September 2021

Strategic Assessment to inform an economy-wide Consumer Data Right

ABOUT US

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

During its start up phase Super Consumers has partnered with CHOICE to deliver support services. Set up by consumers for consumers, CHOICE is the leading consumer advocate that provides Australians with information and advice, free from commercial bias.

Introduction

Super Consumers Australia strongly supports the Consumer Data Right (CDR) and its expansion to superannuation. After a suite of recent transformative superannuation reforms, the superannuation industry is now perfectly placed to harness the benefits of consumer data. The CDR has the potential to break the current cycle of consumer disengagement, poor competition and inadequate product design that characterises superannuation and results in poor member outcomes. The best evidence of this is the $13.8 billion in lost and unclaimed super that is held by the ATO which can't be matched to consumers.[1]

The CDR can enable much-needed disruption in two main ways. Firstly, few super funds collect sufficient data to understand their members' needs and design appropriate products.[2] Dating as far back as 2013, funds have been called out for insufficient use of both their own data and imputed data.[3] The CDR will help funds to more easily access useful information about their members to inform the design of products that are better tailored to their members' circumstances and needs.

Secondly, expanding the CDR to super would allow independent third parties to develop consumer-facing tools and services. Consumer disengagement is high and competition is nearly non-existent. The CDR, in conjunction with the new Your Future, Your Super performance test, has the potential to supercharge competition in this market. The test will highlight consistently poor value products, leaving consumers with a question - 'where would my retirement savings be better placed?' An open data regime could help answer that question and smooth the switching process to better performing funds. With 'write access', third parties could also directly facilitate switching between funds and products to remove a further 'chafe' from fund switching.

One of the few remaining recommendations from the Productivity Commission (PC) review of Superannuation is for the CDR to be extended to super.[4] The recommendation advised policymakers to extend in line with the introduction of the elevated outcomes test which we now have in place with the passage of the Your Future, Your Super legislation. In September 2021, over 1 million people will be notified they are in an underperforming MySuper product. Effectively switching their super with CDR could save them $660,000 in retirement.[5]

Key recommendation:

The super sector is 'CDR ready' and has the potential to improve consumer engagement, competition and product design.

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[1] https://www.ato.gov.au/about-ato/research-and-statistics/in-detail/super-statistics/super-accounts-data/lost-and-unclaimed-super-by-postcode/#footnoteone

[2] Productivity Commission, 2018, 'Superannuation: Assessing Efficiency and Competitiveness', p. 236

[3] Productivity Commission, 2018, 'Superannuation: Assessing Efficiency and Competitiveness', p. 240

[4] Productivity Commission, 2018, 'Superannuation: Assessing Efficiency and Competitiveness', p. 600

[5] Productivity Commission, 2018, 'Superannuation: Assessing Efficiency and Competitiveness', p. 11

Inadequate data collection for product design

The lack of quality data collection by superannuation funds has hamstrung their ability to provide quality, innovative products that meet people's needs.

Many funds have a poor understanding of their membership. In its three year analysis of the efficiency and effectiveness of the superannuation system, the PC found significant member data limitations at funds.[6]

The PC found:

> *"Superannuation funds make insufficient use of their own (or imputed) data to develop and price products (including insurance). This is particularly problematic for designing products for the retirement and transition to retirement stages, because this is when different strategies can have the biggest payoffs for members."* [7]

Funds have shockingly poor collection rates on data points that funds must come to grips with if they are to develop appropriate products for their members. For example, an overwhelming majority of funds failed to collect even basic data required to understand a member's needs:

- Household income (79.5% of funds failed to collect)
- Household wealth (86.6% of funds failed to collect)
- Marriage status (75.9% of funds failed to collect),
- Smoker status, which is a basic indicator of health relevant to the appropriateness of longevity products (75.9% of funds failed to collect).[8]

Their lack of data is particularly problematic for designing products for superannuation members. This can range from accumulation products, insurance offerings and retirement products which are typically offered to members through default channels.

