



3 September 2021

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Treasury
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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,



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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



**Financial
Rights**

LEGAL CENTRE

Open Insurance

The Consumer Data Right and Insurance



sapere
research group

DR RICHARD TOOTH
22 SEPTEMBER 2020
SAPERE RESEARCH GROUP



Contents

Glossary	iii
Forward	v
Summary	ix
Insurance use of data	ix
Potential use cases	ix
Issues in implementing the CDR for the insurance sector	x
Risks / issues and recommendations	xi
1 Introduction and approach	3
2 Background	7
2.1 The 'open' movement	7
2.2 The insurance industry	10
2.3 Issues and concerns	16
3 Data—current and potential uses	27
3.1 Types of data held	27
3.2 Potential uses of CDR with regard to insurance	40
4 Applying CDR to insurance	45
4.1 Sharing of product data	45
4.2 What customer data should be shared by insurers?	49
4.3 Other data held by insurers	51
4.4 Data privacy and safeguards	52
4.5 Other matters of design and implementation	52
5 Risks / issues and recommendations	55
5.1 Issues with implementation	55
5.2 Applications that harm consumers	58
5.3 CDR impacts on insurance markets	59
5.4 Broader issues with CDR	63
References	67

Appendix A Use of data in pricing risk	71
Importance of data to the insurance industry	71
Pricing by insurers	72
Appendix B Data obtained during quotations	79
Home building insurance	79
Travel Insurance	83
Motor insurance	84

TABLES

Table 1: Categories of general insurance	12
Table 2: Public information on natural hazard risks	34
Table 3: Attributes in the banking product standards	48
Table 4: Sample data collected from customer – Home building	79
Table 5: Sample data collected from customer – Travel insurance	83
Table 6: Sample data collected from customer – Motor insurance	84

FIGURES

Figure 1: A hierarchy of legislative instruments as applied to Open Banking	7
Figure 2: Global summary of open banking developments	9
Figure 3: Comparison of open banking developments	10
Figure 4: Key insurance processes	13
Figure 5: An example of quote pre-filling for home building	30
Figure 6: Example of detail data captured during the claims process	38
Figure 7: Extract from Individual Insurance Inquiry Report	40
Figure 8: Premium differences available for the same flood risk on neighbouring properties with variable floor heights and building material choices from a single insurer.	72
Figure 9: One-year change in renewing premiums for home insurance	74
Figure 10: One-year change in new premiums for home insurance	74

Glossary

Abbreviation	Stands for
ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
ADI	Authorised Deposit-taking Institution
ACORD	The Association for Cooperative Operations Research and Development
AFCA	Australian Financial Complaints Authority
API	Application programming interface
APP	Australian Privacy Principle. There are 13 APPs in the Privacy Act
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investment Commission
CDR	Consumer Data Right
CTP	Compulsory third party
DSB	Data Standards Body
EU	European Union
ICA	Insurance Council of Australia
Farrell Report	The Treasury(2017). Review into open banking: giving customers choice, convenience and confidence. Also known as the Open Banking Review.
Financial Rights	Financial Rights Legal Centre
IC Act	Insurance Contracts Act1984 (Cth)
IRS	Insurance Reference Services
NFID	National flood information database
PSD2	Payment Services Directive 2 (an EU Directive)
OAIC	Office of the Australian Information Commissioner
PC	Productivity Commission
PC Data Report	Productivity Commission's Data Availability and Use Inquiry. (PC 2017)
PDS	Product Disclosure Statement
TMD	Target market determination
UBI	Usage based insurance
Use case	Where a particular data set has a current and demonstrable application to the provision of a financial product or service
UK	United Kingdom

Foreword

The insurance sector is experiencing a period of change. Many of the changes arise from the raft of pro-consumer reforms recommended by the Financial Services Royal Commission, including for the first time: the application of the unfair contract terms regime to insurance; the regulation of claims handling practices; design and distribution obligations; and new processes for the sale of add-on insurance.

Other changes arise from strengthened commitments to consumers under the new General Insurance Code of Practice.

But like almost every other aspect of our economy and lives, the insurance sector is likely to undergo significant transformation through the application of new data technologies.

Insurance has always been a data intensive industry. Actuaries have collected and analysed data and calculated risk since the establishment of insurance as a concept. Motor vehicle accident statistics, natural hazard datasets, personal information disclosures and bucket loads of other numbers have been crunched in order to insure businesses and consumers for centuries.

What is different now though is the sheer volume of data, the increased accessibility to this data, the speed in which it can be obtained and the immense computing power and analytical techniques that can be applied.

The exponential rise of “big data”, and the increasing analysis of datasets using artificial intelligence and algorithms has potential to transform the insurance environment. There will be changes we can predict, and changes that take us by surprise. And while the insurance industry adapts to these changes, moving with the times to refine business models – there will also be major impact for insurance consumers.

Some of the changes are likely to improve insurance consumer’s lives. Increased access to and use of one’s own data could improve the disclosure process for buying and renewing our insurance. Data can also be used to assist risk mitigation and potentially produce improved personal and social outcomes in the face of increasing natural hazards borne of climate change.

On the other hand, if misused, there is the very real possibility that the use of big data leads to consumer harms and disadvantage. More data could mean more granular risk segmentation and inappropriate price-optimisation practices. Large numbers of disadvantaged people may find themselves priced out of the market.

However uncertain all of this is – one thing is certain – the big data future is here. Insurers are becoming increasingly sophisticated in their use of data and are investigating new business models based on large and sometimes completely new datasets.

The Senate Select Committee on Financial Technology and Regulatory Technology has also recently recommended the application of the still developing Consumer Data Right to general insurance.

Open Insurance as a concept has yet to be fully defined either by government or industry. This report by Dr Richard Tooth is therefore the first comprehensive attempt to understand the concept of Open Insurance in Australia. The report examines how the Consumer Data Right model is likely to

apply to general insurance and explores the risks and issues associated with its implementation, both for the insurance sector and for consumers. It also proposes a set of recommendations for areas that need further examination and research.

Significantly this report looks at the use of consumer data 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. This report is consequently a rare opportunity for the consumer perspective to influence sectoral change as it takes place, rather than as an afterthought or in hindsight.

We believe that this a landmark report and sets a roadmap for further research and work in this area – ensuring the consumer voice is a significant presence in conversations about the future of insurance.

Thank you to Dr Richard Tooth and Sapere for this important work. I'd also like to thank ECSTRA for providing the ability to undertake this work - without which it would never have occurred. Finally thank you to Drew MacRae, Policy and Advocacy Officer for managing this project and Andy Lewis of Studio Shapes for the great design.

For consumers, insurance is a product intended to manage risk. Sadly, it can also be fraught with risks of its own: the risk you won't get cover or won't be able to afford it; that the cover will not be sufficient; that the policy won't respond as you expect because of a condition or exclusion, or that it will turn out to be junk and a complete waste of money.

The future of insurance is, like everything, uncertain. But if the responses to the challenges outlined in this report are developed and guided by the consumer interest – an interest defined by consumers not by industry – then the future of insurance will be better placed to help us manage the risks of an uncertain future as a community, rather than add to the risks we face. Insurance could then begin to look more like the promises made in advertisements and less like the picture painted in the Financial Services Royal Commission.



KAREN COX

**Chief Executive Officer
Financial Rights Legal Centre**



Summary

The Consumer Data Right (CDR) is a reform that aims to enable consumers to easily access their data and authorise its secure disclosure to accredited third parties. The CDR also requires organisations to provide public access to information about specified products offered.

The CDR was introduced to the banking sector in July 2020 (referred to as 'Open Banking') and will be progressively rolled to other sectors including energy and telecommunications.

This report considers the implications of the CDR for the general insurance sector (eg, home, motor and travel insurance) building on the experience in banking.

The report explores the risks and issues associated with the implementation of the CDR for the insurance sector and proposes a set of recommendations relating to:

1. Issues with the Open Insurance implementation that might reduce its benefits
2. Risks that Open Insurance uses harm consumers
3. Risks associated with the impact CDR has on insurance markets
4. Other broader issues with the CDR.

INSURANCE USE OF DATA

In addition to the customer relationship data, the consumer data held by insurers largely pertains to the needs of risk assessment and pricing and claims.

The data for risk assessment and pricing is obtained from a broad range of sources. Despite the greater use of public sources, insurers continue to obtain a lot of information from the consumer and/or require the consumer to confirm the information they have collected.

While there are many similarities, there is significant variation in the data insurers obtain at time of quotation. Insurers, and consumers themselves, have limited access to government-owned data sources that contain data that is relevant to risk-assessment. There is increasing interest in use of telematics data for risk assessment; however, the insurer may only receive a summary of the data that is captured.

Most insurers are members of the Insurance Reference Service (IRS) and submit summary consumer claims data to the IRS. This data is predominantly used at the time of claim for fraud identification.

POTENTIAL USE CASES

Some potential uses of insurance data have been identified. These included using the data:

- in insurance processes, such as for conducting product comparisons and undertaking quotations
- for non-insurance processes, primarily for financial management activities. For example, a customer may wish to provide their insurance details to a wealth manager

The insurance sector may also make greater use of data from banking and other sectors to which the CDR applies. For example, there is potential for insurers to use banking transaction data to assist underwriting and claims management.

ISSUES IN IMPLEMENTING THE CDR FOR THE INSURANCE SECTOR

I would expect that the CDR principles and rules established for Open Banking would largely apply to insurance. Data standards specific to insurance will need to be developed. The CDR could be a catalyst for standardised definitions.

As with banking it would seem likely the CDR would apply to customer provided data, including information on the products purchased but not include data that is the insurer's intellectual property.

RISKS/ISSUES AND RECOMMENDATIONS

Risks/Issues

There are a variety of risks associated with the use cases and the implementation of CDR. Risks and issues can be broadly categorised as:

- 1. *Open Insurance benefits not obtained due to issues with implementation***

The potential consumer benefits of Open Insurance may not be obtained due to issues with implementation. A likely barrier is the lack of standardisation of key terms used in insurance contracts and risk assessment. Care is required to ensure data standards are sufficient to facilitate new uses but not so prescriptive so as to inhibit innovation.
- 2. *Open Insurance applications harm consumers***

Some Open Insurance applications have potential to harm consumers. This may be due to privacy issues, unintended consequences and inappropriate use cases (e.g. products not in broad consumer interest)
- 3. *CDR impacts on insurance markets***

The application of CDR to banking and other sectors may impact on insurance market processes, particularly relating to risk assessment and claims investigation. Some impacts may harm some consumers.
- 4. *Broader issues with CDR***

As with any reforms there can be unintended consequences associated with the process and design of regulation. Another potentially very significant concern is that the lack of focus of applying CDR to Government owned data sources.

Recommendations

Consumer advocates including Financial Rights may play an important role in managing some of these risks, leveraging its focus on the consumer and the unique insights it obtains from its support of consumers dealing with insurance issues.

Issues with implementation which might reduce potential benefits

- R1. Consumer advocates encourage industry development of standard definitions of key product terms in advance of Open Insurance. Consumer advocates provide input on terms that may cause significant concern.
- R2. Consumer advocates encourage the participation of a range of comparator organisations in the design and guidance for implementation of product data standards for Open Insurance.
- R3. Consumer advocates work to ensure clear data standards are developed for customer-specific data on products held.
- R4. Consumer advocates should work with government and industry to encourage greater consideration of how historical claims data is used and provided to consumers.

Risk that Open Insurance applications harm consumers

- R5. Consumer advocates undertake further work to identify privacy risks that may arise from Open Insurance and monitor privacy risks as they arise under an Open Insurance regime.
- R6. Consumer advocates should work with stakeholders to ensure that there is clarity regarding the liability for the risks associated with incorrect interpretation of and/or inaccurate data for Open Insurance.
- R7. Consumer advocates work with Government, regulators and the industry to ensure the harmonised development of the design and distribution obligations regulation and Open Insurance applications.

Impacts of CDR on insurance markets

- R8. Consumer advocates monitor the applications of CDR for claims-investigation to ensure that it is being used in the consumer interest.
- R9. Consumer advocates undertake monitoring, or encourage monitoring by regulators, of organisations using product data to inappropriately influence consumer decisions.
- R10. Financial Rights encourage consideration by regulators, of how the conduct of new fintech and relevant insuretech organisations will be regulated.
- R11. Consumer advocates monitor the effectiveness of the regulation of third-party claims management and the risk of greater use of the industry as a result of CDR.

Broader issues with CDR

- R12. Consumer advocates work with government and industry to ensure consumers can more easily access and share data held by government-owned or controlled entities that pertains to them and/or the assets they own.
- R13. Consumer advocates research the consumers' interest and perception of risks associated with greater access to their data held by government owned and controlled entities.
- R14. Consumer advocates work with government, industry and other stakeholders to consider how consumers gain easier access to and share data held by Insurance Reference Services and other suppliers to the insurance industry
- R15. Consumer advocates work with government to encourage greater development and use of data to assess the quality of service of insurers.



1. Introduction and approach

The Consumer Data Right (CDR) is an economy-wide reform that will apply sector-by-sector, starting with the banking sector. The objective of the CDR is to provide consumers with the ability to efficiently and conveniently access specified data held about them by businesses (data holders, and to authorise the secure disclosure of that data to third parties (accredited data recipients) or to themselves.¹

The CDR also requires businesses to provide public access to information on specified products that they offer. The right is designed to give consumers more control over their data, leading, for example, to more choice in where they take their business and more convenience in managing their services.

The application of CDR to the banking sector (Open Banking) has been partially implemented in Australia and to varying degrees in other countries. Consideration of the application of CDR to other sectors, notably energy and telecommunications has begun.

This report considers the implications of the CDR to the general insurance sector (all insurance excluding life and health insurance) in Australia. This includes the implications of:

- the application of CDR to the insurance sector (Open Insurance), and
- the broader implications of CDR in other sectors for insurance.

This report has been commissioned by the Financial Rights Legal Centre (Financial Rights)—a community legal centre specialising in financial services²—to prepare its advocates to:

- drive the development of the Open Insurance framework to ensure consumer interests and beneficial consumer outcomes are prioritised with the consumer voice leading the discussion
- inform this policy development through consumer-based research on attitudes to the use of data by insurers, and
- better inform consumers of the various data collection and use practices of insurers, and the risks and opportunities of Open Insurance.

1 The object contained in the legislation (Section 56AA of the Competition and Consumer Act 2010)
(a) to enable consumers in certain sectors of the Australian economy to require information relating to themselves in those sectors to be disclosed safely, efficiently and conveniently: (i) to themselves for use as they see fit; or (ii) to accredited persons for use subject to privacy safeguards; and
(b) to enable any person to efficiently and conveniently access information in those sectors that: (i) is about goods (such as products) or services; and (ii) does not relate to any identifiable, or reasonably identifiable, consumers; and
(c) as a result of paragraphs

2 In addition to providing advice for consumers in financial stress, the Financial Rights conducts research to advocate for changes to law and industry practice for the benefit of consumers. <https://financialrights.org.au/about-us/about-financial-rights-legal-centre/>

The views expressed in this report are those of the author, and do not necessarily reflect the views of Financial Rights.

The rest of the document is structured as follows:

- Section 2 provides a background to the CDR and the insurance industry, including a discussion of concerns and issues that have been raised relating to insurance processes
- Section 3 reviews the data held and used in insurance processes and discusses potential uses of CDR with regard to insurance
- Section 4 reviews the application of CDR to insurance (ie. Open Insurance)
- Section 5 considers the risks/issues associated with CDR for the insurance sector and recommendations for Financial Rights.



2. Background

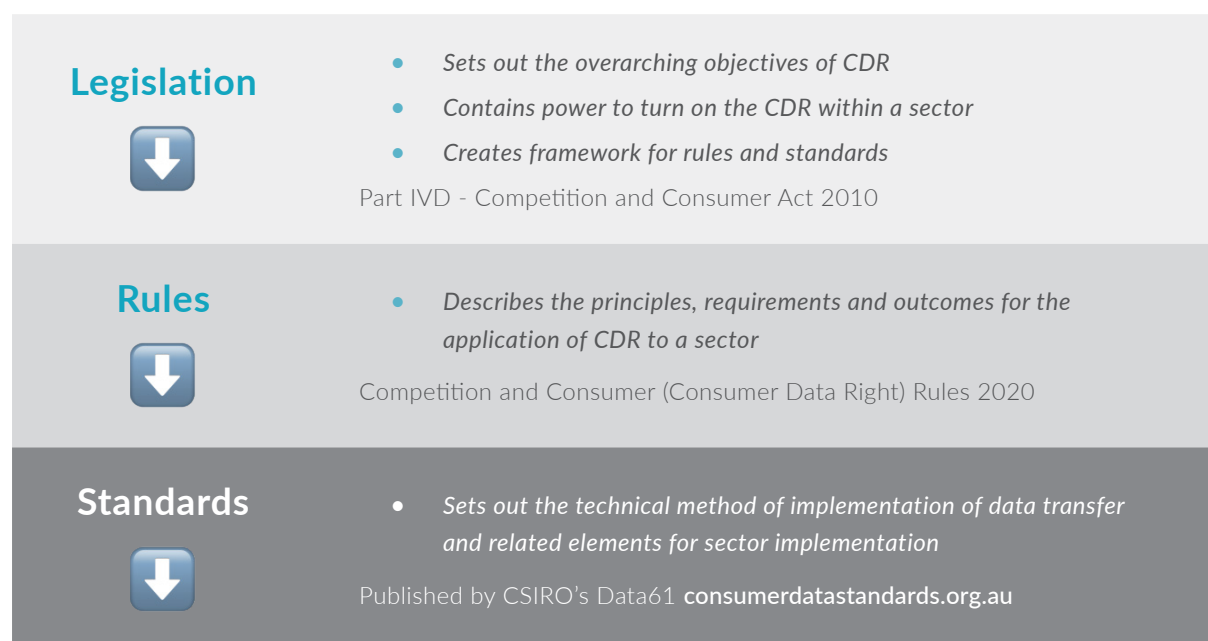
2.1 THE 'OPEN' MOVEMENT

2.1.1 Consumer data right

The concept of the CDR has been promoted in a number of government inquiries³ and was a prominent consideration in the Productivity Commission 2017 inquiry into 'Data Availability and Use' (PC Data Report). The PC Data Report included a recommendation for the creation of an economy-wide comprehensive right to data. Soon after the report's release (in the 2017-18 Budget), the Treasurer announced Open Banking (the application of CDR to banking) would be introduced in Australia and commissioned the Open Banking Review to recommend the most appropriate model and best approach to implement it.

The Open Banking Review (commonly known as the Farrell Review after the chair, Mr Scott Farrell) concluded in December 2017. The review proposed a hierarchy of legislative instruments involving legislation, rules and standards (see Figure 1), which have subsequently been established.

Figure 1: A hierarchy of legislative instruments as applied to Open Banking



Source: Adapted from Farrell Report (p. 12).

The legislation to enact the CDR was passed on 1 August 2019. The legislation established the CDR primarily through amendments to the Competition and Consumer Act 2010 and the Privacy Act 1988. The CDR Rules⁴ were developed over the course of 2018–2019 and finalised on 4 February 2020.

³ Treasury (2019) notes that data rights for consumers were recommended in the Murray, Harper, Coleman, and Finkel inquiries.

⁴ Competition and Consumer (Consumer Data Right) Rules 2020. <https://www.legislation.gov.au/Details/F2020L00094>

Standards have been prepared by CSIRO's Data61, which has been appointed as the Data Standards Body (DSB) for the CDR regime.⁵

The regulatory framework for the CDR has been designed to apply beyond banking and across other sectors. The legislation provides a broad economy-wide set of principles and 'establishes a Ministerial power to apply the CDR to designated sectors and data-sets (with Open Banking being the first such designation).¹ It is expected that the CDR Rules will be tailored to each sector to reflect differing 'circumstances and technology'⁶ and similarly that sector-specific standards will be developed to reflect the nature of the different products and data held.

The Australian Competition and Consumer Commission (ACCC) is currently undertaking a review of the applying the CDR to the energy sector.⁷ The telecommunications sector is proposed to follow. To-date there have been no public announcements as to when the CDR would apply to the Insurance sector.

Work on the CDR itself is ongoing. The Treasurer appointed Mr Scott Farrell to lead another inquiry, beginning in January 2020, into future directions for the CDR.⁸ In March 2020, an Issues paper (the Future Directions Issues paper) was released including consideration of expansion of the CDR with read/write access.

2.1.2 International developments and alternative approaches

The increased sharing and use of consumer data is an international trend. Other jurisdictions around the world have been implementing Open Banking. However, as illustrated in Figure 2 and Figure 3 below, a number of different approaches have been applied.

