

May 2020

# Submission to the Inquiry into Future Directions for the Consumer Data Right

## ABOUT US

Super Consumers Australia (Super Consumers), formerly known as the Superannuation Consumers' Centre, is an independent, not-for-profit consumer organisation formed in 2013. Super Consumers was first funded in 2018. We work to advance and protect the interests of low and middle income people in the Australian superannuation system.

During its start up phase Super Consumers has partnered with CHOICE to deliver support services. CHOICE is the leading consumer advocate in Australia, established 60 years ago, it is an independent voice, ensuring consumers get a fair go.

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*The Superannuation Consumers' Centre is a not-for-profit company limited by guarantee. ABN 34 163 636 566 ACN 163 636 566*

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## Introduction

Super Consumers Australia strongly supports the Consumer Data Right (CDR) and its expansion to superannuation. A consumer data regime has the potential to break the current cycle of consumer disengagement, poor competition and inadequate product design that characterises superannuation and results in poor member outcomes.<sup>1</sup>

The CDR can enable this much-needed disruption in two main ways. Firstly, few super funds collect sufficient data to understand their members' needs.<sup>2</sup> Anecdotally, funds provide a host of reasons for this, including limitations to data provided by employers, and poor member engagement. While we don't accept this justification for inaction, the CDR could help funds to more easily access useful information about their members to inform the design of products that are better tailored to their members' circumstances and needs.

Secondly, expanding the CDR to super would allow independent third parties to develop consumer-facing tools. For example, it could be used to greatly enhance the Productivity Commission's recommendation of a 'best in show' for super funds by allowing for tailored shortlists of products, according to the needs of individuals and particular cohorts (eg. young people and families). This intervention would highlight consistently poor-value products, generating more competition in the market and incentivising funds to lift their performance. With 'write access', third parties could also directly facilitate switching between funds and products. Research suggests that for many people, this is a task usually consigned to life's 'too hard' basket.<sup>3</sup>

However, the complexity of the superannuation market means that some common standards and sources of data are needed before the benefits of CDR can be realised. Without these common standards, expanding the CDR to superannuation may further complicate decision making and ultimately lead to poor consumer outcomes. Additionally, we call for stronger financial advice laws to ensure the benefits of a consumer data regime flow to consumers.

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<sup>1</sup> Super Consumers Australia, [Submission To The Senate Select Committee On Financial Technology And Regulatory Technology](#), 2019

<sup>2</sup> Productivity Commission, 2018, '[Superannuation: Assessing Efficiency and Competitiveness](#)', p. 236

<sup>3</sup> Productivity Commission, 2018, '[Superannuation: Assessing Efficiency and Competitiveness](#)', p. 253

## Summary of Recommendations

**Recommendation 1:** That the Federal Government expand the Consumer Data Right to the superannuation sector.

**Recommendation 2:** That in expanding the Consumer Data Right to superannuation, the Federal Government include 'write' access to enable trusted third parties to apply for, manage and change superannuation and bundled insurance products on behalf of consenting consumers.

**Recommendation 3:** That the ATO build a comparator and switching service into its MyGov consolidation tool, to generate tailored 'best in show' shortlists for people choosing a new superannuation fund or product.

**Recommendation 4:** That the CDR Inquiry investigate allowing the ATO to give accredited third party comparison and switching services access to the ATO's SuperMatch data, with consumer consent.

**Recommendation 5:** That APRA establish a set of mandatory cohorts on which super funds must collect data. These include but are not limited to gender, income, balance size and number and age of dependents.

**Recommendation 6:** That the Federal Government require funds to publish simple, single-page product dashboards for all superannuation investment options and standard machine readable versions of this data be made available by December 2020.

**Recommendation 7:** That the Federal Government review the adequacy of consumer protections in financial advice as proposed in the Financial Services Royal Commission.

**Recommendation 8:** That the Federal Government resource independent consumer organisations to utilise consumer data. In particular, that it progress its work on developing a funding model for an independent Superannuation Consumer Advocate to undertake this role.

## Lack of competition in superannuation leads to poor outcomes for members

If superannuation operated as a normal 'market', funds would have to compete for business and people would shop around for the best offer, 'voting with their feet' when funds failed to deliver.<sup>4</sup> Funds would strive to create quality products tailored to people's needs. But this isn't how superannuation currently operates.