The Government is currently consulting on a retirement income covenant that will require funds to create a retirement strategy for members which will require funds to better understand their members and provide appropriate solutions to meet their retirement needs. At the same time the Design and Distribution Obligations administered by ASIC are about to come into effect and will require service providers to have a clear understanding of the target market for their products. The Australian Institute of Trustees have claimed that they do not access data stating "a retirement income strategy would therefore have to be informed by data that superannuation funds currently do not have access to under current legislative frameworks, for practical

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6 Productivity Commission, 2018, 'Superannuation: Assessing Efficiency and Competitiveness', p. 163
7 Productivity Commission, 2018, 'Superannuation: Assessing Efficiency and Competitiveness', p. 240
8 Productivity Commission, 2018, 'Superannuation: Assessing Efficiency and Competitiveness', p. 238

reasons, or privacy."[9] This is a crucial time for the superannuation sector, there are stepped changes in its obligations to members and it will require good member data to fulfill them.

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

Benefits of data in the retirement phase

As outlined, funds are failing to collect key pieces of information which are crucial to designing appropriate products. Some have complained that this is due to a lack of available data about their membership. Leaving aside the veracity of this claim, greater availability of data on which to base product design could benefit this industry. Filling the data gap could help super funds better respond to the diversity of retired members and focus on important points of difference.

The upcoming retirement income covenant will fuel demand for quality data as funds are now directed to pay greater attention to key data points in order to design appropriate products for members. For example, the covenant lists the following factors which can only be arrived at by considering data that super funds may not already have, but is likely to reside with banks:

- The size of a member's superannuation balance
- Whether a member is expected to receive a full, part-or-nil rate Age Pension at retirement
- Whether a member is partnered or single
- Whether a member owns their own home outright, owns their home with a mortgage, is a rent-vestor or is renting without owning other property at retirement
- The age a member retires and/or starts to draw down from their superannuation.[10]

The CDR will also help in understanding retirement expenditure needs and retirement budgeting. The use of bank data will provide insight into how different cohorts are spending pre and post-retirement. The ability to input data about savings outside of super and remaining home loan balances would be of huge value to consumers in retirement planning.

It could also lead to them taking up more appropriate products which control for things like longevity risk. Drawing down on assets efficiently is crucial for many retirees to be able to maintain their living standards in retirement yet many are concerned about outliving their savings and tend to spend less rather than use products to manage this risk. The Retirement Income Review found that if drawdown rates increase from those currently observed to a more

[9] AIST submission on Retirement Income Covenant, p19
[10] Retirement Income Covenant consultation paper, p9

efficient framework, people's retirement income as a ratio of their pre-retirement income could rise by 11 percentage points for the median earner retiring in 2060.[11]

Benefits of data in insurance in super

The same issues arise for insurance offerings in superannuation. Funds are charged with providing life insurance that will protect members and their families in the event of death or disability. Not knowing anything about the family structure of their members or their members' income levels severely limits their ability to offer appropriate products.

A significant portion of the market offer default Total and Permanent Disability (TPD) insurance policies through super that contain extremely restrictive definitions. These terms make it much more difficult for people to claim if they are unemployed, working less than a certain number of hours per week, or working in 'hazardous occupations.' Research from ASIC found that 60% of people who attempted to make a claim under these terms were denied.[12] This compares poorly with an average of just 12% claims denial for other groups. Currently, the majority of people in these groups are likely unaware that they are paying full price for insurance that they may be unable to claim upon.

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

Super Consumers recently shared the story of Wayne, a truck driver who suffered a stroke that had a devastating impact on his health, particularly his vision. His doctor told him he would likely never work as a truck driver again. Wayne had been paying for TPD insurance through his employer's default super fund. However his claim was rejected as the insurer classified truck driving as a 'hazardous occupation'.[13]

In this case, the trucking company that employed Wayne had defaulted him into a fund that provided insurance that was inappropriate for truck drivers. This issue has roots in the poorly designed default and insurance systems, but the CDR has the potential to rescue individuals from these gaps. The fund itself or a third party could have given relatively low cost information that Wayne had inappropriate insurance if it could easily marry data about Wayne's profession with information about his insurance policy.

Expanding the consumer data right to superannuation could make it much easier for people to be aware of this shortfall in their insurance, but crucially also provide a pathway for super funds to gain more data about members to help them better tailor their products to members' needs.