The Australian approach has many similarities to the United Kingdom (UK) approach. The UK was a front-runner in the development of Open Banking, with its system becoming operational in early 2018. Views on the success of the UK approach are mixed.⁹ The Australian approach—like that in the UK and the European Union (EU)¹⁰—involves Government-led mandatory participation.

In some other jurisdictions, more light-handed approaches have been adopted, with minimal government involvement. For example, in the United States (US) the implementation of Open-Banking is driven by the market. In Japan and Singapore, the government facilitates Open Banking through the development of API standards.¹¹ Hong Kong is going a step further with issuing an Open API Framework.

5 See <https://consumerdatastandardsaustralia.github.io/standards/#introduction>

6 The Farrell Report (p. 19).

7 ACCC, CDR in the energy sector <https://www.accc.gov.au/focus-areas/consumer-data-right-cdr/energy-cdr>

8 Treasury, Inquiry into Future Directions for the Consumer Data Right <https://treasury.gov.au/review/future-directions-consumer-data-right>

9 Some positive views, reported on the UK Open Banking website, are available here. Others have been critical. See for example: "The UK's efforts to implement Open Banking have had zero positive impact on innovation in the banking sector, Monzo founder Tom Blomfield has warned." Available <https://www.telegraph.co.uk/technology/2020/03/07/monzo-boss-warns-open-banking-reforms-have-zero-benefit/>

10 The EU issued the Payment Services Directive 2 (PSD2), which provides the framework for data portability and requires European banks to give authorised third-party payment initiation and account information service providers access to customers' accounts. (Future Directions Issues Paper, p. 4).

11 The Future Directions Issues Paper writes "The Hong Kong Monetary Authority published its Open API Framework for the Hong Kong Banking Sector in July 2018. The framework applies in phases, commencing with product information, then customer on boarding, then account information and payment information services."

As reflected in Figure 3, implementations of Open Banking also vary in terms of the scope of banking activities. The Australian approach differs to the EU in that it includes a right to product information.

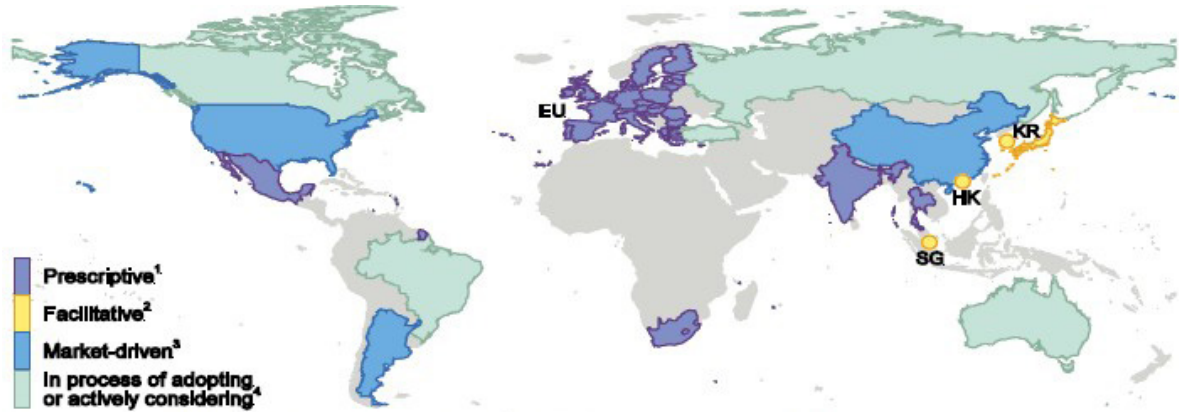
In Australia the CDR, currently, only enables “read” access to data. In contrast, the UK and EU approaches enable third parties to have “write” access to data, which in the Open Banking context would enable customers to allow third parties to undertake fund transfers on their behalf and other services such as direct debit and recurring payment initiations and cancellations.

The potential for “write” access in Australia is being considered as part of the Future Directions Inquiry. Write access could facilitate a range of uses. The Future Directions Issues Paper provides an energy context example, whereby, “write access could enable a consumer to open a new account, and make changes to or close an existing account, quickly and easily through a third party. This could enable the development of convenient and efficient switching services which not only offer to find customers a better deal, but also to switch them.”

There do not appear to be any jurisdictions that have implemented or are developing approaches to prescribe or facilitate a consumer data right for insurance. However, permission-based third-party use of consumer insurance data has received some consideration by industry. These include:

- an industry-driven project to develop international open API standards (similar to what might be developed by Data61) to stimulate innovation and development of Open Insurance applications. The project aims to create standards that are freely available to use, distribute and extend in open source fashion¹²
- third-party development of insure-tech applications to work with insurer-data.

Figure 2: Global summary of open banking developments



The boundaries shown and the designations used on this map do not imply official endorsement or acceptance by the BIS.

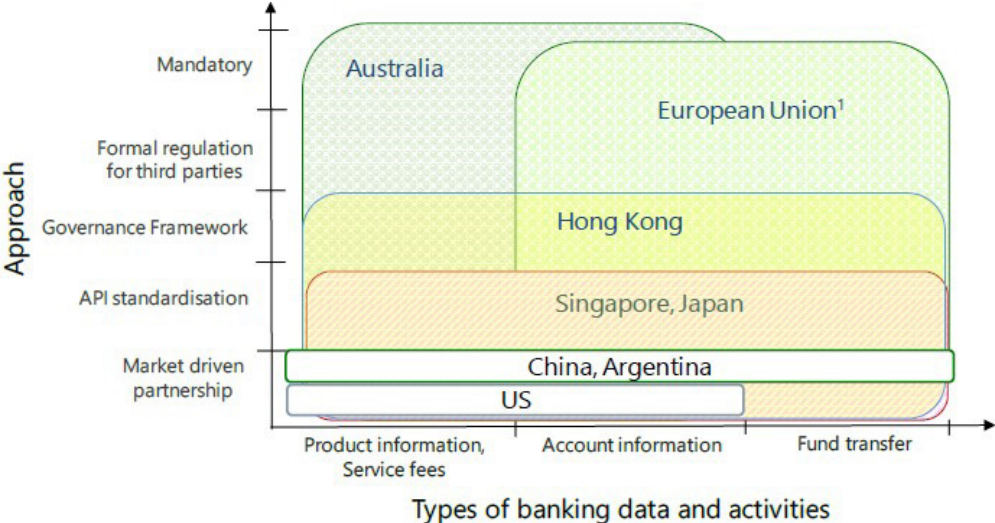
EU = European Union, HK = Hong Kong SAR, KR = Korea, SG = Singapore.

¹ Requires data sharing, ² Encourages data sharing, ³ No explicit rule/guidance requiring data sharing, ⁴ In process of adopting or actively considering adopting.

Source: Bank for International Settlements (2019).

12 Open Insurance Initiative <https://openinsurance.io/>.

Figure 3: Comparison of open banking developments



¹ EU: perimeter depicted in this figure represents the scope of the EU's PSD2, which only applies to payment services. Individual jurisdictions within the EU may choose to broaden the scope of their open banking frameworks beyond the requirements of PSD2 (eg FR and UK).

Source: Bank for International Settlements (2019).

2.2 THE INSURANCE INDUSTRY

2.2.1 Role of insurance

Insurance transfers risk from policyholders to insurers, thereby helping policyholders recover from losses. Insurance provides policyholders with 'peace of mind' and can help the insured to secure finance for their home or other asset. For example, mortgage providers will typically require that the home is covered by insurance. Insurers also provide policyholders with ancillary services such as advice on risk mitigation, advanced warning of hazards and management of the rebuild/recovery process.

Another broader benefit of the insurance industry is in analysing and pricing risk. Competitive pressure compels insurers to invest in information and capability to analyse and price risks. The price of insurance revealed in the market provides a signal as to the risks associated with an asset or activity that can be used to guide decisions (e.g. where and what to build) and actions to mitigate risk (including by governments and asset owners).

It is generally recognised that people and organisations are risk-averse; that is, they prefer certain outcomes over uncertain outcomes of equal expected value.¹³ If customers paid a premium no more than their expected loss (known as the technical premium), we would predict the risk averse to fully insure against all risks.

¹³ Expected value refers to the weighted (by probably occurrence) value of a set of outcomes. For example, the expected value of a \$100 bet on a coin-toss with a payout of \$210 for a correct call is \$105 (50% x \$0 + 50%x\$210 - \$100). Outreville (2014) provides a useful survey of the literature on risk aversion and the demand for insurance.

However, insurance cover is less than complete. There are costs to supplying insurance (in addition to the expected loss) and some are so great as to make some risks uninsurable. Many of the drivers of higher costs can be linked back to problems with data. There are also issues with demand, again some of which are attributed to issues with data. Many of these issues are discussed in Section 2.3 below.

2.2.2 General insurance

This report considers the general insurance sector, which covers all insurance products excluding life and health insurance. A list of the key general insurance product categories is shown in Table 1 below. Conceivably, all of these products might be included in an Open Insurance framework.¹⁴

General insurance products vary by several dimensions that are potentially relevant to consideration of CDR. These include:

- the type of customer (personal, commercial)
- what the insurance covers. These include cover for losses associated with:
 - » *damage to property assets (e.g. home, motor, business equipment)*
 - » *reduced income streams (e.g. consumer credit insurance)*
 - » *liability to others (e.g. legal liability, professional indemnity)*
 - » *other unexpected financial payments (e.g. travel insurance)*
- the timing of cover. Most insurance is purchased annually and renewed; however, travel insurance is purchased as needed, and lender mortgage insurance is a one-off purchase. There has also been growing interest in the potential for on-demand (i.e. as needed) insurance.¹⁵

Of particular relevance to the CDR, insurance products may also vary with regards to the information that insurers collect and retain, the sophistication of pricing and the standardization of features.

14 Of note, the Farrell Report (pp. 36–37) concluded that the CDR should apply to all banking products that are widely available to the general public. The Review concluded that products especially designed for individual customers (usually large business or wealthy individuals) need not be incorporated.

15 Applications of on-demand insurance include cover for valuable personal possessions as they are purchased, tailored insurance for home sharing hosts, cover for drivers who drive infrequently. See '7 On-Demand Insurance Start-Ups Influencing the Market' <https://riskandinsurance.com/7-on-demand-insurance-start-ups-influencing-the-market/>

Table 1: Categories of general insurance

Category	Description
Home and Contents Insurance	Includes home, contents and home and contents combined. Building includes legal liability
Motor Vehicle Insurance	Includes comprehensive insurance and compulsory third-party (CTP) insurance
Consumer Credit Insurance	Typically, covers credit repayment in prescribed events (including death, permanent disability or loss of income due to injury, illness or involuntary unemployment credit repayment)
Travel Insurance	Cover for financial losses caused by a wide range of events that can affect a consumer's trip. Includes Domestic travel insurance and International travel insurance.
Other personal	Caravan Insurance, Boat Insurance, Motorbike, Bike
Lender's Mortgage Insurance	Covers the lender (such as a bank or financial institution) against the risk of not recovering the full loan balance should the borrower be unable to meet loan payments.
Business Insurance	A suite of insurances including: <ul style="list-style-type: none">• <i>liability (professional indemnity, product, public liability),</i>• <i>property (building, vehicle, equipment, asset etc), and</i>• <i>business interruption.</i>
Workers Compensation	A compulsory statutory form of insurance for all employers provides protection to workers if they suffer a work-related injury or disease.

Source: <http://understandinsurance.com.au/>

2.2.3 Process of insurance

The use of insurance follows a fairly common set of processes, which I have categorised as in the figure below.

Figure 4: Key insurance processes

Asset choice	Coverage choice	Insurer choice	Claims
<ul style="list-style-type: none"> ● Choose asset (cost to insure a factor) ● Finance asset (may require insurance) ● Manage through maintenance and use (may influence insurance premium) 	<ul style="list-style-type: none"> ● Determine need ● Determine coverage <ul style="list-style-type: none"> ■ sum insured ■ coverage options 	<ul style="list-style-type: none"> ● Obtain quotations ● Compare options <ul style="list-style-type: none"> ■ Premium ■ Product ■ Expected service ● Purchase & renewal 	<ul style="list-style-type: none"> ● Consumer lodges claim ● Insurer assesses/ investigates claim ● Claim resolution <ul style="list-style-type: none"> ■ Insurer repairs ■ Cash payout ■ Claim denied ● Dispute resolution

Source: Author’s categorisation

The processes of choosing and using insurance are closely tied to asset decisions. From the consumer’s perspective the processes can be thought as beginning with a decision—such as the purchase of a house or car or decision to travel—that exposes them to a financial risk. The availability and cost of insurance can and/or should be an important consideration in the decision. For example, the risk and cost of insurance can influence whether and what vehicle to purchase, the decision to travel overseas and the demand for a particular property.¹⁶

The consumer’s ability to finance an asset can also be dependent on obtaining insurance cover. The level of insurance cover can also influence a consumer’s use of an asset and the amount they invest in maintaining and mitigating risk, which in turn can influence the insurance premiums they pay.

Having made asset decisions, consumers need to choose what risks they will obtain coverage for and what they will self-insure. If consumers decide to insure, they need to decide their level of cover (sum-insured) and the coverage options. Some consumers may seek information to understand risk; others may rely on the assumption that the premiums charged reflect the benefit.

The process of choosing an insurer involves consumers obtaining quotations from insurers and comparing the options. Personalised quotations are required as most insurance products (home building, home contents, motor) are individually priced;¹⁷ that is, the premium charged is specific to the policy holder and the asset being insured. In addition to the premium, consumers need to consider the coverage each insurer provides, and the quality of service provided by the insurer.

16 Numerous empirical studies from Australia and international jurisdictions have found a relationship between property prices and information on hazard risk. This includes that insurance premiums convey information to consumers about risks (e.g. Dobes et al. (2013); Bin & Polasky (2004); Yeo et al. (2015)) and that the cost of insurance is reflected in property prices. For example, Bin & Kruse (2006) in a study on property sales in North Carolina, US concluded that ‘price differentials for flood risk and the capitalized value of flood insurance premiums are roughly equivalent’. See also Bin & Polasky (2004).

17 An exception is that CTP (in states other than NSW) is community rated such that the price does not vary by customer. Some insurers may publish insurance rates for some insurances such as travel.

By purchasing insurance consumers enter into a contract with the insurer. In doing so a consumer has an obligation to disclose relevant information to the insurer before a contract of insurance is entered into. Most insurance is resold annually, and most customers renew.¹⁸

The consumer can potentially influence the availability of cover and the premium they pay through choices that reduce the risk and/or demonstrate to the insurer that they will reduce the risk. These include choices relating to:

- excesses and the sum-insured
- the cover options
- risk mitigation options.

A potentially significant development is the increased role of insurers in undertaking risk-management through monitoring of behaviour and risk. This is occurring most prominently in the case of motor vehicle insurance, whereby insurers use in-vehicle telematics to capture consumer data on behaviour.

The process of making a claim involves a number of sub-processes. These include:

- consumers lodging a claim
- the insurer assessing the claim, which can vary in length and effort from a quick assessment to a more detailed claims assessment process
- the claim being resolved, which can include:
 - » *the insurer undertaking the repair*
 - » *the insurer paying the claimant a cash amount, or*
 - » *the insurer denying the claim*
- the claimant may dispute the insurer's assessment, which can lead to internal dispute resolution (IDR) and external dispute resolution (EDR) through the use of the industry ombudsman (Australian Financial Complaints Authority, AFCA) and, in rare situations, through the courts.

2.2.4 Regulatory environment

The main classes of insurance purchased by individuals are regulated under the Insurance Contracts Act 1984 (Cth) (IC Act) and the accompanying regulations (IC Regulations). For the most common classes of insurance purchased by individuals,¹⁹ the IC Regulations set out standard cover terms and conditions; however, as discussed below, there are concerns with these. Under the IC Act, the insurer must cover the 'prescribed events' described in the regulations unless they have clearly informed the insured in writing (typically through the product disclosure statement, PDS).²⁰ The

18 Silva-Goncalves (2015) studied the switching behaviour of Australian adults with regard to banking, insurance services and main utilities. Switching of insurers occurs more frequently than switching of most other services but is still relative infrequent. Only 28 per cent of surveyed respondents reported having switched their home insurance in the last 5 years.

19 Standard cover applies when the insured is a 'natural person' for insurances relating to motor vehicle, home building, home contents, consumer credit, sickness and accident and travel.

20 IC Act (sect 35).

IC Act and IC Regulations, with the exception of 'flood', do not specify standard definitions for the terms in insurance contracts.

In Australia—with the exception of some products (notably CTP and workers compensation) and standard anti-discrimination laws²¹—a firm's ability to set prices is primarily limited by competition and consumer demand. In contrast, in some international jurisdictions, insurers are required to publish and/or obtain approval for the rates that they use. In the United States, regulations have ranged in stringency from the state setting insurance rates to one of no limitations and many variations in-between that involve insurers obtaining approval for their proposed rate structures.²²

The behaviour of the industry is regulated in a number of ways:

- The Australian Prudential Regulation Authority (APRA) licences general insurers and regulates prudential requirements.
- The Australian Securities & Investment Commission (ASIC) regulates conduct role including monitoring and promoting market integrity and consumer protection and licensing.
- The Australian Competition and Consumer Commission (ACCC) protects and supplements the way competition works in Australian markets and industries, including financial markets.
- The Office of the Australian Information Commissioner (OAIC) promote and uphold privacy and information access rights.
- The Australian Financial Complaints Authority (AFCA) provides an independent dispute resolution service.
- The industry also self-regulates through the adoption of industry codes of conduct. Most general insurers are members of the Insurance Council of Australia (ICA)²³ and comply with an industry developed code of practice.

The process of regulation is ongoing. From 5 April 2021, new design and distribution obligations (DDO) introduced into the Corporations Act will come into effect.²⁴ The DDO will require issuers of financial products to make (and make freely available) a 'target market determination' (TMD) that describes who the product is suitable for and, as is suggested by ASIC, for whom the financial product is clearly unsuitable.²⁵ New unfair contract terms in insurance legislation will also take effect from 5 April 2021 requiring all contracts of insurance, except for particular contracts providing medical indemnity cover, to be subject to the unfair contract term laws.²⁶

21 See Australian Human Rights Commission (2014) for a summary.

22 State set (where the state establishes the allowable rates insurers can charge) has been phased out. In many states insurers lodge their rates to the state regulator and obtain prior approval. In other states there is greater flexibility ranging from a requirement to file their rates with the state and use straight away to setting prices without government oversight. Researchers examining the variation have generally concluded that rate regulation is not in the public interest. Schwarz (2018, p. 943) summarises "Extensive economics research suggests that these forms of insurance rate regulation are not in the public interest. In study after study, economists have documented that property-casualty insurance markets often flourish when states deregulate rates, and tend to experience limited success under many aggressive forms of rate regulation".

23 The ICA is the peak representative body for general insurers in the Australian market. Its members include general insurers and re-insurers.

24 ASIC (2019c).

25 There are several requirements for the TMD. These include that the TMD describe: the class of consumers comprising the target market; conditions and restrictions on distribution; triggers for review; review periods; when the distributor should provide the issuer with information about the number of complaints; kinds of information the issuer will need to promptly determine that a target market determination may no longer be appropriate.

26 Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2019 Measures)) Act 2020. <https://www.legislation.gov.au/Details/C2020A00002>

In response to the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry the Government has prepared a suite of exposure draft legislation and regulations. Notable reforms being considered relate to:

- a duty to take reasonable care not to make a misrepresentation to an insurer
- enforceability of financial services industry codes
- making insurance claims handling a financial service
- new prohibitions on the hawking of financial products
- implementation of an industry wide deferred sales model for the sale of add-on insurance products.

2.3 ISSUES AND CONCERNS

There are a variety of issues, symptom of issues and concerns raised associated with insurance processes and the availability of information. These are outlined below according to the processes described above.

2.3.1 Asset choice and use

2.3.1.1 Lack of risk information when making investments and other asset decisions

Prior to investing in an asset, it is desirable that consumers understand the risks associated with the asset and the costs of insurance. This can reduce the risk of budget constraints (ie. prevent consumers from buying something they cannot afford to maintain and/or insure). It can also lead to a price signal for developers/manufacturers to reduce risk.

There are frequent concerns that consumers purchase (or rent) homes without an appreciation of risk and insurance costs²⁷ and that this contributes to budget issues for consumers in the future. There are a number of compounding issues:

- There is limited public information that is easily accessible for consumers about risks (natural and other) to property
- Consumers can obtain insurance quotes to assess risk. However, the premium paid in one year may not reflect future prices, particularly in high-risk locations due to a combination of factors, including:
 - » *the consumer may choose the lowest premium—which, as a result of insurers having different risk information, may not be representative of the typical premium that insurers will charge in the future*
 - » *more granular pricing by insurers, which leads to lower prices for some and higher prices for others over time*

27 The ACCC (2018, p.178) noted the issue of risk disclosure at the time of property acquisition was raised explicitly in several submissions. Survey evidence suggests that a significant proportion of buyers do not adequately consider the risk prior to purchase of a property. Tooth (2012, pp. 37–38) found over 20 per cent of survey respondents, who assessed themselves as relatively highly exposed to flood, did not understand the risk prior to choosing to live in their location.

