



6 March 2023

Committee Secretary  
Economics Legislation Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600  
AUSTRALIA

Dear Chair

## Inquiry into the Treasury Laws Amendment (Consumer Data Right) Bill 2022

The Insurance Council of Australia (ICA)<sup>1</sup> welcomes the opportunity to provide a submission to the Inquiry. The ICA supports competition within the insurance industry and the aims of the Consumer Data Right (CDR). However, while the CDR applies in the banking industry it does not currently apply in the insurance industry. We understand that before designating the general insurance sector the government intends to conduct a separate sectoral assessment and consult with the insurance industry. The ICA welcomes the opportunity to work with the government on this important reform.

The purpose of the Bill is to expand on the right of individuals and businesses to access and share their data in sectors that have been designated by the Minister. By introducing Action Initiation<sup>2</sup> into the CDR, it would enable CDR consumers to direct accredited persons to instruct on actions on their behalf using the CDR framework.

The ICA notes the Minister has existing broad delegations under the Act to designate (by legislative instrument) a sector of the Australian economy for CDR data sharing, specifying data holders and datasets. The Bill would extend these delegations to include:

*The Minister can declare (by legislative instrument) types of actions that can be initiated under the CDR, and the data holders that are to be action service providers.*

*The Minister has comprehensive rule-making powers for action initiation, including on accreditation of action initiators, how actions are initiated, how requests are processed and factors relevant to assessing discrimination.*

While experience with CDR is largely in the context of banking, the extension of the CDR to insurance will pose unique issues. In this regard it will be important for the Minister to anticipate a comprehensive process of consultation with the insurance industry. Careful consideration will be needed as to what

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<sup>1</sup>The Insurance Council is the representative body of the general insurance industry in Australia and represents approximately 89% of private sector general insurers. As a foundational component of the Australian economy the general insurance industry employs approximately 60,000 people, generates gross written premium of \$59.2 billion per annum and on average pays out \$148.7 million in claims each working day (\$38.8 billion per year).

<sup>2</sup> Also referred to as 'write access' or the authority to give instruction to a business on behalf of a consumer, with respect to their data, accounts, and services.

datasets are designated (under the current provisions of the Act), given the range of data, including claims data held by insurers.

It will also be important for the government to consider the initial experience in applying the CDR to banking and to allow sufficient time for the full implications of CDR to be apparent before extending CDR to insurance.

### **Focusing the scope of CDR on consumer insurance products**

Commercial lines of insurance are predominately sold through intermediaries such as insurance brokers. Brokers provide regular comparisons of commercial insurance products within the market and enable business clients to easily switch policies. It is not apparent the CDR would provide any additional benefits to business clients that are not already available to clients to offset the administrative burden. For this reason, the ICA does not see a compelling case for expanding CDR to professional indemnity and other commercial lines of insurance.

### **Data in general insurance**

As an industry grounded on pricing risk, insurers collect a wealth of data from various sources. This includes personal information provided by consumers, natural hazard data and claims history. Accordingly, it is important to recognise that the types of data will differ from other sectors. These differences will need to be considered when determining which datasets should be subject to declaration under the CDR framework. The following sections illustrate some of the key differences with other sectors and potential implications for CDR:

- *Frequency of Data Collection.*

Consumers do not interact with their insurance policies on a regular basis. Compared to the sectors that have been designated to date, insurers generally do not possess “up-to-the-minute” transactional consumer data. For example, banking data is frequently updated as consumers purchase items, pay bills and make mortgage payments, make transfers and so on. Insurance products are quite different.

After the product is purchased, insurers do not generally ask customers for additional data except in specific cases such as via prompts at time of renewal to review the accuracy of previously provided information. This may have implications for data portability use-cases as customers would need to re-validate data and be prompted to do so.

- *Differences in Information Collected.*

Different insurers will have different underwriting rules and therefore may collect different information from customers. As with the example above, this may have implications for portability as customers will likely need to provide additional information.

- *Diversity of Insurance Products.*

Insurance products are often more diverse, complex and tailored than products in other designated sectors. This may pose challenges for some use cases, such as product comparison. However, the ICA notes that some sub-sectors have standard or minimum coverage requirements, which of themselves diminish the utility of product comparisons.

- *Data Related to Assets.*

Insurer data often relates to the insured asset rather than an individual, meaning that it remains relevant to that person only while they retain that asset. For example, in providing home insurance an insurer will consider the location of the dwelling to assess natural hazard risks (such as riverine flooding, cyclones, bushfires) among other factors. However, the data would not remain relevant should the customer move to a new house.

- *Data Collected by Government.*

In some instances, such as where data relates to workers compensation or compulsory third-party cover, insurers are merely custodians of the data to enable processing of outsourced claims or other services on behalf of government. Our view is that it would not be appropriate for insurers to be required to provide this data directly to consumers or other parties as they are bound by the terms of their engagement with Government.

- *Pricing and Risk Management Data.*

As noted above, the insurance industry assesses, and prices risk based on a broad cross-portfolio understanding augmented with commercially acquired data. As in other sectors, this information is the result of substantial business investment. Sharing of this data between competitors would stifle investment in product development and innovation, and hence is not appropriate for inclusion within the scope of the CDR.

- *Sensitive Personal Data.*

Where insurers do collect personal data, this is often of a sensitive personal nature and collected in very specific circumstances relevant to issuing policies, assessing claims and assisting customers experiencing vulnerable circumstances. For example, motor vehicle insurers may request personal medical information, or a customer may request deferral of payment of an invoice due to financial or personal hardship. Our view is that this data is generally not relevant to the purposes of changing insurance providers or comparing effectiveness of insurance policies and should be an excluded data set. We further note that this sensitive personal data, if shared incorrectly or de-contextualised, may inadvertently “red flag” consumers.

- *Vulnerable Customers.*

Customers who are more digitally savvy will be better able to leverage the benefits of the scheme over those who are less able to use digital means to participate. Consideration will need to be given to impacts on vulnerable customers, including on pricing and coverage.

## **Cost of accreditation**

Insurance brokers currently play a central role in the insurance industry. Intermediaries such as insurance brokers are often part of the customer relationship, and they often hold the relevant consumer data. The application of CDR and the provisions contained in this Bill is expected to require insurance brokers to become Accredited Action Initiators.

We understand the cost of accreditation under the existing Act can be substantial for Accredited Data Holders. This may be particularly acute for brokers that become Accredited Data Holders and/or Accredited Action Initiators, as they are often small businesses. The cost of accreditation could be beyond the capacity of some of these businesses and may result in some brokers leaving the insurance industry reducing competition and access to risk advice, especially in regional areas.

The Committee may wish to consider how the cost of accreditation can be minimised for intermediaries such as brokers.

**Concurrent privacy regimes**

The CDR includes a range of privacy provisions that operate concurrently with the provisions of the Privacy Act. This complexity may be challenging for consumers looking to ensure their privacy is adequately protected, and we anticipate could be a source of conflicting obligations and cost to insurers should the CDR be applied to insurance. Consideration should be given to streamlining requirements particularly in light of the recent release of the Privacy Act Review report.

**Consumer education**

While the CDR provides a framework for provider switching, consumer education will be particularly important for insurance. Insurance products are complex with variations in contract terms, and particularly definitions, between insurers that can make comparison difficult. In the absence of consumer education, the CDR may not increase the level of understanding of the variations in policy cover for home and contents insurance.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Alexandra Hordern, General Manager, Policy – Regulatory Affairs,

Yours sincerely

**Andrew Hall**

Executive Director and CEO