry requires the prior express consent of the licence holder who is the subject of the enquiry. The authorised organisation must retain evidence of that consent for audit purposes. An authorised organisation must also agree to and comply with the stringent auditing requirements set out in an agreement endorsed by the Privacy Commissioner.

Consumer or product data needed

When a consumer obtains a quote and/or obtains the insurance, online, over the phone or face to face, they are generally asked a series of questions where they are required to provide information that discloses to the insurer information that the insurer requires. This generally includes, for example, for a motor vehicle insurance product.

- basic identifying information about the person seeking insurance ;
- driving histories of themselves and occasionally authorized or listed drivers held by state roads and traffic authorities including (variously) demerit points, license suspensions, cancellations or disqualifications; license status; and/or accidents and offences;
- insurance history held by insurers themselves or via the Insurance Reference Service including claims made, claims declined, and insurance cancellations;
- (some insurers require) criminal history held by the National Police Checking Service;
- (some insurers require) employment status, financial position (held by bank and non-bank lenders) and motor vehicle financing National Police Checking Service; and
- damage and condition of a vehicle largely held by Austroads National Exchange of Vehicle and Driver Information System.

Other general insurances can require other information such as:

- pre-existing medical conditions in travel insurance;
- building type, construction materials and security systems in home building insurance (structurally sound and water tight);
- natural hazard data relating to property held by a range of private and public data sources

²⁹ NSW Driver Licence Check <https://roads-waterways.transport.nsw.gov.au/about/access-to-information/release-of-information-authorised-organisations.html>

There is also potential for some non-insurance data sources could assist the underwriting process including:

- using banking data to assess to help assess insurance needs
- access banking record to capture data on purchases to determine sum-insured
- insurers reviewing transactional data to assess risk.

Further data gaps were identified in the Open Insurance report ³⁰including:

- High-resolution elevation/terrain data
- Historical weather data
- Building attribute data
- Building standards and zoning data
- Flood data
- National digital (and quality-controlled) dataset of coastal hazard lines/zones
- Consistent flood model outputs for various climate scenarios
- Topographic data

3. Risk Management

Through the use of excesses, exclusions and rewards, insurers can influence customer behaviour to manage risk. A possible application of CDR is in facilitating the use of customers' insurance data to improve risk management.

CDR may enable an accredited party to access a customer's policy data to advise them on whether an activity is subject to any exclusions or activities. For example, an app may provide advice as to whether a potentially risky activity is covered under their travel insurance policy. Similarly, a rideshare company could check on a potential driver's insurance to record to confirm their work for the company does not affect their coverage.

CDR and associated data standards may also facilitate greater development and use of third-party applications that can be used by insurers to capture information on policyholder risk. For example, a current application is the use of in-vehicle telematics to enable insurers to reward less-riskier driving.

Potential use case/s:

- Better identify the risks for which a consumer may need insurance coverage.
- Obtain more accurate sum-insured information.

Key potential benefits

Benefits for consumers

³⁰ See pages 29-36 Open Insurance

- Consumers may become more informed and engaged with the risks that they face that require insurance.
- There may be an improved outcome for society as risks are mitigated and poor outcomes reduced – such as lowering the rate of motor vehicle accidents through encouraging safer driving, or decreased theft.
- Consumers are not denied insurance at claims time for not meeting their ongoing disclosure requirements.
- Some consumers may be rewarded with lower premiums for safer driving.
- Consumer will have more accurate sum-insured information obtained from more accurate sources.

Benefits for insurers/InsureTech sector

- CDR can assist in removing some of the information asymmetry that besets consumers and insurers.
- CDR could make it easier for third party providers of risk management solutions to simultaneously engage with insurers and policyholders.
- Insurance costs may be lowered through the increased mitigation of certain risks.
- Use of ongoing risk management data may improve risk assessment models.
- Insurers may be better able to tailor their products to the customers' risk profile via usage-based-insurances, Pay-As-You-Drive related variables.
- Insurers will have more realistic understanding of the needs to replace homes for more accurate sum-insured.