- » *climate change, which is expected to result in higher premiums for higher risks*
- » *insurance based taxes, which amplify insurance premiums for high risks.*

A lack of transparency of risk and insurance costs may also reduce incentives for real estate owners/ developers in investment decisions. For example, higher (/lower) insurance premiums can lead to lower (/higher) property prices and provide incentives for developers to consider risk in development decisions.²⁸

The ACCC (2018, p.178) noted the issue of risk disclosure at the time of property acquisition was raised explicitly in several submissions to their inquiry. The ACCC recommended that: “States and territories should implement measures to prompt consumers to investigate insurance costs when they are considering purchasing real estate.”²⁹

Similar issues exist in motor insurance. It is difficult for consumers to assess the insurance costs of vehicles and consequently a consumer may pay little consideration to the cost of repair and thus insuring a vehicle. This can lead to budgeting issues for the consumer. It also means there is little pressure on manufacturers to reduce repair costs.³⁰

2.3.1.2 Information and incentives to mitigate risk

Consumers also need information on how to mitigate their risk and reduce their insurance premiums.

Property-specific mitigation can be effective in reducing risk.³¹ However, from a householder’s perspective, the cost of risk mitigation may often exceed the benefits. There are two important information barriers:³²

First, consumers may be unaware of the extent to which mitigation is possible and can reduce costs. Financial Rights has argued for requiring insurers to provide information as to the components in their premium would assist to address this issue. The ICA (2019) states it has “encouraged its members to provide consumers with information on the natural hazards they face for the property they want to insure. This will give consumers a lead on the mitigation measures they could undertake. The consumer could then discuss with insurers possible premium reductions in recognition of the reduced risks being underwritten.”

Second, it can be costly and difficult for an insurer to verify that the appropriate level of mitigation has taken place, which leads to the insurance premium discounts being significantly less than the

28 There is some evidence that property prices change with insurance premiums. Nevertheless, I expect this to be an ongoing issue.

29 ACCC (2018, Draft Recommendation 7).

30 In some other car markets, cars are publicly rated for insurance risk, which applies a level of market competition regarding the cost of insurance. For example, in the UK, Thatcham Research (Thatcham) administers a ‘Group Rating’ advisory system designed to provide insurers with the relative risk of private cars and light commercial vehicles.³⁰ Thatcham determines a vehicle’s rating based on the cost of times and parts to return a vehicle to its pre-accident condition as well as other factors that affect the cost of claims, including the replacement cost and the safety and security features. The Group Rating provides information to consumers as to the cost of insuring a vehicle and consequently places pressure on manufacturers to minimise the cost of repair.

31 For example, the Queensland Government (Queensland Reconstruction Authority, QRA 2019) provides guidelines with information on improving the flood resilience of new and existing Queensland homes. Analysis undertaken has found that the benefits exceeded costs for 1-in-100 flood zones. The guidelines provide an example (p. 7) whereby following a flood, the owners renovated their home to increase their flood resilience, which led to their insurer (Suncorp) reducing their premium by ~40 per cent [from \$5,253.33 to \$3,133.60 per annum].

32 See also ACCC, 2018 (pp. 222–223) and ICA (2015b, p. 18). Another barrier is that mitigation can involve a significant upfront cost, which consumers may be unwilling to accept; in effect, this can be characterised as consumers having a high discount rate.

potential benefit of mitigation. ICA (2015b, p. 18) argues it is of 'paramount importance' there is 'a mechanism for insurers to become aware of the mitigation undertaken and to then offer discounts.'

The potential to mitigate risk in motor is arguably much more significant. In addition to the financial cost of insurance, road-crashes cause death and injury and is a major societal issue. In the UK, insurers are using telematics-enabled usage-based insurance (UBI) to encourage people to drive less and more safely thereby reducing crashes (and road death) and insurance premiums. I understand there are no technical barriers to this offering in Australia. However, its adoption has been severely hindered by insurance regulation.³³

2.3.2 Choosing cover

2.3.2.1 Assessing need

As noted earlier, if the price were no more than the technical premium, we would expect consumers to obtain insurance for all risks. However, there are a number of concerns that consumers are not obtaining the appropriate amount of cover.

Uninsured for significant risks

A common concern is that many consumers are uninsured for significant risks, it is estimated that around:³⁴

- 4% of owner-occupied houses (excluding strata) do not have building cover
- 29% of households do not have contents cover (~66% of those without building cover)
- 12% of registered vehicles have no vehicle insurance and ~15% only have third-party property (TPP) insurance.

There are a range of supply and demand factors contributing to non-insurance.

In terms of supply, insufficient data by the insurer can contribute to less affordable insurance³⁵ and a lack of some risks being covered. Insurers need information to be able to underwrite and price risks. Issues created by a lack of information include:

- adverse selection, whereby within a pool of property owners, low-risk owners with more information on their risk than the insurer opt out of insurance because insurers do not identify and price them as being low-risk. This can lead to a market failure where risks are not covered³⁶
- moral hazard, whereby the insured takes less care as a result of being insured leading to higher costs and premiums

33 This regulation included splitting motor insurance into CTP and motor vehicle insurance and regulating the price of CTP. See Tooth (2017) for more information and an estimate of the impact of the regulation on the road toll.

34 Sources: Tooth (2015). Robinson (2017).

35 The relationship between price and demand is complicated as in insurance a key driver of price is the expected loss, which is also a measure of benefit. Insurance taxes are of no benefit to the consumer. In previous research (Tooth, 2015) I have estimated that removing taxes on insurance would result in ~300 thousand more households taking out cover.

36 This issue explains the lack of flood coverage until the wide availability of flood mapping.

- ‘ambiguity premium’, whereby a lack of knowledge of the risk distribution leads to insurers adopting a conservative approach to setting premiums to manage prudential risk.

Insurance coverage may also be low due to issues with demand. Some consumers may be unable to afford insurance due to poor budgeting and/or a change in personal circumstances. For asset owners faced with severe budget constraints, reducing expenditure on insurance may appear the most practical means of managing the budget due to the difficulty of reducing other expenditures.³⁷ There are a range of other factors that could contribute to consumers being uninsured, including that consumers:

- lack awareness of the risks and the insurance covers available and lack appreciation of the value of insurance
- lack trust in the insurance industry³⁸
- consider the costs of shopping for insurance are too high³⁹
- believe they can self-insure (because they have enough savings) or rely on other sources of support

Consumers may also not purchase insurance due to a range of behavioural biases that may lead them to under appreciate risks and the value of insurance and under invest in mitigation.⁴⁰

Insurance with little or no value

A concern highlighted in the Royal Commission was that consumers were purchasing ‘junk’ insurance; insurance that has little or no value. The obligations for insurers to publish a ‘target market determination’ is one response to this concern.

Financial Rights has advocated for additional information to be made available including value measures. In a report for the ICA, Finity (2018) contemplated a series of value measures that might indicate the value. These include measures relating to claims frequency, loss ratio (a measure of how much of the premium is returned to customers via claims payments), frequency of cancellations, complaints and claims acceptance. Such data is publicly available but is not currently compiled in a form that it is easy for consumers to use.

Lack of advice

The ICA argues that due to regulatory constraints, “the majority of general insurance is sold on a ‘no advice’ business model, or where advice is provided, care is taken that it falls within the less onerous definition of ‘general advice’.”⁴¹ However, parties (including Financial Rights) have argued that consumers would benefit from greater advice and have encouraged greater clarity and consideration of what advice insurers can provide.⁴²

37 For example, many significant household costs such as the mortgage repayments and rates are fixed expenditures that the homeowner has little control over.

38 See Tooth (2012).

39 There is some evidence to support this as being a significant factor. Many households first purchase contents only once they purchase a property (and are required to have cover by their mortgage provider) (see Tooth, 2015). Having purchased insurance, retention rates are high.

40 A useful summary of the biases, their implications and possible remedies—developed by Meyer and Kunreuther (2018).

41 ICA (2016). They argue that: The current personal advice regime requires onerous training for advisers; a complex needs analysis; and the comprehensive documentation of any recommendations. ... Compliance with the financial advice regime inevitably focuses training for employees and agents on phrasing information so as to allow them to remain within the definition of the advice model they are operating under, rather than on delivering information that is of the most assistance to the consumer’s inquiry. This can produce counterintuitive conversations driven by compliance needs rather than consumer needs. For example, in circumstances where product options have been explained and the consumer asks direct and personal questions such as “what should I do?”, it is difficult and counterintuitive not to personalise the response.

42 See Financial Rights Legal Centre (2017). In research conducted for ASIC, Susan Bell Research (2014, p. 76) concluded that ‘It is clear from

2.3.2.2 Difficulty assessing the sum-insured

Consumers need information on rebuild costs to estimate their sum-insured. A common concern is that households may be under-insured whereby their level of cover is insufficient to cover a total loss.⁴³ While underinsurance appears to be more common than non-insurance, it only comes into effect when the loss is in excess of sum-insured.⁴⁴

To address the risk of underinsurance, policyholders may take out a 'total replacement' policy which covers the risk of being underinsured. However, such policies are expensive, and they make up a small proportion of all policies in Australia.⁴⁵

To determine their sum-insured, consumers may 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.⁴⁶ However, variations in estimates can exist because as a result of insurers customising the building cost estimator (including varying the questions asked).

2.3.3 Choosing an insurer

2.3.3.1 Comparing options

Consumers also need information to choose their insurer and policy options. In selecting an insurer, consumers need to consider:

- the policy and options offered by the insurer
- the quality of service provided by the insurer
- the price (ie. the premium).

Financial Rights notes a range of factors that 'complicate the comprehension, comparability and decision-making process of purchasing a home and contents insurance product.' They summarise:⁴⁷

the research that some consumers do not know as much about their policy as they should and would benefit from the best the insurance industry can provide in terms of information, guidance or advice.' ACCC (2018b, pp. 157–158) recommended steps to achieve better understanding of what falls within 'general advice'.

43 Anecdotally, underinsurance is common; however, there is no accurate information on the extent of underinsurance as it can only be identified at the time of a claim when the loss exceeds the sum-insured. The results of a 2012 household survey (Tooth, 2012, p. 21), suggest that most households are confident they are adequately covered. Only 6 per cent of respondents disagreed with the statement that "I am confident that I am adequately covered by my existing building insurance policy". However, the same survey found that around 30 per cent of policyholders relied solely on their own estimate and did not use a calculator. Furthermore, there is some evidence that consumers may deliberately select a lower sum-insured to reduce their premium. Susan Bell Research (2014, p. 66) provides anecdotal research. Quantum (2014, pp. 17–18) survey data suggests that around 4% of homeowners with building insurance deliberately undervalued their sum-insured to reduce their premium. A potential factor is that, due to the high cost of rebuilding, the recommended sum-insured may be significantly higher than the property value. Underinsurance appears to be more common with contents insurance. The 2012 survey found that, of those with contents insurance cover, around 10 per cent (representing about 0.7 million households) reported that they knew their cover was less than the costs of replacement of goods and a further 34 per cent (representing around 2.2 million households) were unsure.

44 In contrast, under a typical business insurance policy, the policyholder's claim will be reduced if the assets are not insured for their full value (for sizeable claims).

45 ACCC (2018, p. 158) reports that total replacement policies are only offered by three insurers and, in 2017–18, only made-up around six per cent of all home and contents insurance policies issued by these three insurers.

46 Choice undertook a review of home insurance calculators in 2018 <https://www.choice.com.au/money/insurance/home-and-contents/articles/building-insurance-calculators>

47 Financial Rights, Overwhelmed. An overview of factors that impact upon insurance disclosure comprehension, comparability and decision making, September 2018. https://financialrights.org.au/wp-content/uploads/2018/09/180904_Overwhelmed_FINAL.pdf

...consumers are faced with huge differences in price, an array of insurers, a large number of products, difficulties in finding PDSs and KFSs in the first place, varying approaches to presenting disclosure information to consumers and significant variability in definitions, terms and coverage. This is in addition to the almost infinite differences that individual circumstances and behavioural factors play in the process of making a purchase decision.

There is some research that suggests that consumers predominantly worry about price and the insurer's reputation.⁴⁸ This may reflect that, with respect to the most significant risks on personal lines of insurance (with exception of flood cover), the policies of the major brands tend to be reasonably similar and/or difficult to compare and that consumers find it more valuable to use the insurer's reputation as a signal of the quality of the cover they obtain and—in addition—the level of claims service they are likely to receive.

Comparing policy details

The difficulties of comparing insurance policy details has been the subject of frequent inquiry.

The key source of information pertaining to insurance policies are described in the PDS,⁴⁹ and in, the case of Home Insurances, summarised in a one-page Key Fact Sheet (KFS).⁵⁰ Insurers are required to provide PDSs and KFS at the point-of-sale (POS) and make them publicly available.

However, the PDSs are long documents and each insurer may use a different format and different definitions (with the exception of flood). Numerous studies have shown that consumers are unlikely to read PDSs and there are continuing discussions as to how to make it easier for consumers to compare policies. There are a few comparison websites; however, these appear largely to not include the major insurers and appear to have limited appeal.

The most significant variation in home policies is whether flood is included. The typical home building and home contents policies will cover all major natural hazards, with some exceptions.⁵¹

Financial Rights has advocated for the introduction of a revised standard cover regime— applied to all forms of general insurance and legislated in accessible, plain English—in comprising:

- a minimum set of basic default standards that meet community expectations below which insurers cannot fall
- a complete set of standard definitions for every standard risk inclusion, exclusion and commonly used term
- a limited number of clearly defined levels of cover above basic, default standard cover which insurers can compete on, for example: basic default cover, premium cover and deluxe cover

48 Tooth (2012, pp. viii–ix).

49 The PDS is a requirement of the Corporations Act for financial products. The Corporations Regulations provide for a tailored PDS for General Insurance products.

50 The KFS is an obligation of the IC Act.

51 The following events are also typically excluded:

- Actions of the sea—generally defined as including high tides or king tides, sea waves, normal movement or changes in ocean levels
- Erosion, subsidence or landslide, where it is not related to some other event (e.g. an earthquake)
- Soil-contraction—the settling, shrinkage or expansion in buildings, foundations, walls or pavements.

- an ability to cover specific risks in addition to that included in basic, premium or deluxe standards to ensure unique individual risks are insurable, if not available under standard cover
- minimum amounts for claims
- a limit to the number of excesses able to be imposed.

Assessing the quality of service

In insurance, the quality of the service provided is an important factor and, arguably, significantly more so than for products from most other sectors. As argued by the LMI Group:⁵²

Just like the policies they sell which range from broad coverage to very narrow cover, claims departments react differently. Some provide the very highest level of customer service while others move the Insured from a customer to a cost centre the moment a claim occurs.

When a loss occurs, what really matters are:

- *The coverage afforded by the policy - does the policy cover my loss?*
- *The financial strength rating of the Insurer – will they have the funds to meet my claim promptly, particularly at the time of a natural disaster where many customers are claiming?*
- *The Claims Service provided by the Insurer.*

However, for insurance consumers it is difficult to gauge service quality until they make a claim.⁵³ A complicating factor is that insurers have multiple insurance brands, and this is not clear to the consumer.

The lack of information on quality of service can lead to (compared to what is optimal for consumers):

- insurers spending too little effort on service quality
- insurers investing too much in advertising and marketing to signal quality.

⁵² LMI Group provide loss and risk management services. <https://www.claimscomparison.com/about-rating/how-we-rate>

⁵³ Consumers of many other sectors (e.g. banking, telecommunications) use the service more frequently and have more opportunities to assess service quality.

Assessing price

With limited exception insurance premiums are based on individual circumstance. Consequently, to compare prices a consumer needs to seek quotations from different insurers. With all details at hand, this process takes a few minutes;⁵⁴ however, gathering and comparing all the details can be time consuming.

A number of other concerns have been raised with pricing information.

A lack of component pricing

As noted above, Financial Rights has argued for component pricing of premiums. Treasury are currently examining the need for a review to initiate a component pricing regime following a recommendation by the 2017 Senate Economics References Committee's Inquiry into the general insurance industry.⁵⁵ The ICA (2019) disputes the need for this outside of the need to have a better understanding of the hazards they face.

Concerns on renewal

Concerns have been raised that on renewal consumers are not provided with information relating to:

- their previous year's premium, to enable a price comparison, and
- the reasons why premiums have increased.

ICA advised (ICA 2019) that its members will provide 'premium comparisons and an explanation of premium changes caused by objective criteria such as an updated risk profile.' from 1 July 2020.

2.3.3.2 Purchasing insurance

Other pricing concerns raised include concerns that:⁵⁶

- insurers 'optimise' prices; that is, adjust prices based on market conditions and consumer's willingness to pay, and that they charge higher prices on renewals⁵⁷
- there is increasing risk segmentation that—while reducing premiums for many— is leading to high-risks paying more
- some consumers may find insurance unobtainable at an affordable price.

Further concerns associated with the purchase of the product include that:

- claims can be denied or significantly reduced because a consumer provides incorrect information to the insurer, which is discovered at the time of claim lodgement
- issues can arise when there are family disputes where insurance is jointly held and/or relates to jointly held assets.

54 I tested the process with for different products. The time to complete a quotation took between 3 and 5 minutes.

55 See Treasury (2019).

56 See Appendix A. Use of data in pricing risk, for more detail on these concerns.

57 Higher prices on renewals has sometimes been described as a loyalty tax (ESLIM 2018).

2.3.4 Claims lodgement and other issues

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

From a consumer's perspective, many of the issues relate to claims outcomes and the claims process that reflect the choice of the insurer considered above.

Insurance fraud is a concern for the sector. Fraud ultimately leads to higher claims costs and premiums for consumers.

An additional key concern for consumers is the intrusiveness of the claim investigation process that insurers use to manage the risk of fraud. A claim investigation process can lead to a claim being denied due to fraud, denied for other reasons, withdrawn by the claimant or paid.⁵⁸ This process of claims investigation can be harmful to the claimant. It can involve delays in the processing of a claim, intrusive interviewing and requirement of the claimant to provide access to data such as banking and telephone records.⁵⁹

58 In a review of car insurance claims investigations, ASIC (2019a) found that insurers flagged 4.85% of claims as suspicious and investigated 1.1% of claims. Of the investigated claims 71% were paid, 4% were declined for fraud, 10% declined for other reasons and 15% were withdrawn.

59 ASIC (2019a p. 9) in its review of car insurance claim investigations noted that 'Consumers were frequently required to produce an onerous volume of documents, including but not limited to: criminal record checks, social media histories, birth certificates, telephone and text message records, financial statements for each of their bank and loan accounts and information about family members and friends. One insurer required some consumers to provide telephone records with an annotated explanation for each call.'



3. Data - current and potential uses

3.1 TYPES OF DATA HELD

Insurers hold a range of consumer-related data. The data held and used by insurers is described below according to purpose as relating to:

- the customer relationship and the contract
- risk assessment and pricing
- claims processes.

There are other useful categorisations. As is discussed below and in later sections, it is also useful to consider data in terms of the extent it:

- is sourced from the customer, which provides a guide as to the expectations that customers may access the data
- whether the data pertains to the customer and whether it has been obtained with their consent
- can be codified and therefore easily re-used
- is potentially useful for other applications.

3.1.1 Customer relationship and contract data

Insurers like other large service providers will capture and store core customer information (e.g. name, birth date, address), information on their interactions with customers (e.g. records of complaints) and details of the products purchased (the insurance contracts).

This type of information is not specific to the insurance sector; that is, most large firms will capture similar information on their customers.

Some of the customer-relationship data is also used for risk assessment and pricing. For example, the customer's birth date serves both an identifier and as a rating variable.

3.1.2 Data for risk assessment and pricing

3.1.2.1 Overview

Insurers capture a broad range of data for the purpose of assessing risk which is used in the process of underwriting, pricing and ongoing risk management. The insurer's use of data in pricing for risk is described in Appendix A Use of data in pricing risk.

Data collected includes data on:

- the individuals obtaining the cover, including their claims history, driving history etc
- the asset being insured (e.g. the house, vehicle, person, business) including data to assess the potential loss (e.g. rebuild value) and risk to the asset (e.g. flood risk, a person's health history in the case of travel insurance)
- how the asset is used (e.g. driving for work or non-work uses, travel locations)
- the coverage options (e.g. sum-insured).