[11] Retirement Income Review, p39
[12] ASIC, 2019, 'Holes in the safety net: A review of TPD insurance claims'.
[13] CHOICE, 2020, "Junk insurance in super: 'I got nothing' says Wayne

The role for design and distribution obligations
The design and distribution obligations coming into effect in October are built upon funds having an adequate product governance framework to ensure products are targeted at the right people. The only way for a super fund to achieve this is to have a sound understanding of the data on their target market. The CDR's expansion to super will improve the industry's ability to meet the expectations of these reforms and ultimately deliver better products to consumers.

At a high level it requires:

- Product designers to make a target market determination and make it publicly available and
- Product distributors to take reasonable steps so that distribution is in accordance with the target market determination

Super funds will fall into the category of product designers and distributors. Therefore, they will require data to ensure firstly they design products that are appropriate to their members and secondly that they only distribute those products to the right people. The CDR will create a pathway for funds to gather better data about their members and could be used to confine the sale of products to appropriate markets.

Information asymmetry leading to consumer disengagement and lack of competition

Levels of disengagement with super is high, despite it being the second largest financial investment most people will make during their lifetime. A key driver of disengagement is the compulsory nature of super,[14] and the limited availability of consumer-friendly information to help people evaluate their options and make informed decisions.

The PC's inquiry into superannuation found a raft of problems across the industry, including chronic fund underperformance, high fees, duplicate accounts, and inappropriate insurance products. It also revealed the limited incentive for super funds to address these problems as a result of the high level of member disengagement and the prohibitively complex market.[15] Some of these issues have been dealt with at the system level through recent legislative reform, including the Your Future, Your Super legislation. However, there remains scope to better assist people at the individual level so that they can make the most of their retirement savings.

[14] Productivity Commission, 2018, 'Superannuation: Assessing Efficiency and Competitiveness', p. 284
[15] Productivity Commission, 2018, 'Superannuation: Assessing Efficiency and Competitiveness', p. 284

Recent Super Consumers Australia research revealed that there are three distinct approaches people take to retirement planning. These approaches help illustrate where greater access to consumer data could help individuals, product and system design:

- The disengaged (38%): This group is less engaged with financial decision making, in part because they tend to have limited means. They will require the support of default options to assist with their retirement.
- The engaged DIYs (37%): This group is highly engaged with their finances but want to make decisions themselves. They are less likely to trust others to make decisions for them, including financial planners. Instead they require quality, independent information and nudges. This group is underserved by the current system and could benefit from tools that help them understand their retirement needs and find products that meet them.
- The engaged delegators (25%): This group is engaged with their finances but look to others to make decisions for them, including financial advisers or default options. People in this group will require professional financial advisers offering quality advice, backed by appropriate default options and nudges.[16]

There is currently a lack of quality, accessible and comparable information on products for those who want it. MoneySmart and other government resources provide some limited strategic guidance, but not product level recommendations. Research undertaken by CHOICE found people do not want to upskill or be educated about super but are looking for answers to make the right decisions.[17]

Facilitating engagement through third party providers

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

Consumers have the advantage of being protected by the financial services licensing and financial advice laws for any recommendations from third parties. Anyone offering a digital tool will be expected to act in the best interests of the person they are working with, ensuring that they end up with recommendations that are best for them.

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[16] Retirement Planning Survey, February 2021, Super Consumers Australia and Fiftyfive5, N=1,541, https://superblog.netlify.app/2021/07/28/nationally-representative-retirement-survey-results/

[17] Project Superpower 2016, Research commissioned by CHOICE

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

Coordination with the Your Future, Your Super comparison tool and performance test
The PC recommended that the Government should roll out the new Consumer Data Right to superannuation in parallel with implementation of the elevated outcomes tests.[18]

The elevated outcomes test has recently become legislation and is now in effect. From 1 September 2021 members will be notified if their superannuation fund is underperforming. In the next month up to 1.1 million people will be searching for a superannuation fund after being notified their fund has failed the first performance test. People will be directed to the ATO YourSuper Comparison tool, but for some this may fall short of their desire to simply be told which is the best fund for them. Access to consenting people's data could allow comparison tools to generate tailored advice taking into account difficult comparisons of insurance, performance and risk.

