

12 October 2018

Mr Daniel McAuliffe
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Dear Mr McAuliffe

Treasury Laws Amendment (Consumer Data Right) Bill 2018: further consultation

The Insurance Council of Australia (Insurance Council) appreciates the opportunity to comment on the revised exposure draft *Treasury Laws Amendment (Consumer Data Right) Bill 2018* (the draft Bill) and the accompanying *Treasury Laws Amendment (Consumer Data Right) Bill 2018: Proposals for further consultation* (the Proposals Paper).

The Insurance Council particularly appreciates Treasury's recognition of stakeholder concerns about the scope of the definition of Consumer Data Right (CDR) data and the requirement to share value added data. We support the proposed subsection 56BD(2) that limits the ACCC's rules making powers to information about the eligibility criteria, terms and conditions, or price of a product in the case of information not relating to a consumer. As the Proposals Paper highlights, this limitation means that algorithms and the results of analysis of aggregated data sets are not within scope of the access right.

However, in the case of information relating to a consumer, the Insurance Council remains concerned that the revised scope of the CDR regime is still too broad. The Proposals Paper notes that:

“Intellectual property remains potentially within scope to address potential loopholes and uncertainty that could otherwise arise. However, it is not anticipated that it would be likely for any intellectual property to be designated for most sectors.” (p5)

The Insurance Council understands the need for flexibility in the legislative framework to address loopholes, and we note that the revised approach requires the Minister to consider a range of factors including any intellectual property in the information before designating a sector (s56AD). However, the Insurance Council suggests that the intention expressed in the proposals paper and in the Open Banking Review would be better reflected if the legislation contains a general exclusion of intellectual property from the CDR regime coupled with specific exceptions and anti-avoidance provisions to address potential loopholes.

In this context, we reiterate our view that underwriting data used by insurers is a source of intellectual property and a commercial asset. It is essential that any requirement to release data does not compromise the underwriting models used by individual insurers to assess and price risk.

In its earlier submission (7 September 2018), the Insurance Council supported the draft legislation's design feature that consumer data rules may differ between sectors to capture the unique attributes of each sector. The Insurance Council further supports proposal 4 in the Proposals Paper that specifies minimum consultation requirements prior to a sector being designated or rules being made. However, we suggest that a minimum 60 day public consultation period would be appropriate given the complexity of the issues that would need to be examined and the significance of the reform. This would allow due consideration to be given to how the CDR regime could apply to the general insurance and other sectors and achieve the stated aims of improved consumer choice and convenience. This timeframe is also consistent with the Office of Best Practice Regulation's 2016 *Best Practice Consultation Guidance Note*.

On proposal 5 (framework for charges for access to and use of CDR data), the Insurance Council supports the use of market based pricing over an ACCC administered system of fee setting, where fees may be imposed. Data holders are better placed to assess the costs of disclosing data, and the impact on their incentives to generate, collect and hold their 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] or [REDACTED]

Yours sincerely



Robert Whelan
Executive Director & CEO