Insurers analyse the data to develop a risk assessment that is used to determine whether to offer cover and at what price. The sophistication of pricing and the depth of data collected varies by product and insurer. Some insurers will be very selective in their underwriting, choosing not to provide cover for what they deem as high risk.

Insurers may also use risk assessment to undertake targeted marketing to attract those who are lower risk. This may be particularly valuable to the insurer in the case of CTP and private health insurance where regulation prevents the insurer from risk-based pricing.

Based on their risk assessment insurers provide the consumer with a decision as to whether they will underwrite the risk and at what price. Some products, notably statutory products such as CTP, are community-rated, whereby the premium (or premium rates) are the same for all customers. In such cases, the insurer may make the rates public. Most general insurance products are priced using standardised risk models, whereby the risk is determined based on the model. Some larger unique assets (e.g. factories) maybe individually risk rated.

Insurers obtain the data from a range of sources. The data collected includes:

- consumer (being a customer or potential customer) data
 - » *provided by consumers during the process of quotation*
 - » *provided by other parties with consumer approval at the time of quotation (e.g. medical record for travel insurance)⁶⁰*
 - » *collected following the process of sale, the most prominent example being telematics (e.g. telematics data acquired from customer)*
- public data that is:
 - » *freely available to insurers and customers (e.g. data from Geoscience Australia)*
 - » *available only to insurers (the national flood information database, NFID)⁶¹*
 - » *available at a cost (e.g. purchased by insurers)*

60 This is more common with life insurance: 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>

61 <https://www.icadataglobe.com/nfid>

- privately acquired data; that is acquired, and or generated, by the insurer. For example, the insurers may conduct their own flood assessment and/or analyse the claims data they hold (or have access to) to assess risk.

The volume and quality of data that insurers use and their ability to analyse the data has been improving over time. This has enabled insurers to extend their coverage (the notable example in recent times being flood) but has also resulted in more sophisticated pricing with changes in premiums for customers (see Appendix A Use of data in pricing risk).

Despite the greater use of public sources, insurers continue to obtain a lot of information from the consumer and/or require the consumer to confirm the information they have collected. An advantage of obtaining data from a different verified source is that it reduces the risk of incorrect disclosure by consumers purchasing insurance and facilitates more accurate pricing by insurers.

3.1.2.2 Consumer data

Data provided by consumers

To obtain a quotation, insurers require consumers to answer a series of questions. To help identify the data, quotations were obtained from a selection of insurers for home building, motor and travel insurance. A description of the information collected and how this varies is provided in Appendix B Data .

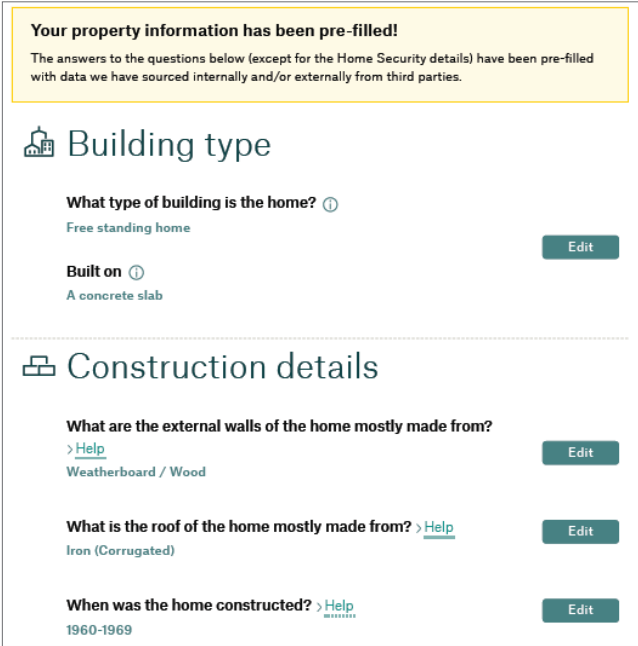
Some of the questions are identical or appear intended to elicit identical information. However, there is also some variation in the scope of questions, the ways questions are asked, and the options consumers are given to respond to questions. I make the following observations:

- Questions about customer and policy details (eg, name, contact details, date of birth) data are largely identical across insurers.
- Some insurers ask additional questions, which can be used to better understand the risk. For example, in regard to home building, not all insurers asked whether the premises had a security system; one asked whether asbestos had been used in the process of building. In regard to motor insurance, some insurers ask more questions about specific damage to a vehicle.
- There is some variation in the language used to in asking question. For example, one insurer would ask for the number of bedrooms including study, others just asked for the number of bedrooms
- There is variation in the options that can be chosen. For example, while the options for roof materials is largely the same, there were some slight differences by insurer
- There is variation in the details of the options. For example, regarding motor insurance, there is variation in the detail of the questions relating to criminal history and prior offences. Regarding a property's year of construction some insurers asked for the year, others asked consumers to choose from a range (which can vary by insurer).

The extent of variation in data collected differs by insurance class. More variation was observed in home building insurance quotations (in the quotations obtained); for example, the some ask for the existence of gas appliances on the premises, security system. However, some variation was observed for all policy classes. The least variation was observed in travel insurance; however, there was still some variation in the questions regarding pre-existing medical conditions.

In some cases, an insurer may pre-load information obtained from other sources (including from previous quotations) and ask the consumer to verify the data. Figure 5: An example of quote pre-filling for home building below shows an example for home building cover, whereby information has been pre-filled from internal and/or external sources.

Figure 5: An example of quote pre-filling for home building



Source: Obtained by the author using an online quotation from Suncorp.

Most insurers embed a sum-insured calculator into their quotation process and provide an estimate of typical replacement costs. These estimates are provided as a guide⁶² and may not be retained as part of the transaction. As noted earlier, most insurers use the same underlying cost estimator “Cordell Sum Sure” owned by CoreLogic.⁶³ However, insurers customise the building cost estimator, varying the questions asked.

There is also variation in the process of collecting data and the descriptions provided. For example, one insurer’s online process was more personalised, including the person’s first name in asking further questions provided by the quote. Insurers also varied in how they presented information and in the help details provided (see Box 1 below).

62 The insurers, generally include a disclaimer such as:
Typical building replacement costs are provided by Cordell Information Pty Ltd [...]. Whilst every care is taken to ensure the accuracy of the information as a guide for costing, no responsibility is accepted by Cordell for its accuracy. Please check with an Architect, Builder, Quantity Surveyor, Valuer or other suitably qualified professional for an accurate estimate. [The insurer] takes no responsibility for the costs provided nor any liability for the accuracy of or reliance upon or use of, the costs.

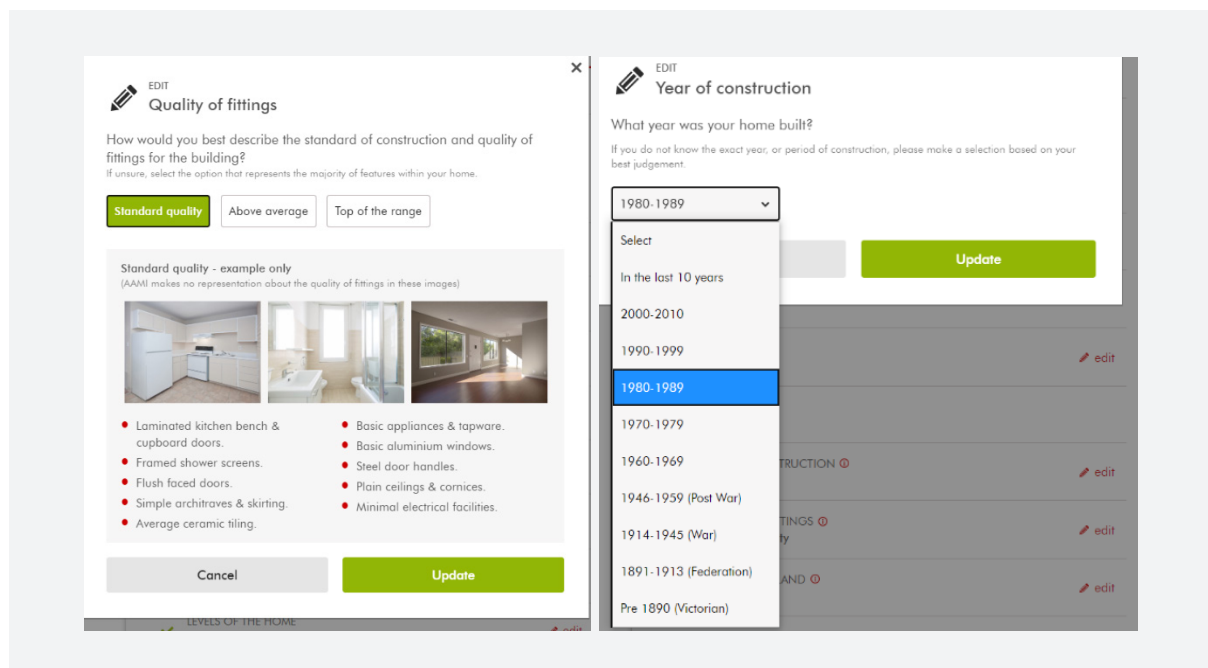
63 Linda Vergnani, Are home insurance calculators accurate? Choice. <https://www.choice.com.au/money/insurance/home-and-contents/articles/building-insurance-calculators>

In some cases, the insurer's help text provided the reason for collecting the data. For example, with respect to a question about 'quality of fittings', the help states:

This information may help to determine the estimated replacement cost to rebuild your home using the same or similar type, standard and specification of materials. This is a guide only to help you decide an adequate sum insured.

Note that some data has multiple purposes. For example, a customer's date of birth may be used as a rating variable as well as a means of uniquely identifying the customer.

Box 1: Example guidance incorporated in quotations



Use of real-time data

Potentially insurers may obtain real-time information from consumers making use of telematics technology to monitor and manage risk. The most salient application is in relation to vehicle-use.⁶⁴ In the UK around one third of young drivers have a telematics-enabled usage-based insurance (UBI) product, whereby the insurer captures information on the driving behaviour and enables the insurer to reward less-risky behaviour. The product has been credited with significantly reducing crash-risk in high-risk drivers in the UK but the regulatory environment in Australia is not favourable to telematics enabled UBI and its take-up is very limited.

64 See Tooth (2017) for a detailed discussion on the use of telematics for insurance.

Some insurers have offered UBI;⁶⁵ however, I understand the main uses of the in-vehicle telematics in Australia are in fleet vehicle management.

The volume of data captured through telematics is extremely large. The data captured, the method of capture and the analysis varies. For example, Mercurien, a provider of telematics services, capture data on the vehicle's position every second the vehicle is in motion creating a huge volume of data.⁶⁶ In such cases the telematic services provider is the holder of the data and has an agreement with the vehicle user and the organisation monitoring the driving. Where the data has been used for insurance purposes, an aggregated measure (i.e. a driving score) has been passed to the insurer. Some telematic solutions are based on data captured using the mobile phone.

Accessing consumer data from other sources

Insurers and consumers themselves have limited ability to access consumer data from alternative data sources. As noted below, insurers that are members of the Insurance Reference Services can access the claims history data that it holds. However, I understand that typically this information is not used at the time of quotation, with insurers relying on the consumers disclosure.

There are other public (ie. government) data sources that contain consumer data that is relevant to risk-assessment that is currently not used.

This is particularly the case for motor vehicle and CTP policies. Insurers ask information from consumers on their driving record, much of which is available from the public record including relating to driving cancellations, licence suspensions and offences. As, non-disclosure of the required information may have an impact on a consumer's ability to make a claim, it can be of benefit to the consumer that the information is obtained from the public source.

The ICA (2016) notes that, "each of the State Governments, through their road and traffic authority, collects and maintains databases recording driver license demerits, suspensions, cancellations, disqualifications and restrictions. Access to these databases, where a consumer has applied for insurance, could enable insurers to verify information provided. This may be beneficial for motor vehicle insurance policies where non-disclosure has occurred due to error, and verification of records at the point of sale would reduce the likelihood that consumers are left uninsured when they need to make a claim."

Of note, consumers can obtain their driving record from public sources, but this is difficult. In NSW, for example, a consumer can purchase a certified driving record for \$32 or obtain an online record for \$22.⁶⁷

In contrast in the UK, consumers and car insurance companies can check a consumer's driving licence records automatically through a service called MyLicence. The service was announced in 2014 as having a number of benefits.⁶⁸

65 Consumers can currently purchase a UBI product from Ubicar (<https://ubicar.com.au/>) who are backed and underwritten by RAC Insurance. A similar product was offered by QBE Insurance Group but withdrawn from the market after 5 years in 2018.

66 <https://www.mercurien.com/technology-3-key-points-of-difference>

67 <https://www.service.nsw.gov.au/transaction/request-driving-record>

68 Participating insurers will need the licence holder's permission and driving licence number to allow secure access to entitlements, convictions and other relevant motoring history. More details at <https://www.gov.uk/government/news/dvla-and-mib-announce-the-launch-of-mylicence-service>

It will act as a deterrent against insurance fraud and in some cases, should reduce insurance premiums for GB motorists. MyLicence aims to protect motorists from unwittingly making false declarations regarding their motoring convictions which could invalidate their insurance and will improve road safety by providing a more accurate risk assessment of drivers.

Consumers can also obtain a criminal history check. However, this is an expensive process and difficult process. The fee for a National Police Check is (based on name and date of birth) is currently \$58.60.⁶⁹ Applicants are advised they should allow a minimum of ten (10) business days for name and date of birth checks to be processed.

3.1.2.3 Other data sources used for risk assessment

Data obtained

Insurers make use of a range of private and public data sources to estimate risk, particularly related to natural hazards. These include privately developed services (e.g. the NatCatSERVICE from Munich Re, a comprehensive natural catastrophe loss database)⁷⁰ and a range of government sources including local and state governments and government agencies (in particular, the BoM and Geoscience Australia, GA). Some of the publicly available data sources by risk are described in Table 2: Public information on natural hazard risks below. The ICA maintains the ICA DataGlobe (see Box 2 below), which provides hazard data for most Australian properties.

State and local governments have the primary responsibility for assessing and mapping the flood risk for their communities.⁷¹ The ICA incorporates flood mapping data into the National Flood Information Database (NFID) (part of the ICA DataGlobe), which houses all available flood maps. Flood maps are being continually updated and incorporated into the NFID. All states—with the exception of South Australia—have been able to contribute detailed comprehensive flood data that has been incorporated into the NFID that previously was only held by local councils.

⁶⁹ Source: https://www.police.nsw.gov.au/online_services/criminal_history_check

⁷⁰ NatCatSERVICE is advertised as—Comprising some 37,000 data records—“the most comprehensive natural catastrophe loss database in the world. Approximately 1,000 events are recorded and analysed every year.” <https://www.munichre.com/en/solutions/for-industry-clients/natcatservice.html>

⁷¹ This information is used for infrastructure and town planning, and to assist with devising strategies to lower the risk of flood for existing communities and assets.

Table 2: Public information on natural hazard risks

Risk	Publicly available information
Flood	<p>Flood data is largely collated by the states, particularly new flood studies.</p> <p>Insurers have access to the National Flood Information Database (NFID) organised by the ICA.</p> <p>Geoscience Australia (GA) provides the Australian Flood Risk Information Portal, which 'hosts data and tools that allow public discovery, visualisation and retrieval of flood studies, flood maps, satellite derived water observations and other related information'.⁷²</p> <p>Some state governments also provide state specific flood mapping information (e.g. Queensland FloodCheck, NSW flood data portal).</p>
Bushfire	<p>Each state provides mapping tools that enable users to check the bushfire risk.⁷³</p>
Earthquake	<p>GA details and summarises information for recent earthquakes that have occurred across Australia and NZ, including off-shore.⁷⁴</p> <p>GA also develops the National Seismic Hazard Assessment for Australia, which 'defines the level of earthquake ground shaking across Australia that has a likelihood of being exceeded in a given time period'.⁷⁵</p>
Coastal hazards (erosion and storm tide inundation)	<p>GA publishes the Smartline Geodatabase. OzCoasts and the Coastal Risk Australia publish publicly accessible websites that provide information on coastal flooding from climate change and other risks based on this data and other sources.⁷⁶ Some states also provide information on coastal hazard risk.⁷⁷</p>
Cyclone	<p>GA provides the Tropical Cyclone Hazard Assessment (TCHA), which 'defines the severe wind hazard posed to Australia based on the frequency and intensity of tropical cyclones making landfall around the Australian coastline.' The TCHA is targeted to 'emergency managers, town planners and infrastructure owners'.</p>
Tsunami	<p>GA provides the Probabilistic Tsunami Hazard Assessment (www.ga.gov.au/ptha), which models the frequency with which tsunamis of any given size occur around the entire Australian coast.</p>

72 <https://afrip.ga.gov.au/flood-study-web/#/search>.

73 Examples include the bush fire prone land mapping tool provided by the NSW Rural Fire Service ([here](#)), and other more general mapping tools (e.g. <https://maps.sa.gov.au/SAPPA/> in South Australia).

74 <https://earthquakes.ga.gov.au/>

75 <http://www.ga.gov.au/about/projects/safety/nsha>

76 See <https://ozcoasts.org.au/about/> and <http://www.coastalrisk.com.au/> GA also publishes the Smartline Geodatabase <http://services.ga.gov.au/>

77 For example: Queensland (<https://www.qld.gov.au/environment/coasts-waterways/plans/hazards>), NSW (http://webmap.environment.nsw.gov.au/PlanningHtml5Viewer/?viewer=SEPP_CoastalManagement)

Box 2: ICA DataGlobe and other sources

ICA DataGlobe

The primary purpose of the ICA DataGlobe is to provide a communications resource for the ICA and member companies that are involved in dialogue with the community and governments about the relationship between the cost of insurance cover for individuals and their exposure/vulnerability to natural perils.

The DataGlobe provides visualisations of collected hazard data (Earthquake, Bushfire, Flood, Cyclone, Hail, Storm etc) that can be used to provide a meaningful insight into natural perils, risk-based insurance premiums and the mitigation measures that may reduce the impacts of disaster in specific locations. The ICA DataGlobe provides hazard data for 14.1 million Australian homes.

Source: <https://www.icadataglobe.com/access-raw-hazard-datasets>

Data gaps

In a submission on 'Australian Government Data Sharing and Release Legislation', the ICA (2018b) described several data gaps relating to the following.

- High-resolution elevation/terrain data—Issues include data gaps in coverage in low-density areas and fragmentation in the way data is collected and published.
- Historical weather data—Issues include some data being unavailable or expensive to obtain relating to historical radar, geostationary satellite imagery and historical flood/tide data.⁷⁸
- Building attribute data—The ICA recommends public release of GeoScope (see below), which gives an accurate location for buildings, roof area, roof complexity, and estimated floor height.⁷⁹ The ICA argues that the data is important for assessing flood and storm surge risk and estimating sums-insured.⁸⁰

78 The ICA (2018b) states 'Most basic historical weather data is readily available with nominal fees to cover the cost of data supply. The gaps are historical radar, geostationary satellite imagery and historical flood/tide data. In some cases, these datasets are available but expensive (e.g. radar). The historical flood height and tide gauge data is held by the BoM but actually owned by many other agencies (e.g. local water authorities, councils, state governments etc.) which makes it difficult and expensive to access. Other historical weather data from BoM (e.g. a recent reanalysis dataset funded by the various fire agencies) may be available through negotiation, but the existence of such datasets is not publicly advertised.'

79 The ICA also recommended release of disaggregated (i.e. per-building) data from NEXIS ([National Exposure Information System](#)), a dataset compiled by Geoscience Australia. NEXIS provides aggregated information (at existing administrative or geographic boundaries) on estimates of the value of buildings and contents and information about property attributes such as age and construction type. The ICA argues that per-building data would be very useful in quantifying natural hazard risk. However, we understand GA is unable to release this information due to licence conditions.

80 ICA (2018b) states 'Accurate building location is very important for understanding flood and storm surge risk, as most address databases assume that the building is in the middle of the land parcel; this is often not true on large or rural land parcels, and can result in over-estimated flood risk. Other attributes in GeoScope could be useful for calculating accurate sum insured for buildings, or for identifying the presence/location of outbuildings on rural properties.'

- Building standards and zoning—The ICA recommends that information about the rebuilding standards applicable in each specific location be consolidated and made publicly available
- Flood data—Issues include:
 - » *Some old studies (typically held by local governments) are not digitised*
 - » *Some local governments release only a small section of their data (e.g. they may just release 1-in-100-year flood maps and not maps that include more frequent and less-extreme events).*

Other industry participants I have talked to have reiterated support for release of the GeoScape data and raised other issues/opportunities including that:

- a national digital (and quality-controlled) dataset of coastal hazard lines/zones (currently held at local or state levels) would be ‘very useful’.⁸¹
- consistent flood model outputs for various climate scenarios, ‘would provide very important insights into safeguarding people and the built environment’
- there is value in updated topographic data as ‘most of the lidar [Light Detection and Ranging information] is now 10 years old.’