Switching superannuation funds can be seamless
Much like the objectives of the CDR for 'open banking', a CDR for 'open super' can encourage seamless switching of superannuation funds. Despite some clear benefits of moving to a better performing fund, switching rates in superannuation are low, with between 2% and 10% of people switching funds in a given year.[19] Approximately half of these switches are the result of a new job or an employer changing the nominated default super fund.[20] There is little incentive for funds to make this process easier, as this contributes to an outflow of members.

Giving members the right to pass information from their super fund to another is a significant use case for the CDR. It will reduce the need for the receiving super fund to validate information and go on data collection expeditions each time they gain a new member. This will increase efficiency and reduce costs in the super system.

Additionally, expanding the CDR to include write access at an appropriate time for third parties in the superannuation sector would allow this 'chafe' to be removed. Third party providers could focus on being a 'one-stop shop' for administering life administration tasks, like managing superannuation along with other services. The potential to make contributions and withdrawals

[18] Productivity Commission, 2018, 'Superannuation: Assessing Efficiency and Competitiveness', p. 600
[19] Productivity Commission, 2018, 'Superannuation: Assessing Efficiency and Competitiveness', p. 21
[20] Productivity Commission, 2018, 'Superannuation: Assessing Efficiency and Competitiveness', p. 252

through banking apps will increase super engagement. Again, it is important to note that a framework of protections against poor quality recommendations and advice already applies to financial services. These protections are strong but need review to make sure they are working effectively and are well placed for potential expansion of robo advice.

The CDR regime has the potential to create sales channels through which new financial advice business models can access customers. In the context of stapling, where competition for the market will be increased, this risk is heightened. We anticipate that businesses may use the CDR to create digitised and streamlined ‘robo advice’ in place of traditional one-on-one advice between advisers and clients. This could make advice more affordable and efficient, but without adequate protections, granting write access could increase the ability of self-interested advisers to take advantage of this new market. These protections include addressing the remaining conflicts in the system such as restricted approved product lists, remaining conflicted payments and the vertically integrated nature of super product design and advice.

It is important the review of financial advice takes these risks into account before before write access for financial products, like superannuation, is considered

Super funds are ‘CDR ready’

Super funds are in the position to access data from other accredited super funds and the CDR’s expansion to banks from day one. This is a key point of difference over other sectors.

As of June 2021, the super sector had $3.3 trillion in assets.[21] Each fund requires a registrable superannuation entity licence with significant legislative and prudential requirements. As a conduct regulator for superannuation, ASIC focuses on trustee conduct that affects superannuation fund members, including protecting consumers from harm, market integrity, disclosure and record keeping. APRA is responsible for prudential regulation and member outcomes including, licensing and supervision of funds.

For these reasons, the PC recommended that super funds should be automatically accredited to be eligible to receive (following member consent) information held by banks under CDR.[22] This will supercharge the ability for the CDR to make a positive impact in this sector compared to others. The strategic timing of CDR implementation means that banking data, which will be one of the main assets to improve the extension of CDR for super, is already in place.

[21] APRA Quarterly stats, June 2021
[22] Productivity Commission, 2018, ‘Superannuation: Assessing Efficiency and Competitiveness’, p. 600

APRA is also undergoing a data transformation project, which in part aims to improve the obligations on superannuation funds to report consistent data which demonstrates how they are meeting the needs of members. In part this will require funds to consider relevant cohorts of members and how their products are delivering outcomes for these cohorts. If this were to happen in concert with the extension of the CDR it could lead to greater standardisation and ensure the data the regulator looks to collect also focuses on consumer use cases.

The Select Committee on Financial Technology and Regulatory Technology heard strong support for measures to make data in the superannuation sector more accessible.[23] They also made a recommendation that, given the technical infrastructure already in place, the Australian Government expand the Consumer Data Right to include other financial services, starting with the superannuation sector.[24]

Allow third party access to data held by the Australian Taxation Office (ATO)

The CDR aims to allow consumers to “make more informed decisions about both themselves and the goods and services they use” by providing access to data that businesses collect about them.[25] In the context of superannuation, comparison and switching tools would be enhanced if consumers could also provide access to data collected by non-commercial entities such as the ATO. The ATO plays a core role in superannuation administration: it tracks people’s wages, taxation, superannuation contributions and rollovers. It also reunites people with their lost super and facilitates account consolidation. Most recently it was used to manage people’s requests for early access to superannuation. Some of this information is stored in the ATO’s database, SuperMatch. APRA-regulated funds can search SuperMatch to determine whether a member has other superannuation accounts or lost superannuation, and help the member consolidate.