### Information asymmetry leading to consumer disengagement

Research by CHOICE in 2016 showed that the superannuation system is far too complex and that just thinking about it makes many people anxious and uncomfortable.<sup>5</sup> The research also found that people often feel kept 'in the dark' by the super funds, with many seeing them as biased and self-serving.<sup>6</sup> Our recent survey of CHOICE supporters suggests people still struggle to find information they can trust and understand.<sup>7</sup>

#### Direct from consumers: comments from the 2020 Super Consumers survey<sup>8</sup>

*It is complicated. There must be a way of making it easier to understand, and to help people to make decisions. Who do you trust? - Laila*

Around two thirds of people open an account with their employer's chosen default super fund when they join the workforce or change jobs.<sup>9</sup> Some do so despite already having a super account from a previous job. These people end up paying administration and insurance fees for multiple accounts. To make matters worse, close to 80% of people never check that the default insurance cover they hold as part of their super is right for them.<sup>10</sup>

<sup>4</sup> Productivity Commission, 2018, '[Superannuation: Assessing Efficiency and Competitiveness](#)', p. 248

<sup>5</sup> CHOICE 2016. [Project Superpower](#), p.14

<sup>6</sup> CHOICE, 2016, '[Project Superpower](#)', p.14.

<sup>7</sup> Super Consumers Australia and CHOICE, 2020, 'Retirement in Australia survey', Q. Retirees - 'How complicated has it been to plan for your retirement?', Pre-retirees: 'How complicated do you think it will be to plan for your retirement?' n = 10,674, not nationally representative.

<sup>8</sup> Super Consumers Australia and CHOICE, 2020, 'Retirement in Australia survey'.

<sup>9</sup> Productivity Commission, 2018, 'Superannuation: Assessing Efficiency and Competitiveness', p. 262

<sup>10</sup> Productivity Commission, 2018, 'Superannuation: Assessing Efficiency and Competitiveness', p.384

Levels of disengagement with super are high, despite it being the second largest financial investment most people will make during their lifetime. A key driver of disengagement is the compulsory nature of super,<sup>11</sup> and the limited availability of consumer-friendly information to help people evaluate their options and make informed decisions.

Simple information in the form of product dashboards is compulsory for MySuper (default) products, however it is often difficult to find on super funds' websites and does not contain standardised metrics. This makes product comparison and assessment difficult. To compound the problem, most of the 40,000<sup>12</sup> investment options in superannuation exist in what is known as the 'choice' sector, where the requirement to produce product dashboards is perennially delayed. Product dashboards would be especially valuable in the choice sector given the permeation of poor value products that charge high fees and yield low returns.

The Productivity Commission's inquiry into superannuation found a raft of problems across the industry, including chronic fund underperformance, high fees, duplicate accounts, and inappropriate insurance products. It also revealed the limited incentive for super funds to address these problems as a result of the high level of member disengagement and the prohibitively complex market.<sup>13</sup> The implications for consumers are serious: The Productivity Commission estimated that around 1.6 million MySuper products underperformed benchmarks over the previous decade,<sup>14</sup> and found that poor fund performance can cost a person as much as \$502,000 over their working life.<sup>15</sup>

The Commission emphasised the need for more competition, predicting that "robust competition between funds" would lower costs, maximise net returns and improve member outcomes.<sup>16</sup>

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<sup>11</sup> Productivity Commission, 2018, '[Superannuation: Assessing Efficiency and Competitiveness](#)', p.284

<sup>12</sup> Productivity Commission, 2018, '[Superannuation: Assessing Efficiency and Competitiveness](#)', p.204

<sup>13</sup> Productivity Commission, 2018, '[Superannuation: Assessing Efficacy and Competitiveness](#)', p.248

<sup>14</sup> Productivity Commission, 2018, '[Superannuation: Assessing Efficiency and Competitiveness](#)', p.52

<sup>15</sup> Productivity Commission, 2018, '[Superannuation: Assessing Efficiency and Competitiveness](#)', p.30

<sup>16</sup> Productivity Commission, 2018, '[Superannuation: Assessing Efficiency and Competitiveness](#)', p. 22