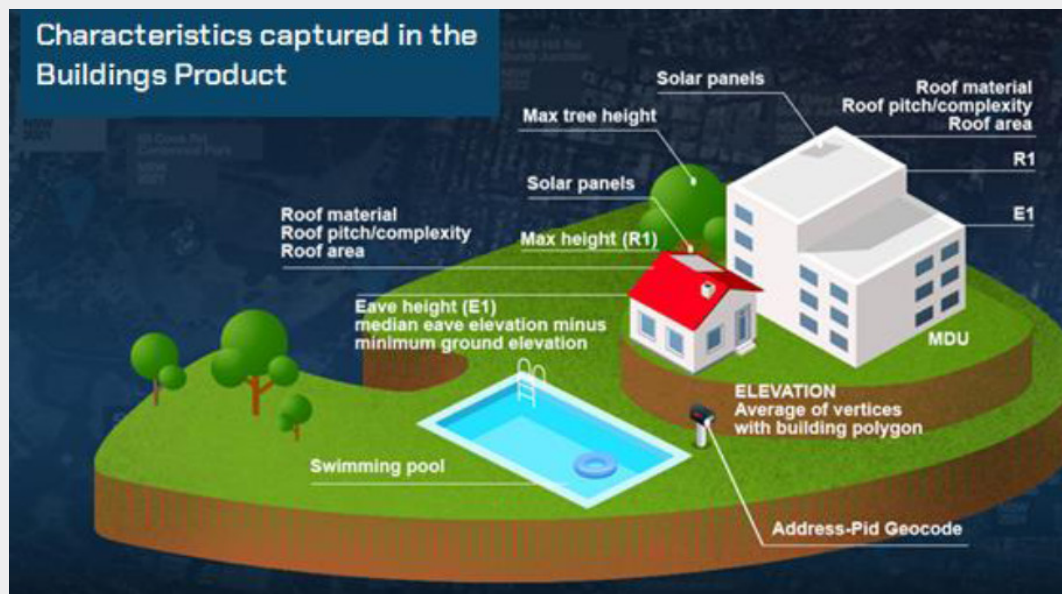
81 Issues raised included difficulties in keeping track of defences and their effectiveness.

Box 3: GeoScape

GeoScape refers to a database (<https://geoscape.com.au>) managed by PSMA Australia, a commercially operating, for-profit company jointly owned by the nine governments of Australia.

Of great interest to insurers, the GeoScape database includes accurate location for buildings, roof area, roof complexity, and estimated floor height.

PSMA aims 'to develop and facilitate the broadest possible access to authoritative national spatial datasets in order to deliver benefits for all Australians.'⁸² However, the GeoScape data is released for a fee, substantial enough to deter its use for insurance purposes.



Source: GeoScape Buildings Product Description Version 1.5 <https://geoscape.com.au/data/>

3.1.3 Claims data

The claims process results in additional data being collected from the customer and being generated by the insurer. In the process of lodging a claim, customers provide insurers with details about the claim (e.g. the event and details of the loss). During the process the insurer captures additional information as a result of assessing the claim and addressing the claim (e.g. undertaking the repair). Much of the data collected during the claims process is of a qualitative nature and/or specific to the claim. For example, for a storm-damage claim against a home and contents policy, data will be collected about the nature of the damage and the repairs required (an example is in Figure 6). There is some standardised historical claims data such as date, type, outcome and value of claims. For example, in the underwriting process, insurers typically ask policyholders about their claims history and whether they have made a claim and had a claim denied in recent years.

Figure 6: Example of detail data captured during the claims process

LEGAL DISCLAIMER: The information contained in this quotation is "Commercial in Confidence" and cannot be submitted to a third party without prior permission from [REDACTED]

[REDACTED]

[REDACTED]

Storm LOSS CAUSE
No ASBESTOS PRESENT
No MOULD PRESENT

CURRENT LEAD TIME
REPAIR DURATION

Cash Settlement Purposes Only QUOTE TYPE

ITEM	TRADE SUMMARY	DESCRIPTION / SCOPE OF WORKS	Qty	Unit	Rate	Amount	Comments / Room Dimensions Advise if Prime Cost / Provisional Sum	(Progress Claim Section)		
								Total % Complete to Date	Previous % Complete	Total Value this Claim
Provisional Sums										
1	Builder	Site Preparation	1	Item	\$ 200.00	\$ 200.00	Plastic protection for sand and polish			
2	Cleaning	Builders Clean	1	Item	\$ 600.00	\$ 600.00				
Family Room (Approx 3.7 x 8.5 x 2.4H)										
3	Flooring	Sand and polish floorboards	32	M2	\$ 45.00	\$ 1,440.00				
4	Plastering	Scrape back bubbling paint and set joins + patch and sand	1	Item	\$ 150.00	\$ 150.00				
5	Painting	Prepare and paint entire ceiling	32	M2	\$ 18.00	\$ 576.00				
Kitchen (Approx 5.9 x 3.7 x 2.4H)										
6	Flooring	Sand and polish floorboards	22	M2	\$ 45.00	\$ 990.00				
7	Plastering	Scrape back bubbling paint and set joins + patch and sand	1	Item	\$ 250.00	\$ 250.00				
8	Painting	Stain seal around 2 x downlights	1	Item	\$ 50.00	\$ 50.00				
9	Painting	Prepare and paint entire ceiling	22	M2	\$ 18.00	\$ 396.00				
Downstairs Rumpus - Lower ceiling (Approx 7.3 x 3.3 x 2.3H)										
10	Plastering	Scrape back bubbling paint + patch and sand	1	Item	\$ 100.00	\$ 100.00				
11	Painting	Prepare and paint entire ceiling	24	M2	\$ 18.00	\$ 432.00				
Master Bedroom (Approx 7.2 x 3.6 x 2.4H)										
12	Electrical	Reconnect downlight + test	1	Item	\$ 320.00	\$ 320.00				
13	Cabinet Maker	Remove and refix RHS BIR aluminium end panel to facilitate wall repair	1	Item	\$ 450.00	\$ 450.00	Min charge - 2 attendances			
14	Plastering	Patch repair wall next to BIR	1	Item	\$ 150.00	\$ 150.00				
15	Painting	Prepare and paint RHS wall	1	Item	\$ 50.00	\$ 50.00				
16	Plastering	Replace approx 6m2 of ceiling + insulation	1	Item	\$ 1,100.00	\$ 1,100.00				
17	Plastering	Patch repair ornate cornice	1	Item	\$ 50.00	\$ 50.00				

IRS data

Insurers who are members of Insurance Reference Services (IRS) Limited submit such data for domestic general insurance claims (relating to motor, home and—recently added—travel claims) to the IRS data registry (see Box 4: The insurance reference service (IRS) below). This is used by the IRS members for authorised purposes, which include underwriting, claims management, claims investigation, loss assessment and fraud detection. IRS members are prohibited from using the data for marketing, non-customer solicitation, or downloading / exporting bulk customer records or supply to third parties.⁸³ An extract of an Insurance Claims Report is provided in Figure 7 below.

The Financial Rights has raised concerns with the use of the IRS data. The Financial Rights (2017) reported that they were told (in 2016 and again in 2017) that 'the reports were haphazard, inconsistent and largely unreliable so that the current report provides minimal benefit to insurers or consumers'. Financial Rights was also concerned that:

- very few consumers know that insurance reports exist, their purpose and when their information is recorded
- access to this report is not free; which is a barrier to consumers being able to check that that information is accurate.
- there are no specific regulations stipulating the permitted contents of the report, the type and the meaning of listings and the length of time the information is retained on a report.

83 IRS membership is available only to insurers bound by the GI Code of Practice.

- the information held in an insurance report has the potential to be very prejudicial to a consumer in obtaining insurance or in making a claim. The lack of specific regulation in insurance reporting is in stark contrast with credit reports where there is extensive regulation about what information can be held, how consumers can get access and correction procedures. Fraud is a serious allegation and the reporting of fraud on an insurance report is potentially defamatory and needs to be tightly regulated.

Box 4: The insurance reference service (IRS)

Insurance Reference Services (IRS) Limited is a non-profit member-based organisation, operating since 1984, that maintains a data registry of claims information. IRS assists Australian general insurance company members better understand policy holder claims history information. The IRS data registry supports risk underwriting, claims management, claims investigation, loss assessment and fraud detection. IRS Limited is comprised of 14 member companies⁸⁴ operating in the domestic general insurance market. Its board of directors is made up of member delegates and representatives of the ICA, which additionally provides administration services. Membership is limited to members of the ICA.

The IRS data registry includes 10 years of motor and home claims information relating to approximately 16 million individuals and 1 million businesses in Australia. IRS is focussing on expansion to include additional claim types e.g. travel claims. It holds 28 million de-duplicated claims in a secure environment and each month receives more than 1.2 million claims updates from IRS members. The data is limited to submissions made by IRS member companies—In relation to motor and household insurance, it covers approximately 90 per cent of contracts.

Each member is able to access the IRS database through real-time user login or via an API. IRS members can search for claims history relating to individuals, companies and addresses.

IRS was originally designed to validate underwriting risk, and to assist within the claim management process to detect and prevent fraud. By sharing information around incidents of insurance claims, the industry is able to develop a source of information to better understand the risk posed by individuals seeking a general insurance policy.

Source: Illion (2019), Bargon (1995), Financial Rights (2019).

⁸⁴ Allianz, Youi, Westpac, Suncorp, QBE, Hollard, Aioi Nissay Dowa Insurance Company Australia Pty Ltd, RACV, Progressive, RAA, Calliden, Auto & General, RACQ, AI Insurance, iag, CommInsure and Asset Insure. See <http://insurancereferenceservices.com.au/>

Figure 7: Extract from Individual Insurance Inquiry Report

Insurance history						
Insurance claims						
Date of loss	02 Sep 2015	Member name	Unknown	Insurance type	Motor Vehicle	
Claim no	CN1001	Claim status	Registered			
Policy no	PN0021	Policy holders	QA PERFORMANCE SYSTEMS PTY. LIMITED			
Claim type	Net settlement amount	Claims recovered from third party	Excess paid	Relationship		
Other Non Financial Loss	\$349	No	No	Claimant		
Personal Misconduct	\$136	No	Yes			
Date of loss	01 Feb 2015	Member name	Unknown	Insurance type	Dealership	
Claim no	CN1000	Claim status	Open			
Policy no	PN004	Policy holders	John Doe			
Claim type	Net settlement amount	Claims recovered from third party	Excess paid	Relationship		
Collision With Pedestrian	\$692	No	No			
Liability To Public	\$357	No	No			
Water	\$97	No	No			
Insurance enquiries						
Date	Reference	Member	Insurance type	Reason	Amount	Relationship
03 Aug 2016	REF123	INSURANCE P/L	Motor Vehicle	Claim	\$0	Principal
Loss assesor/ adjustor/ investigator enquiries						
Date	Reference	Member	Insurance type	Reason	Amount	Relationship
27 Aug 2016	REF02456	INSURANCE P/L	Motor Vehicle	Claim	\$500	Claimant

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

3.2 POTENTIAL USES OF CDR WITH REGARD TO INSURANCE

The potential uses of CDR with regard to insurance will depend on the innovation of providers of data-related products and services and the customer demand for these. Innovation, by its nature, is difficult to predict. Nevertheless, some understanding of the potential uses is helpful in considering the scope of Open Insurance, identifying potential implications and issues and understanding the priority that should be given to applying CDR to the insurance sector.

To that end, this sub-section considers some⁸⁵ of the potential insurance-related uses of the CDR. These have been categorised as relating to using:

- insurance data for insurance processes
- insurance data for non-insurance processes
- data from other sectors for insurance processes.

It is also difficult to predict the extent to which consumers will find a use beneficial, and, accordingly, I do not comment on whether the uses identified will be beneficial to consumers.

⁸⁵ The potential uses have been identified in discussions with those interviewed for this project. I do not expect the list to be comprehensive.

3.2.1 Insurance data for insurance processes

3.2.1.1 Product search

CDR applied to the 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.

3.2.1.2 Quoting and sales

Obtaining quotations

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. The benefits would include:

- reducing the effort and cost for customers and insurers in develop quotes and
- improving the quality of information provided, thereby:
- reducing the administration costs of correcting information
- reducing the risk of customer's inadvertently providing the insurer with incorrect information (which may affect their claim)
- increasing the confidence of insurers that they have received accurate information.

Post sales process

CDR may 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.

New product development

CDR may facilitate insurers developing new and innovative insurance products based on a customer's existing policy and claims history. For example, an insurer might offer:

- tailored contents insurance that aligns with a body-corporate building policy
- supplementary coverage to an insured's existing policy with another insurer. For example: coverage for an AirBnB hosting; coverage for land slide to an existing home contents policy; coverage to address an exclusion with a travel policy.

3.2.1.3 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. While insurers can use such applications, CDR could make it easier for third party providers of risk management solutions to simultaneously engage with insurers and policyholders.

3.2.1.4 Claims investigation and processing

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. For example, CDR may facilitate:

- sharing of data with other parties involved 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 claims-handling firm that manages insurance 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.

Furthermore, the 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.

3.2.2 Insurance data for non-insurance processes

Potentially, insurance data may be used for non-insurance uses such as for financial-risk management purposes. For example:

- A customer allows a lender to access their policy details to verify their insurance coverage, thereby enabling the customer to borrow on better terms. For example, mortgage lenders currently require borrowers to have insurance on their property. However, this requirement is rarely verified following the first year
- A customer allows an accredited party to access their policy details (including details of assets insured, sums-insured, policy details) to assist the customer with financial planning.

The nature of insurance data suggests that the data would likely have limited use outside of financial risk-management.

3.2.3 Data from other sectors for insurance processes

Potentially the greatest implication of the CDR for the insurance sector relates to insurers making use of data that becomes more accessible as a result of CDR applying to the banking sector and other sectors.

Insurers have historically used data from other organisations that has been collected with customer's permission. For example, life insurance companies often ask applicants to sign over "full authority" to their medical records to assess both claims and cover applications.⁸⁶

The CDR applied to Open Banking and other sectors should make it easier for consumers to provide other data to insurers. Potential applications include:

- during the underwriting process
 - » *using banking data to assess to help assess insurance needs⁸⁷*
 - » *insurers verifying information provided by customers. For example, a consumer might allow an insurer to more easily review driving-licence information*
 - » *apps access banking record to capture data on purchases to determine sum-insured*
 - » *insurers reviewing transactional data to assess risk*
- to assist in claims investigation, for example by making it easier for an insurer (or representative) to review banking and telephone records
- for claims assessment and management, increasing the ease with which insurers can use other data from consumers to verify the cost of claims.

⁸⁶ <https://www.avant.org.au/Resources/Public/providing-medical-records-to-a-third-party/>; <https://www.myhealthrecord.gov.au/about/legislation-and-governance/summary-privacy-protections>

⁸⁷ This opportunity appears greatest for life insurance, for which income and expenditure data are important inputs in determining the optimal policy and level of cover. See for example, <https://econsultancy.com/anorak-will-use-open-banking-to-sell-life-insurance/>

4. Applying CDR to insurance

This section considers how the CDR might be applied to the Insurance Sector (i.e. Open Insurance). It draws heavily on the approach adopted by the Farrell Report for Open Banking but focusses on matters that are likely to differ to the Open Banking regime and/or are of particular interest. Consistent with the overarching framework for CDR, it appears likely that, in applying CDR to insurance, many aspects of the Open Banking regime would apply with little or no modification.⁸⁸

4.1 SHARING OF PRODUCT DATA

4.1.1 Overview

One of the objectives of the CDR is to 'enable the efficient and convenient access to information about products or services.', with a key expected benefit that it will make it easier for consumers to make product comparisons.

To facilitate this, the CDR Rules include requirements that firms disclose product data (also referred to as 'product reference (generic) data') in a standardised form. Specifically, Rule 1.12 states:

A data holder must provide an online service that:

- can be used to make product data requests; and
- enables requested data to be disclosed in machine-readable form; and
- conforms with the data standards.

The product data will include:

- product prices including fees, charges and interest rates (however described)
- features and benefits, including discounts and bundles
- terms and conditions
- customer eligibility requirements.

A product data request may be for required product data, voluntary product data or both. While a fee cannot be charged for the disclosure of required product data, a fee can be charged for disclosing voluntary product data.

For Open Banking, data standards have been (or are being) established for a set of attributes for range of products.⁸⁹ The disclosure of product data in a standardised form in Open Banking is expected to lead to greater use of Apps enabling comparisons of products.⁹⁰

88 For example, the governance and regulation for Open Insurance would likely follow that of Open Banking. That is, as outlined in the Farrell Report (Chapter 2): The ACCC will be the lead regulator, with primary responsibility for competition and consumer issues including accreditation of participants and standards-setting. The OAIC will be primarily responsible for privacy protection. Other relevant regulators, including ASIC, APRA and the RBA, will have a support and consultation role.

89 Transaction and savings accounts, Term deposits, Travel cards, Regulated trust accounts, Residential mortgages, Credit and charge cards, Personal loans, Margin loans, Leases, Trade finance, Overdrafts, Business loans

90 For example, in October 2019, the technology company Adatree released an API that aggregated banking product information using the new

In some respects, establishing data standards for product attributes for insurance may be easier than for banking as the basic purpose and structure of all insurance products is similar. Variations in insurance contracts may be largely described by what is covered, limits, exclusions, excesses and a few other features.

Nevertheless, there are some challenges with the application to general insurance.

First, the price of the insurance contract is specific to the policy holder. 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.⁹¹ 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.

Third, the number of relevant attributes is potentially very large.⁹² 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.

Finally, benefits may be limited because the difference in the quality of the insurance depends significantly on the quality of the customer service provided, which is not reflected in product data.

4.1.2 Product data comparison implications of Open Insurance

A potential implication of applying the CDR to insurance is that it becomes a catalyst of greater standardisation of the information contained in the PDS, KFS and TMD. This could involve standardisation in terms of:

- definitions—pertaining to the definitions of key terms within products
- information disclosure—pertaining to how products terms and attributes are described
- product—pertaining to the attributes of the products.

Open Banking APIs. See <https://www.adatree.com.au/adatreenews/kickstarts-with-product-api-aggregator>

91 An exception is CTP for which the premiums are regulated.

92 This is reflected in the large size of the product disclosure statements (PDSs), which may be in the order of 30,000 words.

4.1.2.1 Standardised definition of key terms

Currently, with the notable exception of 'flood', different insurers may use different definitions for key policy terms in policy documents.⁹³ This lack of consistency in definitions is commonly viewed as a barrier to conducting product comparison and would likely hinder the development of product data standards for CDR.

Many stakeholders, including Financial Rights, have expressed interest in seeing greater use of standard definitions. Insurance industry participants appear broadly receptive to greater standardisation of definitions so long as standardisation does not restrict insurers innovating.⁹⁴

4.1.2.2 Information disclosure standardisation

There is 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.

4.1.2.3 Product standardisation

With the exception of some compulsory statutory insurances (CTP insurance and workers compensation insurance), the coverage offered by general insurance policies can vary by supplier. As noted, insurers must cover 'prescribed events' described in the IC Regulations; however, they can deviate from these if they clearly inform the insured in writing (typically through the PDS). The lack of standardisation provides an added challenge to the application of the CDR.

Any benefits of regulated product standardisation would need to be weighed against the risks that such regulation hampers innovation and/or reduce the flexibility of insurers to adapt. For example, regulated standardisation has inhibited the development of telematics enable usage-based insurance in Australia and some overseas jurisdictions.⁹⁵

93 For example, 'action of the sea', which is a prescribed term in the IC Regulations may defined differently by different insurers.

94 For example, in response to the Treasury's 2019 Discussion Paper "Disclosure in General Insurance: Improving Consumer Understanding", the ICA has indicated the industry will "Develop a common definition for 'actions of the sea' and work with stakeholders to determine the need for other common definitions".

95 This is the case in Australia (Tooth 2017) and elsewhere (see for example, <https://www.tu-auto.com/california-taps-the-brakes-on-insurance-telematics/>).

4.1.3 How might be it be implemented

The implementation in banking provides a guide as to how product data standards might be implemented in insurance. A summary of the fields in the data standards for banking products are listed in Table 3: Attributes in the banking product standards below.

Similarly, a set of features might be developed for insurance. For insurance, the relevant attributes may be:

- What is covered including limits
- What exclusions apply under what circumstance
- What excesses apply
- Other features such as choice of repairer

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. Alternatively, the standards could allow insurers to apply their own wording. Greater levels of prescription may make comparisons easier but risk inhibiting innovation. For example, travel insurers may wish to add new exclusions or inclusions in response to the introduction of new sports and activities, which may involve redefining terms.