Key threats or issues arising from the use of data

Risks for consumers

- Ongoing telemetric data may lead to greater individuated pricing models, increased risk segmentation and inappropriate price discrimination as some winners may emerge with lowered premiums but others lose out with higher premiums.
- This may have a significant impact on vulnerable consumers and equity more generally since driving may become unaffordable for some people (such as the young and elderly) who insurers consider are high-risk.
- Misuse or abuse of data that breaches privacy – one study has demonstrated that a hacker “only needs one part of the information provided to a usage-based insurance company to discover a driver’s whereabouts, home, work, or who they met with.”³¹

³¹ Driver Privacy at Risk when Telematics Data Stored in the Cloud: Researchers, Insurance Journal 10 April 2017 <https://www.insurancejournal.com/news/international/2017/04/10/447364.htm>

- Telematics data used for motor insurance purposes could potentially be used to identify a policyholder's movements, if breach or misused.
 - Travel insurance data records information on when someone is away from their home
 - A potential customer may provide an insurer with details of their security measures for an insured property and details of their valuable contents
 - It could heighten risks of financial abuse from family disputes where insurance is jointly held.
- Risk mitigation improvements and cost savings may not be in fact passed on to consumers if they are not transparent;
 - Consumer may not be aware of the sharing of telematics data – for example, currently the majority of consumer (nearly eight out of 10 drivers (78%)) are unaware that their vehicle is transmitting data back to the car manufacturer about the vehicle and the driver's behavior;³²
 - Opting out of data surveillance may lead disadvantage those consumers who cannot access the telematic systems or cannot afford not to join. This leads to questions over voluntariness of consent. Risk pooling will be skewed leading to higher prices for some, or no longer being insured.

Risks for insurers

- Data systems, data collection, data storage and data analytics to manage vehicle-generated data come with high costs.

Existing risk mitigants and recommended mitigation strategies

- Consent rules need to take into account balance of power issues with respect to those potentially vulnerable consumers who may have no choice but to provide their consumer data to insurers.
- Transparent and proactive approaches to proving trustworthiness in the use and handling of risk data.
- Rules need to be in place to maintain user privacy and ensure proper handling and protection of telematics data including vehicle-generated data.

Other solutions available

- Currently vehicle telematics data about a car performance and the driver is held by the manufacturer. The recent *Competition and Consumer Amendment (Motor Vehicle Service and Repair Information Sharing Scheme) Bill 2021*, which passed Parliament in June 2021, amends the Competition and Consumer Act to establish a mandatory scheme to

³² Australian Automotive Aftermarket Association, Government Should Act on 'Hidden' Telematics – Consumers Agree, 21 February 2021 <https://www.aaaa.com.au/news/aaaa-news/aaaa-says-government-should-act-on-hidden-telematics-and-consumers-agree/>

promote competition in the Australian automotive servicing sector. It requires motor vehicle service and repair information to be made available for purchase by Australian repairers at a fair market price. Telematics data was not included in the bill.

- The Open Insurance report that the regulatory environment for the use of telematics data is currently not conducive to its use.³³
- Currently to determine their sum-insured, consumers are able to use a building calculator. Most insurers incorporate into their quotation a rebuilding cost estimate based on a cost estimator provided by “Cordell Sum Sure” owned by CoreLogic. However, variations in estimates can exist because as a result of insurers customising the building cost estimator (including varying the questions asked). Financial Rights has argued for the need to ensure sum-insured calculators are consistent, updated regularly, independent and provide records to consumers – all of which are not currently the case.

Consumer or product data needed

- Telemetric data
- GPS tracking
- Information in relation to vehicles prepared by or for manufacturers for use in diagnosing faults with, servicing or repairing those vehicle

4. Claims handling process

The claims process involves a large amount of information transfer between consumers and insurers and insurers and other parties.

The potential applications of CDR for claims investigation and processing may be limited as there are currently few barriers to the parties involved in claims investigation and processing sharing information where it is efficient to do so. To manage claims on behalf of their policyholders, insurers share information with a range of suppliers such as assessors, builders and smash repairers.