*Image: Factors exacerbating poor consumer outcomes*

### **Inadequate data collection leading to poorly designed products**

The lack of quality data collection by superannuation funds has hamstrung their ability to provide quality, innovative products that meet people's needs. For example the Productivity Commission found that funds collected limited data on member characteristics such as age, personal income, employment status and education.<sup>17</sup> Its survey of super funds revealed that 79.5% of those surveyed collected no data about whether a member had dependents and 79.5% also failed to collect data on income level.<sup>18</sup>

Superannuation funds are charged with providing life insurance that will protect members and their families in the event of death or disability. Not knowing anything about the family structure of their members or their members' income levels severely limits their ability to offer appropriate products.

This also creates a challenge for APRA, which is charged with determining whether a fund is meeting the best interests of its members. Without adequate demographic data about a fund's membership, it is unclear on what basis APRA is in a position to make these assessments.

<sup>17</sup> Productivity Commission, 2018, 'Superannuation: Assessing Efficiency and Competitiveness', p.237

<sup>18</sup> Productivity Commission, 2018, 'Superannuation: Assessing Efficiency and Competitiveness', p.238

Soon to be released research by Super Consumers confirms that most default Total and Permanent Disability (TPD) insurance policies through super contain extremely restrictive definitions. These terms make it much more difficult for people to claim if they are unemployed, working less than a certain number of hours per week, or working in ‘hazardous occupations’. Research from ASIC found that 60% of people who attempted to make a claim under these terms were denied.<sup>19</sup> This compares poorly with an average of just 12% claims denial for other groups.

Currently, the majority of people in these groups are likely unaware that they are paying full price for insurance that they may be unable to claim upon. Expanding the consumer data right to superannuation could make it much easier for people to be aware of this shortfall in their insurance. It could also provide more data to super funds to help them better tailor their products to members' needs.

#### Case study: Wayne's story

Super Consumers recently shared the story of Wayne, a truck driver who suffered a stroke that had a devastating impact on his health, particularly his vision.<sup>20</sup> His doctor told him he would likely never work as a truck driver again. Wayne had been paying for TPD insurance through his employer's default super fund. However his claim was rejected as the insurer classified truck driving as a ‘hazardous occupation’. In this case, the trucking company that employed Wayne had defaulted him into a fund that provided insurance that was inappropriate for truck drivers.

## How the CDR can boost competition and improve member outcomes

The issues paper invites submissions on the future roles that could be performed by the Consumer Data Right.<sup>21</sup> There are several ways that expanding the CDR to superannuation could help to achieve more robust competition between super funds, improving outcomes for members.

<sup>19</sup> ASIC, 2019, ‘[Holes in the safety net: A review of TPD insurance claims](#)’.

<sup>20</sup> CHOICE, 2020, “[Junk insurance in super: 'I got nothing' says Wayne](#)”

<sup>21</sup> Treasury, 2020, Inquiry in to the Future Directions of CDR [issues paper](#), p.4



## Making it easier for funds to access information about their members

When funds fail to collect even basic demographic information about their members, they miss the opportunity to identify patterns in member characteristics and design products accordingly. The CDR could provide super funds with easier access to data collected by members' previous funds, as well as financial institutions. It would be particularly useful for funds to be able to directly access details about members' beneficiaries. Funds could use this data to build a more complete picture of their members' domestic and financial situations and histories.

For example, funds could calculate members' average projected retirement balances for different cohorts. They could then use this information to help struggling cohorts meet their retirement goals. They could also develop cost effective options for people who are not currently earning an income.

## Facilitating comparison tools

The Productivity Commission called for "suitably framed, simple, accurate, accessible and comparable information from a trusted source"<sup>22</sup> to promote better consumer engagement with super.

Expanding the CDR to superannuation could require funds to make available data about members' balance sizes, contribution histories, beneficiaries, and other key factors. Accredited third parties could then use this data to develop consumer-friendly product comparison tools capable of making tailored recommendations to people based on factors such as their life stage, financial health, retirement goals, occupation, time in the workforce, physical health, employment status, number of dependents, contribution history and number of existing superannuation accounts.