Table 3: Attributes in the banking product standards

Name	Description
Bundles	An array of bundles that this product participates in. Each bundle is described by free form information but also by a list of product IDs of the other products that are included in the bundle.
Features	Array of features available for the product. Features are described using free form text. The standards list 23 feature types. These include for example Redraw, Loyalty Program, Digital Wallet, Complementary Product Discounts and Other.
Constraint	Constraints on the application for or operation of the product such as minimum balances or limit thresholds
Eligibility	Eligibility criteria for the product, includes types such as employment status, age,
Fees	Fees applicable for the product. 9 fee types are specified. Data includes the amount/ rates, frequency, discounts and other information
Deposit Rates	Interest rates available for deposits
Lending Rates	Interest rates charged against lending balances. Fields include Rate Type (eg. Fixed, Variable, Penalty etc), Calculation frequency, Application frequency etc

Source: <https://consumerdatastandardsaustralia.github.io/standards/>

4.2 WHAT CUSTOMER DATA SHOULD BE SHARED BY INSURERS?

To assess the extent of data that should be applied, the Farrell Report categorised data as:

- Customer-provided data— information provided directly by customers
- Transaction data—data generated as a result of transactions made on a customer's account or service
- Value-added customer data—data that results from effort by a data holder to gain insights about a customer
- Aggregated data sets—created when banks use multiple customers' data to produce de-identified, collective or averaged data across customer groups or subsets.

The Report recommended that customer data and transaction data should be incorporated into the CDR but that the value-added customer data and the aggregated data sets should not be. The Open Banking Rules have aligned with the Farrell Report recommendations.

As noted in Section 3.1, insurers also hold data, such as flood mapping data, that, although not collected from the consumers or referencing the consumer, can be of value to consumers. Similarly, banks may hold data on property values. The Farrell Report did not contemplate access to such data and the Open Banking rules do not refer to such data.

4.2.1 Customer-provided data

Customer-provided data refers to information provided directly by customers to the data holder.

The Farrell Report argued that such data “clearly ‘belong’ to the customer” and that ‘in principle customers should have the right to instruct that it be given to them, or shared with data recipients they choose, in a form that facilitates its transfer and use.’ The Review made two qualifications. First, it noted that the obligations should only apply where the data holder keeps that information in a digital form. Second, it argued that the obligation should not apply—for reasons of data security—to information supporting an identity verification assessment.

An additional consideration relevant to insurance is whether the CDR might be applied to data captured during quotations. During the process of obtaining a quote for insurance, potential customers provide substantial information to the insurer that might be re-used for obtaining quotations from other insurers. For example, a customer applying for a house insurance policy online might wish to reuse the details they have entered to obtain quotations from other firms.

Conceivably, this could be facilitated by extending the CDR to information provided by consumers in obtaining a quotation. Such an obligation on insurers would be clearly beneficial to consumers who are shopping around. However, in effect, it would mean extending obligations on firms to consumers who are not customers (or former customers). The potential societal value of such an obligation may also be limited as consumers could conceivably provide such information to a third-party comparator.

4.2.2 Transaction data

Transaction data refers to data generated as a result of a customer's interactions with the data holder. Banking products and services generate large volume of transaction data—such as records of deposits, withdrawals etc. Such transaction data may have substantial value and its portability is generally recognised as a key potential benefit of Open Banking.⁹⁶ The Review recommended that 'data holders should be obliged to share all transaction data in a form that facilitates its transfer and use.'

The transaction data associated with insurance products is limited—primarily related to claims processing and customer service interactions. Customers might reasonably expect that the CDR would apply to their claim's history information, and in particular that the details that are currently captured in a claim's history report (and sent to the IRS) would be made available.

In addition to that captured in the claim's history report, a claim generates substantial additional data relating to the detail of the claim. For example, this would include a description and photos of the damage and in some cases the repair process.

4.2.3 Value-added customer data

The Farrell Report recommended that data that results from 'material enhancement by the application of insights, analysis or transformation by the data holder' should not be within scope of Open Banking. The CDR legislation allows for CDR data to include data that is 'directly or indirectly derived' from underlying CDR data.

With regards to insurance, the key value-added customer data relates to the risk assessment that is generated as a result of the underwriting process and, based on this, the premium charged to consumers. (See the Appendix for a discussion of insurer pricing). Such information can be of great interest to consumers.

Some insurers provide some information of the factors that make-up of the insurance premium and factors that can influence the premium. For example, NRMA currently provide the contribution of the flood-risk to the insurance premium. Suncorp provides advice on the impact of risk mitigating activities on reducing the premium related to cyclone risk. Customers can also vary the information they provide in the quotation to see the influence of different factors; however, this process is difficult.

However, it appears unlikely that risk assessment and pricing data would be incorporated into the CDR. Risk assessment and pricing can be a key competitive advantage. An insurer that is able to price more accurately than its competitors will benefit financially by pricing to attract the lower-risk customers and avoid covering the high-risks. The competitive advantages of better risk-rating drives insurers to invest more in information gathering. Insurers need to weigh-up the benefits of gathering additional data to improve their pricing against the cost of the additional data gathering.

⁹⁶ The Farrell Report notes there are a 'multitude of potential uses can be imagined for [banking] transaction data. A customer could share receipt and payment patterns or credit card transactions with a comparison services provider to obtain budgeting advice or a recommendation on the best credit card for them.'

Given the competitive importance attached to risk assessment and pricing, insurers go to some lengths to a) protect their investment in underwriting from competitors and b) in getting information from competitors. A risk for insurers with consumers obtaining this information, is that consumers can then pass it to competing insurers. This dilutes the incentive for insurers to invest in obtaining risk information.

4.2.4 Aggregated data

Aggregated data refers to the data created by firms in aggregating the de-identified customer data. In the context of insurance, it could include, for example, aggregated data by postcode on policy details (e.g. the sum-insured and level of excess chosen), assets (e.g. types of buildings), risk (e.g. claims experienced). Such data has potential value to other insurers, other firms and even consumers.⁹⁷

However, the Farrell Report (pp. 39–40) argued against compelling banks to release such information on the basis that:

- in most cases the value of the data ‘will have been created by the effort of the bank’ and it would ‘seem fair’ that banks were compensated for providing such information.⁹⁸
- there may be limited benefit because over time competitors would be able to obtain data from customers and apply their own aggregations.

Similar arguments would apply for Open Insurance. A further issue is that it would be challenging to specify the aggregated data sets as different insurers will aggregate data in different ways.

4.3 OTHER DATA HELD BY INSURERS

In addition to data about their product and data related to their customers, insurers hold and use a significant amount of data to assess risks that would be of potential use to consumers and other stakeholders. The access to such privately held data was raised during the Productivity Commission’s Inquiry into Data Availability and Use.

The ICA (2016) in its submission to the inquiry summarised

Increasing the access to insurers’ data is a complex issue. As we have already noted, insurers hold detailed and sophisticated data in order to underwrite a 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. Increasing public access to this data will have an impact on incentives to invest in research and data analysis capabilities, which in turn will have adverse consumer outcomes.

97 For example, a consumer might wish to know what the average sum-insured or frequency of theft claims for their region.

98 Another implication (although not noted by the Farrell Report), is that mandatory provision would reduce incentives for firms to generate such information.

It is also important to note that insurers may not own all of the data they hold. Insurers that access data from third party providers, with proprietary rights over that data, will be under contractual obligations to keep that data confidential.

4.4 DATA PRIVACY AND SAFEGUARDS

Much of the data security principles and rules for Open Banking would presumably apply for Open Insurance. The following principles discussed in the Farrell Report and subsequent ACCC work on Open Banking appear appropriate for Open Insurance.

- Notification—data holders must clearly communicate to consumers what they are authorising the data holder to do.
- Joint accounts—Authorisation for transfers of data relating to a joint account should reflect the authorisations for transfers of money from the joint account.
- Security standards—In order to be accredited to participate in Open Insurance, all parties must comply with designated security standards set by the Data Standards Body.
- Liability—The liability framework should be consistent with existing legal frameworks to ensure that there is no uncertainty about the rights of customers or liability of data holders.⁹⁹
- Consent—Consent must be explicit, fully informed and able to be permitted or constrained according to the customer’s instructions.¹⁰⁰
- Obligations on data recipients—Data recipients under Open Insurance must be subject to the Privacy Act.¹⁰¹
- Consent rules—Nature and form of consent (Rules 7.10 to 7.12).

4.5 OTHER MATTERS OF DESIGN AND IMPLEMENTATION

4.5.1 Who should be able to direct data to be shared?

Classes of customers

The Farrell Report considered whether the Open Banking regime should apply to small and large businesses in addition to individuals. The Review concluded that it would be ideal for all customers to have access to Open Banking on the basis that carving out a set of customers could prove to be an additional cost; not a cost-saving.¹⁰²

99 See Farrell Report (pp. 65–69).

100 Farrell Report (recommendation 4.5).

101 Farrell Report (recommendation 4.1).

102 As noted in the Review regulatory complexity tends to add unnecessary costs and can lead to unintended consequences.

The value of including small and large business into Open Insurance appears more limited. The information captured in the banking accounts of individuals, small and large businesses is similar, and, through transactions, the accounts interact with each other. There is no similar interaction of the insurance products. There would also be limited benefit in extending the CDR to businesses that purchase insurance via a broker.¹⁰³

Former customers

The Farrell Report included recommendations that the CDR be applied to former customers. In its review of the CDR Framework, the ACCC (2018a), recognised 'the utility in providing former customers with the right to access relevant data concerning their prior accounts'; however, they also noted issues to be resolved, relating to 'the authentication process for former customers and the timeframe over which customers may seek to exercise the CDR once they cease to be a customer.'¹⁰⁴

These issues would also apply to insurance.

4.5.2 Who should be required to share data?

Under the Open Banking Rules all ADIs, with the exception of foreign bank branches, will be required to share data. Similarly, it seems reasonable to expect that Open Insurance rules would apply to all authorised general insurers.

4.5.3 Who can receive shared data?

The Open Banking Rules establish the criteria and process for accreditation to become a data recipient. The rules reflect a risk-based framework. Under the rules Authorised Deposit-taking Institutions (ADIs)¹⁰⁵ are automatically accredited, which reflects that ADIs are licenced to engaged in higher-order risk activities (e.g. money transfers) than data transfers.

Similarly, it seems reasonable to expect that authorised insurers¹⁰⁶ are automatically accredited to be data recipients for insurance data.

4.5.4 Recovering the costs of data transfer

Under the Open Banking Rules, data holders will not be able to charge for the provision of customer data and required product data. It seems reasonable to expect that a similar policy would apply for insurance.

103 Furthermore, (as is the case with banking) larger businesses will typically have the resources for assessing the most appropriate products and services.

104 Consistent with this conclusion, the CDR Rules for the banking sector (Schedule 3 Part 2) state that to be eligible the CDR consumer the CDR consumer must have an account that is open and is set up in a way that can be accessed on line.

105 An ADI is defined in the Banking Act 1959 (Cth) (Banking Act) as a body corporate that APRA has granted authority to carry on 'banking business' in Australia.

106 In Australia, general insurance companies are authorised by APRA under the *Insurance Contracts Act (Sect. 12)*.

5. Risks / issues and recommendations

There are a range of risks/issues associated with the use cases and the implementation of CDR for the insurance sector. Broadly these can be categorised as:

- Issues with the Open Insurance implementation that reduce its benefits
- Risks that Open Insurance uses harm consumers
- Risks associated with the impact CDR has on insurance markets
- Other broader issues with the CDR

These are considered below, along with recommendations for consumer advocates such as Financial Rights may play an important role in managing some of these risks, leveraging their focus on the consumer and the unique insights it obtains from its support of consumers dealing with insurance issues.

5.1 ISSUES WITH IMPLEMENTATION

Obtaining the benefits of Open Insurance require effective data standards that API developers can use to efficiently transfer information. Two reasons why this may not occur are:

- a lack of common definitions hinder development
- the implementation of data standards is less than ideal.

5.1.1 Lack of common definitions

The lack of common definitions in insurance may inhibit the effective implementation of Open Insurance. With the exception of flood, there are no established common definitions for many key terms used in insurance contracts. For example, insurers may vary in how they define some events (e.g. 'actions of the sea') and asset features (e.g. number of storeys).

While there is a risk that any standardisation inhibits innovation, this risk appears small with regard to standardised definitions, providing that insurers can qualify statements (e.g. "we cover actions of the sea with the exception of ..."). Nevertheless, care will be required, particularly where there is significant potential for changes in meanings due to technology and social changes (e.g. due to development of new sports, materials etc).

Insurers have expertise in assessing risk and will likely be best placed to develop standard definitions so as to minimise the need for qualification. Consumer Advocates may have an important role in helping to identify issues that are of common concern to consumers.

Recommendation 1

Consumer advocates encourage industry development of standard definitions of key product terms in advance of Open Insurance. Consumer advocates provide input on terms that may cause significant concern.

5.1.2 Implementation of data standards

5.1.2.1 Product data

To be useful product data standards need to be clear and consistently applied. It appears that material variations in how product data standards have been implemented in banking is hampering the ability of comparators organisations, who are expected to be among the largest users, to use the information.¹⁰⁷ I understand that despite some involvement by comparators,¹⁰⁸ the product data standards and definitions for banking were largely determined between the major banks, Data61 and the regulators and that the comparator organisations did not have a significant input into the design and implementation.

To ensure that data standards are clear and consistently applied in insurance, I recommend that consumer advocates seek to ensure strong participation of a range of organisations in the standards development. This may be best achieved by encouraging the regulator (ACCC) and data standards body (Data61) to actively seek significant input from comparators and other potential users of the standards.

The comparator organisations and insurers have an important stake and knowledge in the product data standards development and together have a critical interest in the balance between prescription and flexibility. I understand that the comparators vary significantly in their focus and operations., and the role of comparators and their usefulness has been critiqued.¹⁰⁹ I expect there will be some self-selection in the extent of participation with some comparators having an active involvement and others providing limited, if any, input.

Aside from encouraging the process is undertaken appropriately, I expect the key benefit of active involvement by consumer advocates will be in identifying key issues of concern to vulnerable consumers.

Recommendation 2

Consumer advocates encourage the participation of a range of comparator organisations in the design and guidance for implementation of product data standards for Open Insurance.

5.1.2.2 Data for risk assessment

As discussed in Section 3.1.2, there are variations in the data that is collected by insurers from customers for risk assessment. Such variations will make it difficult for this data to be codified and reused. Variations in the risk assessment undertaken by insurers are also linked to some concerns discussed in section 2.1, particularly the challenge of determining the sum-insured. The Open Insurance process is a potential opportunity to encourage greater standardisation of terminology (as discussed above). However, the most significant data opportunity with regards to risk assessment appear to relate to greater consumer access to government-controlled data sources (see 5.4.2) and the use of claims history data (see 5.1.2.4).

¹⁰⁷ Based on personal correspondence with industry participants.

¹⁰⁸ The comparator Finder is on the Banking Advisory Committee. <https://consumerdatastandards.gov.au/advisory-committees/advisory-committee/>

¹⁰⁹ See ACCC (2018, pp. 163–164) for a discussion.

5.1.2.3 Data on products held

A likely set of use cases involves consumers sharing their data on the coverages they hold to third parties. This would include general product data associated with the policy (e.g. inclusions and exclusions) as well as consumer specific data (e.g. the asset, the sum-insured, excesses etc). It will be important that the data is accessible in a form that can be easily interpreted by a third-party.

These use cases should be easily facilitated so long as the data standards for product data and the customer-specific data are well organised and defined. As noted above, comparators should have an interest in the product data standards being well-defined. Given the potential value as a use case, it is important that the consumer-specific data standards also receive appropriate attention.

Recommendation 3

Consumer advocates work to ensure clear data standards are developed for customer-specific data on products held.

5.1.2.4 Claims data

As discussed, codified claims data of insurers who are members of IRS are incorporated into the IRS claims database for use by members. The existing IRS data standards would likely form a basis for related data standards under Open Insurance.

The most salient use-case for historical claims data is in risk assessment. However, it appears insurers are not using the IRS for this purpose; instead relying on consumers for this information at the time of quotation. The quality and breadth of the data (it does not cover all insurers) may be an issue. IRS data appears to be used predominantly at the time of claim (in identifying potential cases of fraud), which may be to the consumer detriment if the data is not accurate.

It would be preferable that the historical claims data is reviewed at the time of risk assessment thereby reducing the burden on the consumer's memory and reducing its use for fraud investigation. Open Insurance, with greater customer access to their claim's history, may lead to greater confidence in the quality of the data in the IRS. However, the benefits may be limited without easy access by consumers to the IRS data, which holds a consumer's claims history from multiple insurers. Consumer access to this data has additional privacy risks (as the data that has been accumulated from multiple insurers and will have involved data matching).

The investigation into Open Insurance will likely shine greater light on the IRS data and use of claims data and this result in changes that improve the quality and use of the data. A number of options might be explored, for example:

- encouraging insurers to access the IRS and confirm the data with consumers at the time of quotation
- ensuring that by default, consumers also receive the data that is sent to the IRS for verification
- enabling easier access for consumers to the IRS.

Recommendation 4

Consumer advocates should work with government and industry to encourage greater consideration of how historical claims data is used and provided to consumers.

5.2 APPLICATIONS THAT HARM CONSUMERS

New Open Insurance applications have potential to lead to a number of consumer harms.

5.2.1 Privacy issues

The potential privacy risks associated with 'Open Insurance' appear less significant than for Open Banking. As Treasury (2018) notes, banking data is a 'high-risk data set'. In addition to the risk of a loss of funds through fraud, banking data is high risk because it contains information on people's behaviour that could be used to infer a person's or their families' associations and beliefs.

Based on the potential use cases identified, it appears less likely that consumers will use Open Insurance to access and transfer sensitive information. Nevertheless, there are some possible risks associated with Open Insurance. For example:

- a potential customer may provide an insurer with details of their security measures for an insured property and details of their valuable contents.
- for some covers (e.g. travel insurance) consumers provide an insurer with medical history information (pre-existing conditions). This may pose a privacy risk if a consumer uses Open Insurance to transfer the information to another party
- travel insurance data records information on when someone is away from their home
- telematics data used for motor insurance purposes could potentially be used to identify a policyholder's movements. However, the telematics data held by the insurer may be limited. I understand that a common operating model is for the telematics data to be collected and analysed by a third-party (with whom the insured and the insurer will have a contract). In such case the insurer may only use and hold a summary of the information collected.
- it could heighten risks of financial abuse from family disputes where insurance is jointly held.

The rules and processes implemented to address privacy for Open Banking should also apply to Open Insurance to mitigate risks. Of note, the CDR Rules, include rules (clause 7.5) relating to the permitted uses of data including specific rules relating to the use of data and disclosures with regard to direct marketing. Nevertheless, Financial Rights should continue to monitor the potential privacy risks.

Recommendation 5

Consumer advocates undertake further work to identify privacy risks that may arise from Open Insurance and monitor privacy risks as they arise under an Open Insurance regime.

5.2.2 Application of Open Insurance causes unintended harms

A risk with many new applications is that errors in their use cause unintentional harms. This appears possible with regard to a number of the potential use cases, whereby an error in the data or interpretation of the data leads to a poor decision being made. For example, under Open Insurance a customer may provide 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.

An effective liability framework may help to mitigate risks to consumers. The Farrell Report recommended (Recommendation 4.9) that there is a clear and comprehensive liability framework that to extent possible, is consistent with existing legal frameworks to “ensure that there is no uncertainty about the rights of customers or liability of data holders.” However, it is an open question as to how this will apply in the Open Insurance.

Recommendation 6

Consumer advocates should work with stakeholders to ensure that there is clarity regarding the liability for the risks associated with incorrect interpretation of and/or inaccurate data for Open Insurance.

5.2.3 Use cases are not in consumer interest

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.

The design and distribution obligations (DDO), to be introduced in 2021, requires issuers of financial products to make a target market determination (TMD) should help to mitigate this risk. Nevertheless, there is a residual risk that the regulation fails to be effective and/or does not encompass the range of the new applications. As such, it is appropriate that consumer advocates monitor the progress of the DDO regulations and the development of Open Insurance applications to identify risks.

Recommendation 7

Consumer advocates work with Government, regulators and the industry to ensure the harmonised development of the design and distribution obligations regulation and Open Insurance applications.

5.3 CDR IMPACTS ON INSURANCE MARKETS

The insurance sector, like other any other sector, may make take advantage of Open Banking and other applications of the CDR. As insurers depend heavily on data for key processes—in particular risk assessment, but also claims management—we might expect the application of CDR in other sectors to have significant implications.