However, there are some situations that involve additional parties. There are potential applications of CDR for claims processing where other parties are involved.

Potential use case/s:

- Provide requested information (such as bank or telephone records) to the insurer (as CDR is applied to other sectors).
- Provide information to a third party representative (including solicitors, financial counsellor or for-profit claims handling management firms).

³³ Tooth, R. (2017). Insurance influence on road-safety. Working paper produced with the support of Austroads <https://www.aph.gov.au/DocumentStore.ashx?id=12e52b5a-7b23-495d-9528-963e3c0fd111>

- Share your insurance details with other parties involved in the repair/remediation.

Benefits for consumers

- Faster, more efficient claims handling processes including provision of information to insurers.
- Sharing of insurance details with other parties in a claim. For example, CDR may facilitate the parties involved in a motor vehicle crash more easily sharing their insurance details with each other.
- A policyholder more easily sharing their insurance details with a third-party representative who can assist insurance processing claims on behalf of the customer.
- A policyholder more easily sharing their insurance details with other parties involved in the repair/remediation. For example, CDR may make it easier for motor vehicle insurance customers, who (under their policy) have a choice of repairer, to share the insurance details.
- Speedier remediation processes.
- Decrease in timeframes for claims handling.

Benefits for insurers/InsureTech sector

- More efficient claims handling process including decrease in timeframes.
- More accurate information and reduction of information asymmetry.
- Standardisation of data may make it easier for insurers to work with a broader range of suppliers than just the established network.
- Greater standardisation may also have supplementary benefits for back-end processes.
- Increasing the ease with which insurers can use other data from consumers to verify the cost of claims.

Consumer or product data needed

- Basic personal insurance data for sharing with third parties.
- Telematic data.
- GPS tracking.
- information in relation to vehicles prepared by or for manufacturers for use in diagnosing faults with, servicing or repairing those vehicle.
- Phone records, bank and other financial records used in establishing factual matters in an insurance investigation where fraud may be considered.

Key threats or issues arising from the use of data

Risks for consumers

- A key concern for consumers has historically been the intrusiveness of the claim investigation process that insurers use to manage the risk of fraud – this has the

potential to be exacerbated if insurers have quicker, easier, and more expansive access to data sources such as telephone and banking records often required in a claims investigation. ASIC has already identified poor practices from insurers relating to

“onerous, unexplained and successive information requests for a wide range of documents including criminal record checks, social media histories, birth certificates, telephone and text message records, financial statements for every bank and loan account and information about family members and friends”

Easier, speedier and more voluminous access to these sources will only exacerbate these issues unless constrained.

- Insurers could use data obtained under CDR to profile claimants, which could lead to consumers that meet a particular profile being relatively disadvantaged or discriminated. This could lead to tensions where such profiling leads to traditionally disadvantaged groups being impacted more.
- Easier access to claims handling information for for-profit claims management services may lead to poor outcomes for consumers, when similar processes can be done by themselves or by a free and independent community solicitor or financial counsellor.

Risks for insurers

- Current lack of common data standards.

Existing risk mitigants and recommended mitigation strategies

- Limits need to be placed on accessing material for claims handling or investigation processes to prevent fishing expeditions for any material that may be used against a claimant.³⁴

Other solutions available

- *Competition and Consumer Amendment (Motor Vehicle Service and Repair Information Sharing Scheme) Bill 2021*, which passed Parliament in June 2021, amended the Competition and Consumer Act to establish a mandatory scheme to promote competition in the Australian automotive servicing sector. It requires motor vehicle service and repair information to be made available for purchase by Australian repairers at a fair market price. The information included in the scheme is however somewhat limited, and would need significant expansion in order to address some of the issues raised above.

5. Information handling and transparency

General insurance companies are required to disclose to policyholders the information they hold on the consumer and the extent to which your personal information may be shared with

³⁴ For more information on these poor claims handling practices – see Financial Rights, *Guilty Until Proven Innocent* <https://financialrights.org.au/wp-content/uploads/2016/03/Guilty-until-proven-innocent.pdf> and ASIC

other insurance companies, loss assessors, claims agents and insurance reference bureaus. Gaining basic access to ones data is also one of the central reasons for the CDR.