Consumer comparison tools that include a static list of 'best performers' are of limited value in the superannuation context. To make better decisions people need access to tailored information that helps them choose products that match their needs. For example, younger people with longer investment horizons could be alerted to products that have a higher risk/return trade off that may be more appropriate to their needs. Conversely, people nearing retirement could be connected with more appropriate low risk products.

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<sup>22</sup> Productivity Commission, 2018, '[Superannuation: Assessing Efficiency and Competitiveness](#)', p.266

The tools could also assist people to understand their insurance needs and the most suitable products. People caring for families could be prompted to adjust their insurance cover, and be informed of eligibility changes associated with taking time out of the workforce or reducing working hours.

Empowering people to compare options and make objectively good decisions about where to invest their retirement savings would help compel funds to either improve poor quality products, or exit the market. Incorporating superannuation funds into the CDR framework could also help them get more data on their membership and use this data to better design products.

**Recommendation 1:** That the Federal Government expand the Consumer Data Right to the superannuation sector.

### How ‘write’ access could help people manage their superannuation

Despite some clear benefits of moving to a better performing fund, switching rates in superannuation are low, with between 2% and 10% of people switching funds in a given year.<sup>23</sup> Approximately half of these switches are the result of a new job or an employer changing the nominated default super fund.<sup>24</sup> People disengage from decisions about superannuation, in part due to the perceived ‘chafe’ involved in engaging with their superannuation fund.<sup>25</sup> There is little incentive for superannuation funds to make these processes easier, as this may contribute to an outflow of members.

#### Letter from a consumer: Difficulty switching funds

*Rolling over [my super] was a long and confusing process which required a lot of effort on my part, spanning many emails and phone calls. Communication should have been far more efficient and streamlined. Due to the frustration that I experienced, I would be reluctant to change super funds again in the future. - Lindsay*

Expanding the CDR to include write access for third parties in the superannuation sector would allow this ‘chafe’ to be removed. Third party providers could focus on being a ‘one-stop shop’ for administering life administration tasks, like managing superannuation along with other services.

<sup>23</sup> Productivity Commission, 2018, ‘[Superannuation: Assessing Efficiency and Competitiveness](#)’, p.21

<sup>24</sup> Productivity Commission, 2018, ‘Superannuation: Assessing Efficiency and Competitiveness’, p.251

<sup>25</sup> CHOICE, 2016, ‘Project Superpower’

Write access would allow people to more easily manage a range of superannuation related tasks, like budgeting for retirement, finding appropriate insurance and investment options, as well as managing binding nominations for death benefits. In superannuation, once the fundamentals are in place, there is a decreased need to make frequent changes. This creates challenges for consumers when it comes time to engage, including:

- The need to re-learn the basics of investment options, bundled life insurance, binding nominations,
- The need to learn how to interface with their fund (e.g. remember login details and interface options),
- Limits on the types of advice the superannuation fund can provide,
- Lack of awareness of the times when engagement is valuable (e.g. changing jobs, having a child, updating binding nominations, nearing retirement)

Allowing write access would enable people to manage services through a familiar platform and get the advice they need to make decisions. CHOICE research on engagement with superannuation found a strong desire among consumers for reminders to help them monitor their savings via a central platform.<sup>26</sup> This would ensure that super stays on the radar, and prompt more regular consideration and behaviour around super.

Appropriate protections need to be in place if we are going to give third parties write access to someone's retirement savings. We will deal with this in the final section on consumer protections.

**Recommendation 2:** That in expanding the Consumer Data Right to superannuation, the Federal Government include 'write' access to enable trusted third parties to apply for, manage and change superannuation and bundled insurance products on behalf of consenting consumers.

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<sup>26</sup> CHOICE, 2016, '[Project Superpower](#)', p.32

## Linking CDR-driven comparison tools with existing frameworks and infrastructure

The issues paper invites input on the potential linkages and interoperability with other consumer-directed data portability regimes.<sup>27</sup>

### **Incorporate comparison and switching tools with MyGov’s consolidation feature**

The Australian Taxation Office (ATO) already makes it possible for people to view and consolidate superannuation funds via the MyGov website. The Productivity Commission recommended that the ATO expand this service to allow people to select a new fund from a list of the top 10 MySuper products (Recommendation 2).<sup>28</sup> It recommended the list be created by an independent expert panel, and that it target people who are new to the workforce, changing jobs, or simply wishing to engage with their superannuation.