Prima facie we also might expect, insurer use of CDR from other sectors to be positive. The objectives, principles and rules of Open Banking and the CDR are designed to benefit customers and allow customers control over their data.¹¹⁰ Under CDR customers need only pass on their information when it is their benefit to do so.

However, the implications of CDR might not always be positive for all customers. As elaborated below, there can be both winners and losers associated with the release of more information. By choosing not to provide information customers may in-effect signal information to the insurer.

The following sub-sections consider the implications for key insurance processes on risk-assessment/underwriting and for claims management.

5.3.1 Impact of CDR on underwriting

A potential implication of CDR being applied to other sectors is that it facilitates insurers having access to additional information to underwrite and price insurance. As discussed earlier, insurers might use the CDR to support the underwriting process by facilitating access to customer transactional data to:

- assess insurance needs
- verify information customers have provided
- capture data on purchases to better determine sum-insured
- review transactional data to assess risk.

Such applications appear benign and generally in the customer interest.

One potential concern is that the insurer's improved access to data leads to more granular pricing, with higher premiums for higher risks and/or some consumers finding it difficult to obtain cover. 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 adverse risks for general insurance products appear light. Currently general insurers are largely free, subject to anti-discrimination legislation,¹¹¹ to price based on any risk-based factor. Insurers already use a large range of sources to assess risk, particularly for home insurance. For motor vehicle insurance, capturing behavioural data using telematics is an option. It appears possible but unlikely,¹¹² that in general insurance, insurers will benefit materially in their underwriting from having access to a consumer's transactional banking data. The issue is potentially material, in the case of life insurance, where historical spending patterns could conceivably be analysed to assess risk.

Potentially an open data regime, may make it easier for insurers to verify data provided by customers and thereby confirm the suitability of the cover for the customer. These may lead to consideration of the extent to which insurers are obligated to validate the information provided when it is in the consumer's interest and the information can be obtained.

110 The Farrell Report (p. 13) stated 'The primary reason for Open Banking and the CDR is to benefit customers by providing the tools to enable them to make informed choices.' A key guiding principle for Open Banking is that it is customer focussed— that data transfers and use are driven by customers' informed choice.

111 See Australian Human Rights Commission (2014) for a summary.

112 Based on discussions with industry stakeholders.

5.3.2 Impact of CDR on claims investigation processes

To manage the risk of fraud, insurers need to identify and investigate potential fraudulent claims. A claims investigation process can lead to a claim being denied due to fraud, denied for other reasons, withdrawn from the claimant or paid. In a review of car insurance claims investigations, ASIC (2019a) found that insurers flagged 4.85% of claims as suspicious and investigated 1.1% of claims. Of the investigated claims 71% were paid, 4% were declined for fraud, 10% declined for other reasons and 15% were withdrawn.

This process of claims investigation can be harmful to the claimant. It can involve delays in the processing of a claim, intrusive interviewing and requirement of the claimant to provide access to data such as banking and telephone records.¹¹³

The CDR has potential implications for the insurance claims-investigation process by making it easier for insurers to access and analyse the claimant's data (e.g. telephone and banking records) to assess a claim. There are potentially positive and negative implications to this.

The use of CDR in the claims-investigation process could benefit consumers by:

- improving the efficiency and effectiveness of fraud detection and consequently reducing the cost of fraud that is reflected in insurance premiums
- reducing the harm to consumers caused by the claims-investigation process by:
 - » *making it easier for people to share data with insurers conducting the investigation (thereby reducing the burden on the claimant)*
 - » *improving the speed with which claims investigation is conducted, thereby leading to faster claims processing.*

There are, however, potential negative outcomes from increased use of CDR in the claims-investigation process. A potential risk is that insurers use data obtained under CDR to profile claimants, which could lead to consumers that meet a particular profile being relatively disadvantaged. This could lead to tensions where such profiling leads to traditionally disadvantaged groups being impacted more. On the other hand, potentially the use of CDR could reduce the risk of inaccurate profiling.

Another concern is that the increased ease with which insurers can use CDR in the claims-investigation process results in a greater frequency of insurers obtaining claimants' data to assess claims in circumstances where this is unwarranted and invasive.

Recommendation 8

Consumer advocates monitor the applications of CDR for claims-investigation to ensure that it is being used in the consumer interest.

113 ASIC (2019a p. 9) in its review of car insurance claim investigations noted that 'Consumers were frequently required to produce an onerous volume of documents, including but not limited to: criminal record checks, social media histories, birth certificates, telephone and text message records, financial statements for each of their bank and loan accounts and information about family members and friends. One insurer required some consumers to provide telephone records with an annotated explanation for each call.'

5.3.3 Other impacts of CDR

Open Insurance and CDR more broadly may lead to other changes in the insurance industry.

5.3.3.1 Use of product data in influencing insurance decisions

Open Insurance should lead to product data being more easily accessible by comparators and other organisations and consequently greater use of the data to conduct comparisons. However, there are some risks associated with this including:

- increased number of, and reliance of consumers on, comparators that provide simple product comparisons
- focus by consumers on minor product features that are easily codified rather than on other important features including
 - » *those that are not easily comparable*
 - » *those that depend on consumer circumstance e.g. no-claims bonuses,*
 - » *reputation for service, which is not incorporated in product data*
- rise of fintech applications appearing to provide advice to consumers.

A related implication is Open Insurance leads to greater switching behaviour by consumers. This can have positive and negative effects. 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 (e.g. whereby pricing adapts to short-term climate forecasts).

Recommendation 9

Consumer advocates undertake monitoring, or encourage monitoring by regulators, of organisations using product data to inappropriately influence consumer decisions.

5.3.3.2 New industry participants

CDR and Open Insurance may facilitate new types of insurers entering the market and, for example, focussing 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).

Recommendation 10

Financial Rights encourage consideration by regulators, of how the conduct of new fintech and relevant insurtech organisations will be regulated.

5.3.3.3 Third-party claims management

Open Insurance could lead to greater use of third-party claims management firms, as a result of them providing applications that enable consumers to more easily transfer their policy and claims details.

For example, with regard to motor claims, these may include 'accident management companies' that sign up customers following an accident by managing the organisation of repair, alternative transport and processing of the claim and credit-hire companies that focus on the provision of a replacement vehicle. Insurance industry stakeholders have raised concerns with some of the practices of third-party claims management.¹¹⁴ Consumer groups have also raised the concern that third-party companies (such as towing companies) may take advantage of a consumer's stressed state following an accident.¹¹⁵

Recommendation 11

Consumer advocates monitor the effectiveness of the regulation of third-party claims management and the risk of greater use of the industry as a result of CDR.

5.4 BROADER ISSUES WITH CDR

There are a number of risks and opportunities for insurance markets associated with the process of implementing CDR.

5.4.1 Unintended consequences of regulation

A risk with any regulation is that it has unintended negative consequences for consumers.

Two common concerns of regulations are that they add cost and limit innovation. Compliance with regulation can be costly, and through the process of competition these costs will be passed on to consumers in the form of higher prices. CDR applied to the insurance industry has potential to increase industry costs through imposing costs associated with information management and compliance. A related risk is that this hinders competition because the compliance cost is relatively more significant for new entrants.

Regulation, such as the CDR rules, also has potential to hinder innovation. For example, a risk is that the development of an innovative telematics product is hindered by a requirement to conform with standardised data rules.

While Financial Rights should be mindful of such risks, the participation of the industry in development of regulation should help to mitigate them.

The process of forming regulation also has risks. The process itself can be costly, but perhaps more importantly it can divert attention from other, more important, reforms.¹¹⁶

5.4.2 The limited scope of CDR

A potential lost opportunity is the limited scope of CDR in terms of the data sources. As discussed below there would be benefit to insurance consumers from other data sources and types of data.

114 For example, the ICA (2018c, p. 10) has raised concerns that the 'daily hire rate provided through credit-hire businesses is usually significantly higher than rates provided by other hire car operators' and that this can lead to at-fault drivers being faced with 'the threat of litigation for exorbitant replacement vehicle costs'.

115 See for example, Alice Richard, What to do if your car needs towing after an accident, Choice, 5 October 2018 <https://www.choice.com.au/transport/cars/general/articles/what-to-do-if-you-need-car-accident-towing>

116 See for example, Willis (2008) discusses the regulatory opportunity costs associated with the pursuit of financial literacy regulation.

5.4.2.1 Government controlled data

The focus on CDR to date has been on consumer access to industry data. However, potentially the most significant benefits to insurance 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 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 is currently not practically accessible.¹¹⁷ This includes:

- for motor vehicle insurance, data on licences, demerits etc
- for home insurances, property level data compiled by GeoScape
- for travel insurance, medical history data from My Health Record.

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.

Due to variations in how insurers currently collect information, the information provided by consumers for quotation has relatively lower value.

In light of above, I recommend that consumer advocates work with government and industry to ensure that consumers can more easily access data held by government-owned or controlled entities that pertains to them and/or the assets they own. Consistent with the CDR, consumers should be able to efficiently share this data with insurers and other accredited organisations. In doing so Financial Rights would have a natural ally with the insurance industry.¹¹⁸

Recommendation 12

Consumer advocates work with government and industry to ensure consumers can more easily access and share data held by government-owned or controlled entities that pertains to them and/or the assets they own.

The improved ability of consumers to access and share such data is not without risk. It could lead to greater use of sensitive information (such as medical histories) by insurers and associated privacy risks. In this regard, the consumer attitudes to and perspective of such risks and how they vary by type of information is of interest.

¹¹⁷ One exception relates to compulsory third-party insurance in NSW, whereby an insurer can retrieve vehicle and registration information data from a government source, based on a customer and vehicle identifier.

¹¹⁸ The Business Council of Australia in a recent submission to the Future Directions Issues paper has also called for an exploration of 'how the CDR can be extended to include consumer data held by government agencies' <https://treasury.gov.au/sites/default/files/2020-07/bca.pdf>

Recommendation 13

Consumer advocates research the consumers' interest and perception of risks associated with greater access to their data held by government owned and controlled entities.

5.4.2.2 Insurance related information held by other parties

Insurance-related consumer data may be held by a number of other organisations that supply to the insurance industry but are not insurers, and consequently, unlikely to be captured under the Open Insurance framework. These include the IRS (discussed earlier) and other parties such as assessors, repairers and firms capturing telematic data. For much of this data, common data standards may not be possible or appropriate; however, there is value in ensuring that consumers gain access to their information.

Recommendation 14

Consumer advocates work with government, industry and other stakeholders to consider how consumers gain easier access to and share data held by Insurance Reference Services and other suppliers to the insurance industry.

5.4.2.3 Data on service quality

As has been discussed, the quality of service can be an extremely important factor in choosing an insurer.

However, the information consumers have to assess quality of service is far from ideal. Relative to other services consumers have limited interaction with insurers. A consumer may judge an insurer's reputation from a range of sources, including the experience of friends and family, online discussions, websites providing comparisons and brand advertising.¹¹⁹ However, the information has limited use as not all cases of high consumer dissatisfaction progress to dispute resolution.

Given the importance of the insurer's reputation as a factor in consumer decision making and the limited extent to which PDSs are reviewed, there may be significant value in efforts that encourage information on service quality is made available. Potential interventions include:

- exploration of greater access and use of the AFCA data
- developments of standards/guidelines for undertaking consumer satisfaction with the claims experience
- collation and release of industry statistics on claims performance (potentially by ASIC and APRA).

Recommendation 15

Consumer advocates work with government to encourage greater development and use of data to assess the quality of service of insurers.

¹¹⁹ An indication of an insurer's service performance may also be derived from statistics on disputes. Such data is collected and compiled by AFCA (which replaced the Financial Ombudsman Service, FOS). This data includes the statistics on the frequency with which insurers are in dispute and dispute outcomes and has been used by parties to assess the quality of service. For example, AFCA statistics are used in the methodology <https://www.claimscomparison.com/>

6. References

- ACCC (Australian Competition and Consumer Commission) (2018a). Consumer Data Right Rules Framework. September 2018.
- ACCC (Australian Competition and Consumer Commission) (2018b). Northern Australia Insurance Inquiry: First Interim Report. November 2018.
- ACCC (Australian Competition and Consumer Commission) (2019). Explanatory Statement for Proposed Competition and Consumer (Consumer Data Right) Rules 2019 – August 2019.
- ASIC (Australian Securities and Investment Commission) (2019a) Roadblocks and roundabouts: A review of car insurance claim investigations, Report 621, July 2019.
- ASIC (Australian Securities and Investment Commission) (2019b) Disclosure: Why it shouldn't be the default. REP 632. October 2019.
- ASIC (Australian Securities and Investment Commission) (2019c) Product design and distribution obligations, Consultation Paper 325, December 2019.
- Australian Human Rights Commission (2014). A quick guide to Australian discrimination laws. Available at <https://www.humanrights.gov.au>.
- Bank for International Settlements (2019) Report on open banking and application programming interfaces. A report of the Basel Committee on Banking Supervision. November 2019. Available at <https://www.bis.org/bcbs/publ/d486.pdf>
- Bargon, Bruce (1995) "The insurance reference service - An overview" [1995] PrivLawPRpr 2; (1995) 2(1) Privacy Law & Policy Reporter 6. <http://classic.austlii.edu.au/au/journals/PrivLawPRpr/1995/2.html>
- Bin, O., & Kruse, J. B. (2006). Real estate market response to coastal flood hazards. *Natural Hazards Review*, 7(4), 137-144.
- Bin, O., Kruse, J. B., & Landry, C. E. (2008). Flood hazards, insurance rates, and amenities: Evidence from the coastal housing market. *Journal of Risk and Insurance*, 75(1), 63-82.
- Cakan, Y., Loh, M., & Parameswaran, S. (2010). Pricing when only the customer can see. Institute of Actuaries Australia.
- CFA (Consumer Federation of America) (2014). Proof that Price Optimization Is Being Used and Producing Unfairly Discriminatory Rates. Letter to NAIC Commissioners. December 16, 2014.
- Dobes, L., Jotzo, F., & Doupé, P. (2013). Adaptor of last resort? An economic perspective on the Government's role in adaptation to climate change. National Climate Change Adaptation Research Facility., Gold Coast, 70 pp.
- DPMC [Department of the Prime Minister and Cabinet], 2014. The Australian Government Guide to Regulation. Available at: <https://www.pmc.gov.au/resource-centre/regulation/australian-government-guide-regulation>
- Elegido, J. M. (2011). The ethics of price discrimination. *Business ethics quarterly*, 21(4), 633-660.

ESLIM [Emergency Services Levy Insurance] (2018). Monitor Pricing differences: New vs existing customers. Discussion Paper. November 2018.

FCA [Financial Conduct Authority], (2018), Pricing practices in the retail general insurance sector: Household insurance. Thematic Review. TR18/4, October 2018.

Finity (2018) Measuring value in insurance products. A report for the Insurance Council of Australia. November 2018.

Financial Rights Legal Centre (2017) Submission by the Financial Rights Legal Centre to the ACCC Northern Australia Insurance Inquiry, 24 October 2017. December 2017.

ICA [Insurance Council of Australia] (2015). Too Long; Didn't Read Enhancing General Insurance Disclosure: Report of the Effective Disclosure Taskforce to Insurance Council Board.

ICA [Insurance Council of Australia] (2016). Submission to the Productivity Commission Inquiry into Data Availability and Use. Submission 66. 29 July 2016.

ICA [Insurance Council of Australia] (2018a). ICA Response to ACCC Issuers Paper – Northern Australia Insurance Inquiry. 19 January 2018.

ICA [Insurance Council of Australia] (2018b). Submission in response to New Australian Government Data Sharing and Release Legislation – Issues Paper. 1 August 2018.

ICA [Insurance Council of Australia] (2018c). Submission to Economics and Industry Standing Committee inquiry into Western Australia's Smash Repair Industry: Structural Challenges. Submission 8.

ICA [Insurance Council of Australia] (2019b). Submission to Treasury's Discussion Paper "Disclosure in General Insurance: Improving Consumer Understanding" 1 March 2019.

Illion (2019). Submission to the Banking, Superannuation and Financial Services Royal Commission. 29 March 2019.

Meyer, R. and Kunreuther, H. C., (2018). The Ostrich Paradox: Why We Underprepare for Disasters. Issue Brief available at <https://riskcenter.wharton.upenn.edu/wp-content/uploads/2019/03/Ostrich-Paradox-issue-brief.pdf>

Outreville, J. F. (2014). Risk aversion, risk behavior, and demand for insurance: A survey. Journal of Insurance Issues, 158-186.

PC [Productivity Commission] 2017. Data Availability and Use, Productivity Commission Inquiry Report No. 82, 31 March 2017.

Queensland Reconstruction Authority 2019, Flood Resilient Building Guidance for Queensland Homes. February 2019. Available at www.qra.qld.gov.au.

Robinson, Tony (2017). Pranged. The real cost of optional vehicle insurance in Australia Brotherhood of St Laurence, Financial Inclusion Program 2017. Available http://library.bsl.org.au/jspui/bitstream/1/10248/1/Robinson_Pranged_real_cost_of_optional_motor_vehicle_insurance_2017.pdf.

Silva-Goncalves, J. (2015). Australian's switching behaviour in banking, insurance services and main utilities. Report prepared for Heritage Bank. September 2015.

Susan Bell Research (2014) Insuring your home: Consumers' experiences buying home insurance. ASIC Report REP 416. <https://download.asic.gov.au/media/2195187/rep416-published-28-october-2014.pdf>

The Treasury (2018). Privacy Impact Assessment Consumer Data Right—Draft. December 2018.

The Treasury (2019). Disclosure in General Insurance: Improving Consumer Understanding: Discussion paper.

Tooth, Richard (2012) Australian Household Insurance: Understanding and Affordability, February 2012. Available at <http://www.srgexpert.com/publications/our-people-publicat-366>.

Tooth R. (2015). Analysis of demand for home and contents insurance. Available <http://www.insurancecouncil.com.au/issue-submissions/reports/analysis-of-demand-for-home-and-contents-insurance-by-dr-tooth>

Tooth, R. (2017). Insurance influence on road-safety. Working paper produced with the support of Austroads. Available from <http://srgexpert.com>

UK Regulators Network (2014). Consumer engagement and switching.

Willis, Lauren. 2008. Against consumer financial literacy education. Iowa Law Review, 94(1).

Appendix A Use of data in pricing risk

IMPORTANCE OF DATA TO THE INSURANCE INDUSTRY

Insurers need information to be able to underwrite and properly price risks. Issues with this information are a potentially significant source of insurance market failure and inefficiency.

First, insufficient information can particularly be an issue where the insured is better informed about a risk than the insurer.¹²⁰ This can lead to a problem of adverse selection, whereby within a pool of property owners, the low-risk owners opt out of insurance because insurers do not identify and price them as being low-risk. For example, a homeowner whose house is located on a hill is less likely to purchase flood insurance if insurers do not offer the owner a discounted premium that reflects the lower risk. This leads to a vicious circle, whereby insurers increase prices to account for the likelihood that those that take out insurance are relatively high-risk, which in turn further discourages the relatively low-risk consumers from taking out cover.

Moral hazard is a related issue, whereby the insured takes less care as a result of being insured. For example, there is evidence that greater motor insurance cover can lead to poor driving behaviour. Similarly, a property-owner insured for flood may invest less in risk mitigation than one who is uninsured.

The problem of adverse selection can be resolved with improved information. Using the example above, insurers with information that the house is located on the hill would assess the flood risk as low and offer discounted premiums to reflect this lower risk.¹²¹ This insight helps to explain why flood insurance has been historically difficult to insure and why the release of flood-mapping information has resulted in flood insurance cover becoming more widely available.

A lack of information may also be an issue even if insurers have more or similar information to the insured. To price risk, insurers need information on the distribution of risk, and a lack of information on the risk distribution can lead to insurers pricing conservatively high.¹²²

Improved information on risks can help to address the issues described above and improve the operation of insurance markets. There are several potential benefits. Improved information on risk may lead to lower premiums as a result of:

- a greater take-up of cover, particularly by low-risk consumers who would otherwise opt out
- improved risk mitigation as a result of reduced moral hazard
- more efficient use of capital and lower pricing as a result of reduced ambiguity.

120 This is commonly referred to as asymmetric information.

121 The issue of adverse selection can also be mitigated by insurers through bundling (offering insurance that covers multiple risks) and deductibles.

122 This is known in the insurance literature as the 'ambiguity premium', whereby a lack of knowledge of the risk distribution leads to insurers adopting a conservative approach to setting premiums.

PRICING BY INSURERS

The most significant use of data by insurers is in risk assessment and pricing. In general insurers set prices based on:¹²³

- The technical premium—which is the insurers estimate cost of providing insurance, including a return on investment and allowance for taxes.
- Premium adjustments—for non-cost factors including consideration of competitive dynamics and customer demand.

