

7 September 2018

Mr Daniel McAuliffe
Structural Reform Group
The Treasury
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Dear Mr McAuliffe

Treasury Laws Amendment (Consumer Data Right) Bill 2018

The Insurance Council of Australia¹ (Insurance Council) appreciates the opportunity to comment on the exposure draft *Treasury Laws Amendment (Consumer Data Right) Bill 2018* (the draft Bill). We are also grateful for the roundtables held by Treasury on 23 August and 28 August 2018.

Consistent with previous submissions, the Insurance Council continues to support the development of a legislative framework enabling consumers to more effectively use data relating to them. While we recognise the need for “flexibility to make rules that are appropriate and adapted to any industry that might become designated into the future”² we also note that “the Government considers it important to provide direction to the ACCC on the types of consumer data rules that can be made”³.

The Insurance Council is concerned that the draft legislation, in its current form, provides insufficient direction regarding the scope of data subject to the consumer data right (CDR) regime. At the roundtable on 28 August 2018, Treasury expressed its intention that the CDR regime was *not* to capture high value added data, consistent with the Productivity Commission’s objective for a data regime to “preserve commercial incentives to collect, maintain and add value to data.”⁴ However, this intent is not reflected in the draft legislation apart from a requirement that the Minister consider, as one of a number of factors, the effect of a designating instrument on “promoting data-driven innovation”.⁵ The Insurance Council suggests this intention could be explicitly indicated and that a criteria along the lines of the Productivity Commission’s objective could be added to the list of factors to be considered when designating a sector or making rules under s56AD(1)(a).

¹ The Insurance Council of Australia is the representative body of the general insurance industry in Australia. Our members represent approximately 95 percent of total premium income written by private sector general insurers. Insurance Council members, both insurers and reinsurers, are a significant part of the financial services system. June 2018 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$45.7 billion per annum and has total assets of \$121.4 billion. The industry employs approximately 60,000 people and on average pays out about \$120.8 million in claims each working day.

² Exposure Draft Explanatory Materials, clause 1.27

³ *ibid*

⁴ *Productivity Commission Inquiry Report* (31 March 2017) “Data Availability and Use” p13

⁵ Exposure Draft *Treasury Laws Amendment (Consumer Data Right) Bill 2018* s56AD(1)(a)(v)

Insurers hold detailed and sophisticated data in order to underwrite a wide range of risks faced by consumers and businesses. Underwriting data is a commercial asset for insurers, and it is also the basis on which insurers compete against each other. It is essential that any requirement to release data does not compromise the underwriting models used by individual insurers to assess and price risk.

The Insurance Council strongly supports the draft legislation's design feature that consumer data rules may differ between sectors to capture the unique attributes of each sector and also manage the relevant regulatory burden.⁶ In addition to a sector specific data policy, the Productivity Commission recommended that "participants in an industry should determine the scope of consumer data relevant to their industry" in the form of a data specification agreement to be registered with the Australian Competition and Consumer Commission (ACCC).⁷

The Insurance Council understands that the ACCC will be releasing details of its rules framework on 17 September 2018. We suggest that the legislation, taken together with the ACCC's rules framework, should be consistent with the PC's recommendation of an industry led data policy. This would allow the scope of the consumer data right to evolve in line with the changing data and technological landscape faced by industry.

Under the draft legislation, the consumer is defined to include individuals and businesses.⁸ The provision of a consumer right to large business enterprises appears contrary to the intended operation of the policy. The Explanatory Memorandum notes that the "CDR is designed to give customers more control over their information leading, for example to where they take their business, or more convenience in managing their money and services"⁹. The Insurance Council questions the need in this context, for the right to be extended to large business enterprises.

If you have any questions or comments in relation to our submission, please contact John Anning, the Insurance Council's General Manager Policy, Regulation Directorate, on (02) 9253 5121 or janning@insurancecouncil.com.au.

Yours sincerely



Robert Whelan
Executive Director & CEO

⁶ Exposure Draft *Treasury Laws Amendment (Consumer Data Right) Bill 2018* ss56BA(2), 56FE(2), and Exposure Draft Explanatory Materials, clause 1.82

⁷ *Productivity Commission Inquiry Report* (31 March 2017) "Data Availability and Use" Recommendation 5.2, p210

⁸ Exposure Draft *Treasury Laws Amendment (Consumer Data Right) Bill 2018* ss56AF, and Exposure Draft Explanatory Materials, clause 1.53

⁹ Exposure Draft Explanatory Materials, clause 1.1