

12 October 2018

Australian Competition and Consumer Commission
Via website portal

ACCC-CDR@acc.gov.au

Dear Sir/Madam

Consumer Data Right Rules Framework

The Insurance Council of Australia¹ (Insurance Council) appreciates the opportunity to comment on the Australian Competition and Consumer Commission's (ACCC) Consumer Data Right Rules Framework. While the Rules Framework has a banking focus, owing to the banking sector being the first designated sector, it also sets a precedent for other sectors that are designated in the future. The Insurance Council's submission focuses on the broader implications of the Rules Framework for the general insurance sector, should it become a designated sector.

Nature of insurance data

In considering which types of data are within scope of the CDR regime, the ACCC proposes to make rules covering transaction data (data that is generated as a result of transactions made on a customer's account or service). However, unlike products that are "consumed", insurance transaction data is unlikely to assist consumers to make more informed decisions. A consumer making a claim against a policy might be considered to be the only point at which the product is consumed, and most consumers purchase insurance without an insured event occurring and triggering this point of consumption. This can be compared to a banking transaction product, for example, where bank records on everyday transactions and larger purchases, and the fees incurred for those activities, might provide useful information to consumers in considering alternative products.

From a general insurance point of view, consumer knowledge about their own risks, and the different options available in the market for covering that risk, represents the most valuable information to a consumer. Any extension of the Rules Framework to the general insurance sector will require careful consideration of how the CDR regime achieves its stated aims of improved consumer choice and convenience.

Requirements for accreditation

As highlighted in the *Review into Open Banking* (December 2017), consumer trust, created by accreditation requirements, is critical to the success of the CDR regime. In this regard,

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

the Insurance Council supports the ACCC's proposed criteria for accreditation as a data recipient, including that "the applicant holds appropriate insurance, relevant to the nature and extent of the applicant's management of CDR data" (p26). Potential claims for damage arising from misuse or loss of customer data are covered by cyber insurance, with professional indemnity insurance typically limited to acts or omissions in the professional service itself. Cyber insurance is readily available in the market and often provided alongside professional indemnity insurance. In addition to covering claims for loss, insurers offering cyber insurance have dedicated teams offering rapid response, guidance and recovery in the event that a security incident occurs.

Consent

The Insurance Council supports the ACCC's intention that consumer consent be freely and voluntarily given but we suggest that the proposed rules could better give effect to that intent. In particular, the ACCC proposes to make rules that "accredited data recipients cannot make consent to share data a precondition to obtaining other services not related to, or dependent on, the sharing of CDR data". However, the proposal leaves open the possibility that an accredited data recipient may deny a service to a consumer if related CDR data is not shared. This contrasts with the privacy principles under which an "entity must not collect personal information (other than sensitive information) unless the information is *reasonably necessary* for one or more of the entity's functions or activities" (APP3.2).

The Insurance Council suggests that accredited data recipients should not be able to deny a service to a consumer if the consumer does not provide CDR data unless the CDR data is reasonably necessary for the supply of that service. This is particularly the case in the early stages of the CDR regime when many consumers would have yet to generate CDR data.

If you have any questions or comments in relation to our submission, please contact John Anning, the Insurance Council's General Manager Policy, Regulation Directorate, on [REDACTED].

Yours sincerely



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