As discussed below, the technical premium is major reason for variation in premium. However, both factors are influenced by data.

Technical premiums

The expected cost to an insurer of a providing cover can vary dramatically based on a few characteristics. This is reflected in large variations in premiums for neighbouring houses (see figure below).

Figure 8: Premium differences available for the same flood risk on neighbouring properties with variable floor heights and building material choices from a single insurer.



Source: ICA Submission to the ACCC Northern Australia Inquiry, ICA (2018).

123 A useful description of the insurance pricing is contained in the ACCC's Northern Australia Insurance Inquiry: First interim report (ACCC 2018). Note, that the ACCC described a 3-stage process, with a third stage that included the application of taxes and policy discounts.

Insurers capture a broad range of data for the purpose of assessing risk which is used in the process of underwriting, pricing and ongoing risk management.

The ability of insurers to analyse data, and the range and quality of the data available to insurers and customers, has been increasing. This has enabled insurers to improve their coverage of risks.¹²⁴ Improved information is enabling insurers to become more sophisticated and granular in their pricing of risk. In recent decades insurers (and their reinsurers) have moved from setting premium rates based on a broad measure of location (e.g. postcode)¹²⁵ to setting premiums based on individual property risks based on location and attributes of properties.

Armed with improved hazard information, insurers are better able to distinguish between higher and lower risks and adjust their premiums accordingly. All else being equal, this leads to increases in premiums for high-risk properties and reductions in premiums for low-risk properties. An example is provided in Box 5: Example of more sophisticated and granular pricing below.

A benefit of risk-based pricing is that it provides incentives for risk mitigation by policyholders (e.g. driving more carefully) and by government (e.g. by building levees). More accurate pricing can also reduce cost by enabling insurers to improve their financial management of risks.

More accurate risk-based pricing will lead to some consumers paying higher premiums. This is particularly an issue for disadvantaged customers in high-risk areas.

That some consumers pay significantly more is not necessarily an issue for insurance—it may be better characterised as an issue of financial inequality. For example, with regards to home insurance, there is evidence that insurance premiums convey information to consumers about risks¹²⁶ and the difference in property prices may closely reflect the difference in the capitalised value of insurance premiums.¹²⁷ A consumer may rationally choose a property with higher flood risk and insurance premiums to save money on the cost of the property (and consequently mortgage repayments).

However, many consumers may not properly assess the risks prior to property purchase and more accessible information may help property-owners manage such risks.

Another residual issue with regard to property cover is that consumers are not able to protect themselves against the risk that insurance premiums will rise over time. As insurance is purchased on a yearly basis, householders cannot protect themselves against the risk of higher premiums due to change in hazard risk (e.g. due to climate change) or due to improved risk assessment by insurers.

124 A prominent example is flood cover for home building and contents insurance policies. Historically, flood cover was often excluded due to a lack of flood information available to insurers. The release and improved management of flood maps led to the widespread availability of flood insurance in Australia.

125 ICA (2018b, p. 9) states that 'In simple terms, two decades ago the price of cover for comparable properties would not vary greatly within a geographic area, for example a postcode.'

126 Nyce et al. (2015).

127 For example, Bin & Kruse (2006) in a study on property sales in North Carolina, US concluded that 'price differentials for flood risk and the capitalized value of flood insurance premiums are roughly equivalent'. See also Bin & Polasky (2004).

Box 5: Example of more sophisticated and granular pricing

The figures below (taken from the ACCC's Northern Australia Insurance Inquiry first interim report) are an example of the effect of an insurer introducing more sophisticated pricing. The figures show the one-year change (in 2014, \$ nominal) in the renewing (Figure 9: One-year change in renewing premiums for home insurance) and new (Figure 10: One-year change in new premiums for home insurance) premiums for home insurance in north Queensland in response to more sophisticated cyclone modelling, whereby cyclone risk was assessed on more detailed data, and new rating factors were introduced.

The figures highlight two features:

- *Sophisticated pricing results in premium decreases and increases; in the example, about half of renewals experienced decreases and half increases.*
- *Insurers manage the premium increases on renewal customers, by 'capping' the yearly premium increase thereby spreading the full premium increase over a number of years. The premiums for new business increased by about 20 per cent on average.*

Figure 9: One-year change in renewing premiums for home insurance

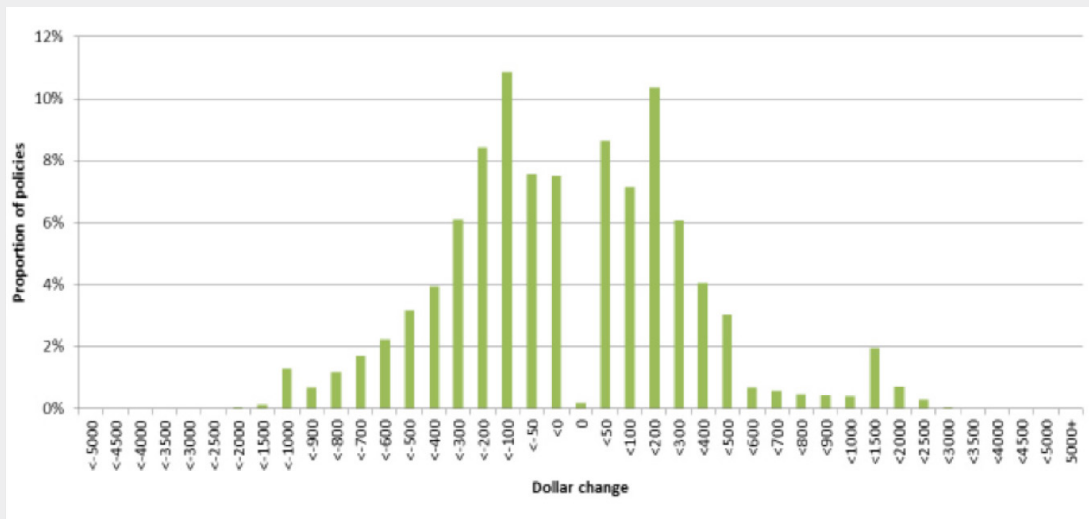
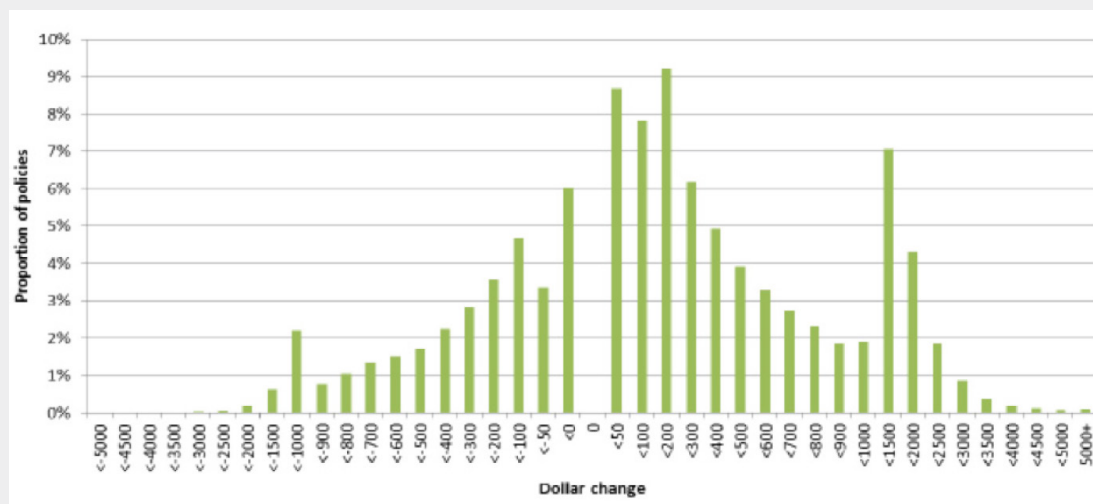


Figure 10: One-year change in new premiums for home insurance



Source: ACCC (2018b, pp. 70–71).

Non-technical premium adjustments

Insurers make a number of non-technical premium adjustments to reflect market factors. For example, insurers may adjust premiums to reflect:

- the level of competition, increasing premium in areas where competition is limited and vice-versa
- individual customer demand, for example, by providing lower premiums to entice or retain customers who are more sensitive to price. This practice of modifying prices based on individual customer demand is often referred to as 'differential pricing'.

The ability of insurers to make such adjustments is limited by competition and the availability of data. Competition prevents an insurer charging excess margins to any particular market segment as doing so will likely to attract increased competition in that segment. Similarly, an insurer that attempts to charge a higher premium to an individual customer risks losing the customer to competition.

Data limitations are also important. Insurers cannot benefit from such price adjustments without the data (on competitor prices and consumer behaviour) to understand how customers will respond. More data on competitors pricing and on individual consumers, would presumably give insurers greater ability to make non-technical premium adjustments.

The significance of such adjustments is difficult to assess. A common concern is that insurers charge more to renewal customers (often referred to as inertia pricing)—the argument being that renewal customers are less likely to shop around.

Information that has been provided as evidence of inertia pricing includes:

- analyses that suggest that premiums and margins rise with length of period of renewal¹²⁸
- from the US, insurance-rate filings that refer to prices being adjusted to 'marketplace conditions'¹²⁹
- examples of firms providing 'new customer' discounts, which are not available to existing customers, and
- reports of consumers saving significant amounts by switching.¹³⁰

However, such pricing patterns are also consistent with cost-based pricing when (as is the case) there is uncertainty over the true costs (i.e. risks) and firms have different information.¹³¹ Some firms offer new customer discounts; however, this is a commonly accepted practice that occurs in many

128 Examples include ESLIM (2018) presenting information on rising premiums and UK FCA (2018) presenting information on premiums and margins.

129 This is reported in ESLIM (2018).

130 For example, Elinor Zuke, Insurance Customers 'Need To Shop Around Every Year,' Consumer Intelligence, 11 May 2017 <https://www.consumerintelligence.com/articles/insurance-customers-need-to-shop-around-every-year>

131 For example, each insurer has different information and analysis that can be used to price an individual risk. The insurer that has the most optimistic (i.e. lowest cost) estimate is most likely to under-price and win the business. Over a period of several renewals, the insurer continually revises premiums using general price increases, comparisons with the market and examination of rating experience. Due to the low initial premium these revisions will generally result in increases and consequently be perceived as evidence of 'inertia pricing'. See Cakan et al (2010) for an elaborated discussion.

industries.

Differential pricing (including inertia pricing) can have positive and negative effects on welfare. The expected impact will vary by situation, but in a competitive market differential-pricing will tend to increase output and be welfare enhancing. For example, it can lead to discounts to consumers with lower willingness-to-pay, who might otherwise not purchase the product or service. This may mean an increase in the number of households insured and/or an increase in the level (or quality) of cover obtained. It may result in higher prices to some customers and consequently a reduction in sales to those customers.

Differential pricing can also change welfare by changing the distribution of benefits. From this perspective it is generally viewed positively.¹³² For example:

- Differential pricing leads to lower prices for people with lower ability to pay (such as students, pensioners, and more generally the poor).
- Inertia pricing can benefit consumers who prefer to place greater value on discounts when they first purchase a product, which is when they may face greater budget constraints (e.g. new homeowners may prefer relatively lower premiums in early years).

The key risk with differential pricing appears to be that there are vulnerable people who are paying more than necessary by not shopping around. Given the relatively low cost of searching and switching this issue appears unlikely to be significant unless the customer has great difficulties in making decisions (i.e. is vulnerable). Such issues might be best addressed with targeted programs.

132 See Elegido (2011, p. 638) for a discussion and references.



Appendix B Data obtained during quotations

This appendix describes the variation in data collected by insurers during the process of obtaining a quotation. The tables do not intend to be comprehensive—it is based on a small number of quotes, sufficient to identify the types of information collected and the extent of variation.

HOME BUILDING INSURANCE

Table 4: Sample data collected from customer – Home Building

Category	Topic	Extent of variation	Notes
Policyholder	Policyholder details (name, DOB)	Standard question	
	Contact details (Email, phone)	Standard question	
	Additional policy holders (Name, age etc)	Largely standard question	Minor variation in how asked
Basic policy information	Start date	Standard question	
	Address	Standard question	
Tenure	Landlord, primary residence, rental etc	Standard question	
	Mortgage	Sometimes asked	Some also ask for mortgage provider
Construction data	External wall materials	Standard question. Variations in options	Example options not always included: Aluminium, mud brick, polystyrene and vinyl
	Roof materials	Variations in options	Example options not always included: Copper and thatched

Category	Topic	Extent of variation	Notes
	Number of storeys	Typically asked but options and definitions vary slightly	For example: Options of split-levels and 1-elevated
	Type (e.g. free standing)	Typically asked. Largely uniform	
	Foundations (slab/stilts)	Typically asked. Variations in options	Example options not always included: mobile home and nursing home unit
	Has asbestos been used in construction?	Not always asked	
	Are there any gas appliances present at the premises?	Not always asked	
	Construction standard/ Building quality	Typically asked but specifications and language varies	Variety of effort made by insurer to assist with classification
	Current 'state' of structure	Not always asked	Example: "Is your home watertight, structurally sound, secure and well maintained?"
Layout	Number of bathrooms	Always asked. Variation in how specified	Example: Some ask about additional toilets.
	Number of bedrooms and size	Existence of bedroom always asked. Variation in how specified	Example: Some include study in bedroom count; some ask size and dimension options vary
	Laundry - size etc.	Not always asked	

Category	Topic	Extent of variation	Notes
	Size of interior space and size of entire site.	Not all asked. Variation in options	Example: Different size parameters given as options. Some ask for exact dimensions; others ask if e.g. bigger than X sqm.
	Number of covered car spaces etc.	All asked but variation in how specified.	Example: Some count garage and covered space separately some combine. Some ask for additional on-site parking spaces
Features	Verandas, balconies & decks	Some only ask for balconies. Variations in how specified	Example: "Count each side and each level of your home with a veranda, balcony or deck separately" others don't specify.
	Tennis court	Not all asked	
	Pool	Typically asked. Variations in options/ details	Some offer options re type of pool.
	Sheds – Quantity and size	All asked. Variation in language	Definitions of large and small etc. vary.
	Detached granny flat	Not always asked	
	Shape of roof?	Not always asked	Example: Is the roof pitched or flat?
	Ducted air-con, fire place, spa, jetty/pontoon etc.	Sometimes asked. Variation in detail	Some drill down into features others do high level check.
Location	Slope of land?	Typically asked, but not always. Variation in language used.	Example: Flat ground/gentle slope. A steep slope – 15% or more

Category	Topic	Extent of variation	Notes
	Proximity to bushland?	Not always asked. Variation in options	Examples: "Within 15 metres; 16 – 50 metres; 51 – 100 metres; Greater than 100 metres" "Are there any trees within 20 metres of your buildings in excess of 2 storeys high?"
Risk related	Occupancy	Not always asked	Is someone normally at home during the day?
	Claims/loss history of people residing in house.	Variations in questions asked and options	Example: Over past 5 years? (Including quote contact details - optional)
	Existence of alarms and smoke detectors – and if monitored by security provider.	Not always asked	
	Door and building access	Not always asked	Example: "Building access restricted by electronic swipe cards or a supervised reception /entrance?"
	Window security	No always asked	
	Insurance track-record?	Variations in questions asked and options.	Example: Insurance declined, not renewed, cancelled or had an insurance claim refused in past 5 years?

TRAVEL INSURANCE

Table 5: Sample data collected from customer – travel insurance

Category	Topic	Extent of variation	Notes
Policyholder	Policyholder details (name, DOB)	Standard	
	Contact details (Email, phone, mailing address)	Standard	
	Additional people covered by policy (Name, age etc)	Largely standard	
Travel details	Destinations	Standard question with variations	Some also ask for main destination and list of minor destinations
	Period of cover: Departure and Return dates	Standard	
Selection of Plan	List of high-level plan options	Standard question with large degree of variation in structure, contents and language.	Samples of high-level plan categories: Cancellation, single trip Comprehensive single trip Comprehensive multi-trip vs Residents oversees Non-residents cover Non-medical
	Additional cover - extras	Standard question but high degree of variation	Options include: Winter sports cover, moped/motor cycle cover etc. List varies.
Pre-existing medical conditions	Declaration and cover of pre- existing conditions including pregnancy	Variation in how material is presented/ inclusions etc. High degree of detail. Variation in language and content. Difficult to assess extent of variation	Some require medical assessments for certain pre- existing conditions others don't specifically state requirement. Mention of age brackets varies.

MOTOR INSURANCE

Table 6: Sample data collected from customer – motor insurance

Category	Topic	Extent of variation	Notes
Policyholder	Policyholder details (name, DOB)	Standard	
	Contact details (Email, phone, mailing address)	Standard	
	Additional people covered by policy (Name, age etc)	Largely standard	
Basic policy details	Start date	Standard	
	Car registration	Standard question. Variation.	Vehicle details - Select your car.../ direct match (often long list to choose from) – sometimes match not obvious
	State registered	Standard	
	Registration status	Not standard	
	Yearly distance travelled	Standard. Variation in detail	Range provided or indicative km to be provided.
	How car is used	Standard questions	
	Where typically parked	Standard questions. Variation in how asked	
	Car finance	Not always asked	
	Additional accessories	Standard – Variation in how data captured.	Free text vs drop down
	Modifications	Standard question. Variations in options	Examples: Engine, body paint or suspension (numerous options)
State of car	Is it in roadworthy condition?	Sometimes asked	

Category	Topic	Extent of variation	Notes
	Specific damage - long list of options	Sometimes asked	E.g. hail damage, windscreen damage
Risk profile	Any accidents/ claims in past x years?	Standard question. Timeframes vary and inclusions vary	Some also ask for driver's licence suspensions, cancellations and restrictions
	Age at which listed drivers obtained licence?	Standard question.	
	Additional offences of drivers?	Sometimes asked. Variations in detail	"In the last 3 years, have you or anyone to be insured under this policy committed any criminal act in relation to fraud, theft, burglary, drugs, arson, criminal damage, malicious damage or wilful damage?"

About us and acknowledgements

ACKNOWLEDGEMENT OF COUNTRY

The Financial Rights Legal Centre acknowledges Aboriginal and Torres Strait Islander people as the traditional custodians of this land where we live, learn and work and pays respect to their Elders, past, present and future.

ABOUT FINANCIAL RIGHTS LEGAL CENTRE

The Financial Rights Legal Centre 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 is one of the services operating the National Debt Helpline, which helps 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.

National Debt Helpline: [1800 007 007](tel:1800007007)
Insurance Law Service: [1300 663 464](tel:1300663464)
Mob Strong Debt Help: [1800 808 488](tel:1800808488)

Monday - Friday | 9.30am - 4.30pm



Ecstra Foundation is a grant making charitable organisation committed to building the financial wellbeing of all Australians within a fair financial system.

Money matters. Ecstra is assisting Australians with resources and support to help them talk about money, to navigate through this crisis and to build future financial security.

We inform and support consumers, we engage with organisations across all sectors, we make grants to organisations to support and strengthen communities and we research, measure and evaluate outcomes to grow the evidence base of what works.

We also support community organisations on the financial frontline - those delivering direct support to Australians in financial need, but also those ensuring appropriate consumer protection frameworks and community knowledge of consumer rights and redress are available.

Ecstra works as part of the National Financial Capability Strategy led by the Australian Securities and Investments Commission (ASIC). Our initial funding, provided through the Community Benefit Payments scheme, means we will always place consumers at the centre of our work.



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'Sapere' comes from Latin (to be wise) and the phrase 'sapere aude' (dare to be wise). The phrase is associated with German philosopher Immanuel Kant, who promoted the use of reason as a tool of thought; an approach that underpins all Sapere's practice groups.



ABOUT THE AUTHOR

Richard Tooth is a consulting economist with expertise in public policy, competition, strategy and regulation. His consulting engagements include preparation of independent reports, cost-benefit analysis, financial modelling, technical advice and applied econometric analysis. He has over 15 years consulting experience and has led over 100 engagements.

His clients include a range of private and public organisations including regulated utilities and regulators, Commonwealth and state government departments, private industry and industry associations. While he works across a range of industries, he has particular experience with regards to water, energy, transport, natural resources, insurance and other financial services.

He has authored several research publications and has lectured at a post-graduate level. He is a former President of the NSW branch of the Economic Society of Australia, a member of the Australian Centre for Financial Studies Insurance Research Reference Group, a research associate with the Centre for Water Economics Environment and Policy at the Crawford School of Economics, Australian National University and an Adjunct Senior Lecturer with the Institute of Transport and Logistics Studies, the University of Sydney Business School.

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