The use of consumer data could allow for more nuanced versions of the ‘best in show’ model proposed by the Productivity Commission.<sup>29</sup> A shortcoming of the model as it is proposed is that the list would be the same for everyone, even though different demographics have different retirement planning needs. Access to consenting people’s data could allow such a tool to generate tailored ‘best in show’ style shortlists, minus the ‘one size fits all’ approach.

This idea of a one-stop-shop to manage superannuation via a centralised portal had strong appeal among research participants in a 2016 CHOICE research project.<sup>30</sup> By linking the management of superannuation to other financial administration, participants felt they’d be more likely to engage with decisions about superannuation.

**Recommendation 3:** That the ATO build a comparator and switching service into its MyGov consolidation tool, to generate tailored ‘best in show’ shortlists for people choosing a new superannuation fund or product.

<sup>27</sup> Treasury, 2020, Inquiry in to the Future Directions of CDR [issues paper](#), p.6

<sup>28</sup> Productivity Commission, 2018, ‘[Superannuation: Assessing Efficiency and Competitiveness](#)’, p.65

<sup>29</sup> Productivity Commission, 2018, ‘Superannuation: Assessing Efficiency and Competitiveness’, p.31

<sup>30</sup> CHOICE, 2016, ‘[Project Superpower](#)’, p.32

### Third party access to data held by the Australian Taxation Office (ATO)

The CDR aims to allow consumers to “make more informed decisions about both themselves and the goods and services they use” by providing access to data that businesses collect about them.<sup>31</sup> In the context of superannuation, comparison and switching tools would be enhanced if consumers could also provide access to data collected by non-commercial entities such as the ATO.

The ATO plays a core role in superannuation administration: it tracks people’s wages, taxation, superannuation contributions and rollovers. It also reunites people with their lost super and facilitates account consolidation. Most recently it was used to manage people’s requests for early access to superannuation. Some of this information is stored in the ATO’s database, SuperMatch. APRA-regulated funds can search SuperMatch to determine whether a member has other superannuation accounts or lost superannuation, and help the member consolidate.

Expanding the CDR to include data kept by the ATO would enable third party comparators and switching tools to access data from superannuation funds that consumers may have forgotten about. As discussed in more detail later, this type of expansion would require much higher standards of conduct in the financial advice space. For now we recommend the Inquiry investigate this option and consider what additional consumer protections are required in financial advice to make this option feasible.

**Recommendation 4:** That the CDR Inquiry investigate allowing the ATO to give accredited third party comparison and switching services access the ATO’s SuperMatch data, with consumer consent.

### Maximising the CDR’s potential to transform superannuation

The issues paper invites submissions on what needs to happen to maximise the benefits of CDR.<sup>32</sup> Some common standards and sources of data are needed before the benefits of CDR can be realised for superannuation.

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<sup>31</sup> Parliament of the Commonwealth of Australia, House of Representatives, 2019, [Explanatory Memorandum](#), TREASURY LAWS AMENDMENT (CONSUMER DATA RIGHT) BILL 2019,, p.3

<sup>32</sup> Treasury, 2020, Inquiry into the Future Directions of CDR [issues paper](#), p.4

## Require funds to collect better data

Superannuation fund data made available to third parties will only be as useful as the data that superannuation funds collect in the first place. In order to meet the best interests of members, superannuation funds need to ensure their products deliver good member outcomes. In order to do this they need to collect sufficient data about their membership to ensure their product offerings are meeting member needs. The Productivity Commission made clear that the data which funds currently collect is insufficient.<sup>33</sup>

The regulator, APRA, is undergoing a data transformation project, which in part aims to improve the obligations on superannuation funds to report data which demonstrates how they are meeting the needs of members. In part this will require funds to consider relevant cohorts of members and how their products are delivering outcomes for these cohorts.

To date APRA has left it largely up to funds as to how they define these relevant cohorts. We are concerned that this leaves far too much discretion in the hands of funds who have historically failed to collect relevant information to understand the needs of members. We have recommended that APRA establish a set of mandatory cohorts which include (but are not limited to) gender, income, balance size and number and age of dependents.<sup>34</sup> This would allow a common data set and independent points of comparison across funds, against which their relative performance in delivering to the needs of these cohorts could be compared.

