

13 September 2021

Consumer Data Right Division
The Treasury
Langton Cres
Parkes ACT 2600
Email: data@treasury.gov.au

Dear Treasury

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

Industry Super Australia (ISA) is a research and advocacy body for Industry Super Funds. ISA manages collective projects on behalf of 13 industry super funds with the objective of maximising the retirement savings of nearly five million industry super members.

ISA welcomes the focus of the Consumer Data Right Strategic Assessment consultation paper's on the benefits to consumers; competition and market efficiency; innovation and safer and more secure data sharing practices. ISA's comments focus on consumer benefits and the means by which CDR can benefit superannuation fund members.

We note on page 9 of the consultation paper the following comment is made *"As CDR expands it will transform data from being an inaccessible resource used by businesses for profit, to an invaluable tool that consumers can control and benefit from as well."* Whilst recognising the potential benefits to consumers through the expanded use of CDR in the superannuation sector; ISA is concerned that the early expansion of CDR into the sector could be used as a resource to generate profit with minimal benefit to superannuation fund members and consumers.

Key points

- ▶ ISA believes that sectoral differences warrant a sector-by-sector implementation of CDR;
- ▶ ISA does not oppose the CDR's implementation into the superannuation sector at a later stage;
- ▶ Until differential regulatory treatment of superannuation sub-sectors is addressed CDR could cause misinformation and mis selling and not encourage competition;
- ▶ CDR may assist trustees to design appropriate products for their members.

Superannuation is a unique financial product:

Australian workers are required to contribute to their own retirement through compulsory superannuation contributions to funds that are highly regulated in a trust environment. Superannuation is a unique financial product that operates in an imperfect market. Many years from being in a position to benefit from their investment, the majority of workers are disengaged and do not exercise their right to choose a superannuation product. Evidence of

market disfunction is the number of members who continue to respond to offers to remain in or switch to funds that have higher fees and lower returns. The fact that this continues to occur suggests that factors other than informed decision making are influencing consumers to act in a manner that appears not to be in their best interests.

Unlike providers of banking products such as loans or credit cards, superannuation trustees have a strict obligation to design and offer products to members that are in their financial best interests. *Caveat Emptor*¹ does not exist in a trust environment where to the prudent fiduciary member interests are paramount. Competition whilst a positive force, is tempered by the social policy objective of requiring private investment towards an individual's retirement savings.

Superannuation legislative change

The superannuation sector is undergoing a period of rapid and significant change driven by legislation and market consolidation. Prominent among the recent changes are the *Your Future Your Super* reforms that have introduced performance benchmarking tests and associated information designed to inform and empower consumers. These and other recent structural changes are in the process of being implemented.

APRA superannuation data transformation project

One of the key reforms currently being implemented is the APRA coordinated Superannuation Data Transformation project which is a multi-year project that has some time to run. The project will determine which data is held by funds and the manner it is reported to regulators and appropriate methodology and filters. The application of CDR to the superannuation sector whilst this significant project continues would be disruptive at best.

Data should not be misleading

Within the superannuation sector there continues to be differential treatment for the disclosure of superannuation products. It has been a consistent policy of the current federal government to require different levels of data collection, reporting and disclosure between MySuper and choice superannuation products. This has resulted in an orchestrated opaque level of transparency and a resultant inability to properly compare the fees, costs and returns of superannuation products. Whilst the recent introduction of performance benchmarking adds a level of transparency, as yet, the scheme does not apply to choice products. Adding to consumer misinformation and potential confusion, ASIC has once again delayed the choice sector implementation product dashboards, which display comparative data for consumers, until 1 July 2023.

The consultation paper refers to data sharing extending to data-empowered consumers. In the current uneven regulatory environment, the sharing of superannuation data is likely to result in data-misinformation consumers. Until such time as there is a requirement for data relating to all superannuation products to be kept and reported in a manner that allows useful comparison, the application of CDR to the superannuation sector is likely to result in misdirection for consumers and service providers.

Principles for implementation of CDR within the superannuation sector

CDR could be of benefit in the superannuation sector

ISA believes that in time a consumer-focused approach to the use of CDR could provide benefits to members and those providing services to members. The compulsory nature of

¹ *"Let the buyer beware"*. The principle that the buyer alone is responsible for checking the quality and suitability of goods before a purchase is made.

superannuation; lack of member engagement; poor inputs from employers and the incidence of multiple accounts has resulted in poor quality member data. CDR could play a role in providing better product data to enable more informed consumer decisions. It will not be possible to achieve this until key product data is available for all products.

Superannuation trustees could potentially use CDR to meet their existing obligations to design and offer products that meet their members best financial interests; in particular relevant retirement products.

Access to superannuation data should be separated from the selling process

Information relating to a person's superannuation product choices and their account balance are key information to those attempting to use CDR to sell financial products. Financial firms target high net worth individuals to sell products and encourage the switching of financial products and services. It has been a common past practice for firms to engage in data mining to target consumers as evidenced by the multiple cases of mis-selling that emerged from the Banking Royal Commission.² Any future access to superannuation data should be separated from the process of selling financial products or services.

Barriers to benefits of CDR being passed on to superannuation consumers

The provision of services to members of superannuation funds from financial planners and others could be improved through the enhanced financial information available via CDR. CDR will not be able to provide some of the key information relating to the members' financial circumstances, in particular their relationship status and other relevant financial information not capable of being captured by CDR. CDR would only be of maximum potential assistance to the planner if the planner was authorised to access multiple data packages pertaining to related individuals.

Basic member data relating to superannuation account balances and product choices, TFN's, address and social security information is currently placed on the ATO and MyGov platforms. This information is currently available only to government agencies and the individuals the information relates to. There are existing and appropriate privacy restrictions relating to the use of this data.

The superannuation system should not rely on CDR to provide appropriate outcomes

To ensure equity and fairness the superannuation system should operate on the premise that members do not need to engage in the system or rely upon data to benefit from the system. Australian workers are required to contribute towards their retirement and rightly expect the system to work to their benefit. The superannuation system should work to provide the best possible outcomes for members and combine with trustees who have a fiduciary obligation to act in the best financial interests of members. Default options and protections should be at a level which ensures members interests are protected and enhanced. Any use of member data should be to tailor product offerings within the confines of the protection the system offers.

Members must be able to control the use of their data

Superannuation data should be restricted to member authorised service providers, including their own superannuation fund. Consistent with the rights and obligations imposed within the superannuation trust environment, those authorised to access superannuation consumer data should be limited to those also operating within a trust environment or subject to controls of a similar nature. Information access to third parties should be restricted to avoid a misalignment of interests.

² Royal Commission into Misconduct in the Banking Superannuation and Financial Services Industry (Final Report delivered 1 February 2019)

Implementation

CDR has the potential to benefit consumers. It is not appropriate to implement CDR in the superannuation sector until the finalisation of the data transformation program and the implementation of sector neutral changes.

CDR should be consumer focused and separated from the offering of superannuation services or products.

There exists a growing range of information relating to superannuation which could be utilised to provide better options and services to members. This information is of limited utility until all superannuation products provide the same data to enable appropriate comparisons and information.

The Banking Royal Commission's Final Report recommended a further review of consumer protections and conflicts of interest in the advice industry by the end of 2022. There should be no CDR implementation in the superannuation sector until this takes place.

If you would like to discuss this submission, please contact Richard Watts at rwatts@industrysuper.com.

Yours sincerely



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