Expanding the CDR to include data kept by the ATO would enable third party comparators and switching tools to access data from superannuation funds that consumers may have forgotten about.

There is $13.8 billion in lost and unclaimed superannuation that is held by the ATO.[26] Typically people who ever changed their name, address, job or lived overseas, may have unintentionally lost track of some of their super. Funds are required to pay unmatched super to the ATO and the

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[23] Senate Committee on Financial Technology and Regulatory Technology, First interim report, p157
[24] Senate Committee on Financial Technology and Regulatory Technology, First interim report, p221
[25] Parliament of the Commonwealth of Australia, House of Representatives, 2019, Explanatory Memorandum, TREASURY LAWS AMENDMENT (CONSUMER DATA RIGHT) BILL 2019, p.3
[26] https://ministers.treasury.gov.au/ministers/jane-hume-2020/media-releases/there-138-billion-lost-and-unclaimed-super-could-any-it-be

ATO keeps unclaimed super until it is claimed by individuals. In order for the ATO to find the super's rightful owner it requires people to provide verification information to the ATO. The CDR has the ability to combine and use ATO data, existing super member and banking CDR data to find and consolidate this money with their rightful owners.

The ATO also holds data which is highly valuable for funds in helping to determine their retirement income strategy. Without requiring personal data sharing, there is a role for the CDR and Treasury, APRA and the ATO to help identify key macro-level data sources that could be used by funds to develop a retirement income strategy. Information such as retirement ages or expected retirement ages, reliance and eligibility for the Age Pension, and broad demographic information will improve retirement products and strategies developed by funds. Without change by 2060, it is projected that one in every three dollars paid out of the superannuation system will not be spent.[27] Better retirement products will give people greater confidence in spending their retirement assets that will ultimately result in a higher standard of living in retirement.

Existing and future consumer protections

The expansion of the CDR to super will undoubtedly be a net benefit for consumers and superannuation. Yet it is still important that the existing and any future broader consumer protections are effective to ensure this is the case.

An assessment of current consumer protection legislation should be undertaken to determine whether further CDR consumer protection rules are required with regards to super. The assessment should include the impact of the following legislation in ensuring consumers are not missold or 'nudged' super and insurance products:

- The design and distribution obligations.
- Ant-hawking legislation.
- Financial advice regulations.
- Superannuation legislation and prudential standards, particularly relating to data.
- Australian Consumer Law, such as misleading and deceptive conduct.

For example, it would not be appropriate for third party, for profit comparison sites to give the false impression of comparing super products when they may not cover all options available. There is evidence in other sectors like electricity and insurance where comparison sites funnel people into poor products.[28] The risk of switching super into products with poor returns and inadequate insurance can be devastating, particularly because super is one of the largest

[27] Retirement Income Review, p435
[28] https://www.choice.com.au/shopping/shopping-for-services/utilities/articles/energy-comparison-sites

investments people will hold. Without any rules in place to ensure universality, independence and consistency there is a risk these issues will be replicated under the CDR for super.

The CDR also has the ability to reshape the broader consumer and advice regulations to make it more aligned to consumer needs. The current consumer protection framework in financial advice is built upon disclosure and regulating for what is reasonable based on the availability of data to advice providers. For example, advisers currently use approved product lists to compare a limited range of products on the grounds that full knowledge of the offerings on the market is unachievable. A statement of advice discloses the products which were compared in order to give a recommendation. Commissioner Hayne found that just as “night follows day”, advisers tend to recommend ‘in house’ products. ASIC research showed that in a sample of advice cases, 75% breached the best interest duty and none of those in breach were able to show they recommended products that put people in a better position.[29]

A consumer data regime has the potential to displace this excuse that full market comparison is not possible. It would enable new advice business models to emerge and connect people with a broader range of products. It also opens the way to improve regulation. Regulators could also make use of data to more easily determine if there were more appropriate products on the market that could have been recommended. Alternatively if recommendations were based on an algorithm, these algorithms could be designed to avoid conflicts, removing the need for the complex regulatory architecture that has developed around ‘managing’ conflicts in financial advice.

[29] FSRC, 2019, ‘Final Report’, p.169