This would also have benefits to the establishment of a consumer data regime. It would allow third parties to independently assess the strengths of funds in delivering to the needs of individual cohorts of members. This type of analysis would assist with business to business services, in helping funds understand how well they perform against peers. It would also allow third parties to directly help people find a fund that is better at looking after their individual needs (e.g. a fund with product design features better targeting near retirees or carers).

**Recommendation 5:** That APRA establish a set of mandatory cohorts on which super funds must collect data. These include but are not limited to gender, income, balance size and number and age of dependents.

<sup>33</sup> Productivity Commission, 2018, '[Superannuation: Assessing Efficiency and Competitiveness](#)', p504.

<sup>34</sup> Super Consumers Australia, 2019, '[Submission](#) In Response To APRA Consultation Letter On Prudential Standard SPS 515

## Facilitate access to existing data sources

Currently data collection powers sit with APRA, for the purposes of prudential regulation. Where data has been collected, it has not been for the purpose of helping consumers make better decisions about superannuation.

For example, APRA's 'heatmaps' compare funds on performance, fees and sustainability using colour gradients. The data was presented in an array of spreadsheets which left many journalists and even industry insiders at a loss to explain what it all meant for an individual consumer. One industry commentator labelled the spreadsheets "about as useful as an ashtray on a motorbike" for consumers wanting guidance on picking the best fund.<sup>35</sup>

APRA has been at pains to point out that the primary purpose of these heatmaps is to assist the regulator and industry to improve, it is not designed to be consumer facing.<sup>36</sup> Meanwhile, ASIC has continued to develop its expertise in delivering high quality consumer facing information through its MoneySmart website. There are still significant gaps in the data ASIC can rely upon to create consumer facing information. For example, not all funds are required to publish simple, single-page product dashboards for all superannuation investment options. This was a recommendation of the Productivity Commission in 2018 and the Stronger Super reforms in 2013, but without the creation of the enabling regulations this reform has currently been pushed out until 2023.

It is disappointing that it will take over a decade, or potentially longer to implement this simple measure. Without this information the ability of open data to transform the superannuation market will be severely hampered.

These product dashboards should be made available as a priority. The underlying data should also be made available in standard machine readable format to facilitate use by regulators and third parties.

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<sup>35</sup> SMH, 2019, 'Worst performing superannuation funds exposed by APRA 'heatmap'', available at: <https://www.smh.com.au/business/banking-and-finance/worst-performing-superannuation-funds-exposed-by-apra-heatmap-20191210-p53ihq.html>

<sup>36</sup> Rowell, H., 2019, 'APRA Deputy Chair Helen Rowell - Speech to the 2019 ASFA Conference', available at: <https://www.apra.gov.au/news-and-publications/apra-deputy-chair-helen-rowell-speech-to-2019-asfa-conference>

**Recommendation 6:** That the Federal Government require funds to publish simple, single-page product dashboards for all superannuation investment options and standard machine readable versions of this data be made available by December 2020.

## Consumer protection

There are clear reminders in recent history that some business models have sought to exploit ineffective consumer protections and erode the value that would otherwise be delivered to consumers. The evidence uncovered in the Financial Services Royal Commission in relation to the financial advice space is a clear example of this value erosion. The Commission found that financial advisers and vertically integrated business models are systematically taking advantage of weaknesses in the consumer protection regime to place their interests ahead of their clients. This includes charging fees for no service and keeping people in inappropriate products in order to maintain commissions.

The CDR regime has the potential to create sales channels through which new financial advice business models can access customers. We anticipate that businesses may use the CDR to create digitised and streamlined ‘robo advice’ in place of traditional one-on-one advice between advisers and clients. This could make advice more affordable and efficient, but without adequate protections, granting write access could increase the ability of self-interested advisers to take advantage of this new market.