Potential use case/s:

- Obtain, examine and use the information held by insurers on you more easily

Key potential benefits

Benefits for consumers

- More easily obtain the information general insurers hold on you and the extent to which your personal information may be shared with other insurance companies, loss assessors, claims agents and insurance reference bureaus.
- Obtain your information for free rather than paying \$22 to the Insurance Reference Service for the My Insurance Report for the same information.³⁵
- More readily identify incorrect information held by insurers.
- Potentially more easily correct any incorrect information held by insurers.
- Identify disclosure information that is missing and update it as appropriate.
- Greater knowledge and control over the information held.
- Increased transparency and confidence in insurance sector information handling.
- Use the information in a manual (rather than automatic way) for disclosure purposes with comparison services or another insurer for better quoting and switching.

Benefits for insurers/InsureTech sector

- More easily provide privacy information as required under the *Australian Privacy Rules*.
- Improve information quality held.
- Motivate to hold data in a more consistent fashion.
- Potentially improve information asymmetries if information is corrected.
- Improve product offerings if data is appropriately fed back into the design and distribution

Key threats or issues arising from the use of data

Risks for consumers

- Holding this information in machine readable form may potentially lead to the loss of sensitive data with consequential problems
- Identifying incorrect information may be difficult depending on the form it is in

³⁵ <http://insurancereferenceservices.com.au/about>

- Information may be held inconsistently across insurers and unreliable.
- Use of Insurance enquiries – if used to underwrite risk has the potential to discriminate against those who seek better deals and thereby undermine competition.

Risks for insurers

- Increased resources needed to correct information
- Potential doubling up in providing information to the IRS

Existing risk mitigants and recommended mitigation strategies

- Treasury is currently considering the issue of passing CDR data to non-accredited parties. The CDR PIA recommended that the CDR include an obligation on Data Holders to “warn” CDR Consumers when providing them with their CDR Data pursuant to their request (for example to state that the protections of the CDR regime (and possibly the APPs) will not apply if they provide that data to a third party).
- Provide information in a form that is secure.
- Provide warnings when providing them with their CDR data that CDR protections may not be available if they provide the data to a third party

Other solutions available

- Insurance Reference Service – which is currently not specifically regulated to the same extent as Credit Reporting, is reportedly unreliable, difficult to access and costs a consumer \$22 to access their own data.
- Manual processes to obtain data from individual insurers – this is currently a genuinely laborious and complicated process

Consumer or product data needed

Currently MyInsurance Reports including the following information:

- Insurance claims
 - Date of loss
 - Name of Insurer
 - Insurance Type
 - Claim No
 - Policy No
 - Policy Holder
 - Claim Type
 - Net settlement Amount
 - Claims recovered from third parties
 - Excess paid
 - Relationship

- Vehicle details
- Vehicle make
- Year
- Registration number
- Vehicle model
- VIN
- Registration State
- Write-off status
- Insurance enquiries
 - Date
 - Reference No
 - Name of Insurance (Member of IRS)
 - Insurance Type
 - Reason
 - Amount
 - Relationship (?)
- Loss assessor/adjustor/investigator

My Insurance Reports also include the following non-insurance related information:

- Public Record information
 - Bankruptcies
 - Summons
 - Judgments
- Commercial Credit History
 - Defaults
 - Serious credit infringement notices
 - Credit enquiries
 - Authorised agent enquiries
- Business relationships
 - Current Directorships
 - Previous Directorships

That is not to argue that this is what needs to be shared. For example, if insurance enquiries are used to underwrite risk, this has the potential to discriminate against those who seek better deals and thereby would undermine competition.

Datasets or kinds of data that may or may not be suitable for Consumer Data Right designation

- We have reservations about the use and access to the following consumer datasets for insurance processes described above:
 - Health, medical and fitness data
 - Criminal records
 - Financial records – with respect to underwriting and risk profiling that may lead to discrimination
 - Grocery, shopping or other retail spending data used to underwrite and risk profile based on inappropriate correlations leading to discrimination