### Conflicts in financial advice

Conflicted advice continues to plague the financial services sector. ASIC’s 2018 report considered advice given by the five biggest vertically integrated financial institutions, regarding advice to switch to in-house products. The report found that in 75% of the advice files reviewed, the advisers did not demonstrate compliance with the duty to act in the best interests of their clients.<sup>37</sup> Similarly, ASIC’s 2019 report looked at the quality of advice provided by superannuation funds. ASIC found that 51% of advice files reviewed did not comply with the best interests duty and related obligations.<sup>38</sup>

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<sup>37</sup> ASIC 2018, [Financial advice: Vertically integrated institutions and conflicts of interest](#), p.8

<sup>38</sup> ASIC, 2019, Financial advice by superannuation funds, p.30



Advice to establish self-managed super funds has also fallen well below the mark, with ASIC finding in 2018 that 91% of files did not comply with Corporations Act's 'best interests' duty and related obligations.

These reports come post the Future of Financial Advice (FoFA) reforms, which introduced a best interest duty and removed some types of conflicted remuneration. The Financial Services Royal Commission (FSRC) made further recommendations to remove some remaining conflicted remuneration (e.g. life insurance and grandfathered commissions). These will go some way to removing conflicts. However, before expanding the CDR to the superannuation sector, there is a need to review the adequacy of consumer protections, in particular those advice related protections.

Commissioner Hayne's commentary in the FSRC final report is instructive. He was critical of the approach taken in FoFA, which attempted to manage rather than remove the conflict between adviser self-interest and the interests of the client.<sup>39</sup> As the forensic analysis of the FSRC and the ASIC reports mentioned above show, self-interest tends to trump the interests of the client. The Commissioner was skeptical of the ability of existing laws to fix these problems. However, he acknowledged there were a number of new protections soon to be introduced that may lessen the influence of conflicts, including improved adviser training and design and distribution obligations. The Final Report recommended a review of the advice laws no later than December 2022 to assess whether further reform was needed.<sup>40</sup>

Given the advice sector is yet to solve its ongoing problem with conflicts of interest it is too soon to open up superannuation to write access. Giving third parties a new channel to sell superannuation products to people, in a context where, at best, half of the financial advice given is in breach of the law, would be reckless. We recommend that the FSRC's proposed review of financial advice occur before write access for financial products, like superannuation, is considered.

**Recommendation 7:** That the Federal Government review the adequacy of consumer protections in financial advice as proposed in the Financial Services Royal Commission.

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<sup>39</sup> FSRC, 2019, Final Report, p.169

<sup>40</sup> FSRC, 2019, Final Report, p. 26

## **How consumer organisations are best placed to harness consumer data for the benefit of consumers**

As outlined above, many of the existing business models that would make use of consumer data are hamstrung by self-interest. This means the expected benefits from creating a consumer data right may disproportionately accrue to service providers, rather than consumers.

One way to counterbalance this impact is to establish and/or fund consumer organisations to develop uses for consumer data. In the same way that the ABC is funded with a specific mandate of producing content which benefits all Australians (e.g. local content, regional content, content independent from commercial influence), consumer organisations can be funded to make use of consumer data to benefit all Australians.

As an independent consumer advocacy body, Super Consumers Australia can see the value in using this data to develop tools which help people engage with their superannuation. Engagement with superannuation has traditionally struggled to resonate with consumers. Our research has shown that in part this is due to the complexity of the system and the perceived self-interest of many of the players (e.g. superannuation funds and advisers). There are distinct advantages in having a mandate to make use of consumer data within a consumer advocate. An organisation known for its independent consumer focus will have a position of trust which will help it 'cut through' to people in a way traditional players cannot.<sup>41</sup>

There are also many non-commercial uses of consumer data that would not find a market if a consumer organisation didn't exist to make use of them. For example, free and independent financial counselling services exist to assist people experiencing financial hardship with support and financial advice. These services would be well placed to utilise consumer data to assist people in managing their finances. These services provide a significant social benefit, but given their clients are in financial hardship this is not a service that can realistically operate for profit.

Consumer organisations should be funded to develop non-commercial, conflict-free services. They are uniquely placed to ensure the data is analysed and presented purely in the interests of consumers. As we made clear in our response to the Federal Government's Expression of Interest process for funding a Superannuation Consumer Advocate, we are well placed to take on this role for the benefit of superannuation consumers.

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<sup>41</sup> CHOICE, 2016, 'Project SuperPower', p.18

**Recommendation 8:** That the Federal Government resource independent consumer organisations to utilise consumer data. In particular, that it progress its work on developing a funding model for an independent Superannuation Consumer Advocate to undertake this role.