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Inquiry into Future Directions for the Consumer Data Right Response to Issues Paper: March 2020

ABOUT US

Set up by consumers for consumers, CHOICE is the consumer advocate that provides Australians with information and advice, free from commercial bias. By mobilising Australia's largest and loudest consumer movement, CHOICE fights to hold industry and government accountable and achieve real change on the issues that matter most.

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INTRODUCTION

CHOICE has consistently supported the responsible development and expansion of the Consumer Data Right (CDR) since its proposed introduction in November 2017. The CDR was conceived to empower consumers through improved access to their data, and to facilitate consumer mobility between products and services. Implemented well, the CDR should boost competition and lower prices across markets with confusing offers and low switching rates. Thanks to the response of the Federal Government, Australians will soon be able to access their banking, energy and telecommunications data through the CDR.

This submission will focus on three key areas in relation to the CDR: potential areas of expansion, accessibility and consumer protection. A national product safety database, country-wide complaints register, and the insurance and automotive industries would all benefit from the application of open data. However, expansion of the CDR into new categories will not benefit consumers unless data is accessible and usable. This can be achieved in a number of ways, including fair pricing, consumer testing and education.

The Treasury Laws Amendment (Consumer Data Right) Bill 2019 has provided an initial framework for the CDR's privacy protections. The Australian Competition and Consumer Commission (ACCC) and Office of the Australian Information Commissioner (OAIC)'s newly released Compliance and Enforcement Policy for the Consumer Data Right is also a step in the right direction. However it is critical that strong privacy protections continue to be implemented and maintained. This can be achieved through appropriate accreditation, restrictions, testing and education programs.

In addition, consumers say that superannuation is one of the most complicated, difficult to choose products.¹ For this reason, CHOICE supports all of the recommendations contained in the Super Consumers Australia submission to the Inquiry into Future Directions for the Consumer Data Right. As their work highlights, an open data regime 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.²

¹ CHOICE, Consumer Pulse, March 2020

² Super Consumers Australia, [Submission To The Senate Select Committee On Financial Technology And Regulatory Technology](#), 2019

Recommendations

- 1. All of the recommendations contained in the Super Consumers Australia submission to the Future Directions of the Consumer Data Right be adopted**
- 2. The CDR should be extended to allow third-parties to have write access to support consumer decision making. Write access should only be granted to businesses acting in the best interests of customers and not receiving payments from other commercial entities when offering write-access services**
- 3. The CDR be implemented in the insurance industry**
- 4. The CDR be implemented in the automotive industry**
- 5. The ACCC or other appropriate body develop an online, search database of product safety reports**
- 6. That Australian Consumer Law regulators, at the Federal, State and Territory levels, utilise the CDR to make consumer complaints data publicly available**
- 7. Consumer and business education is provided for each roll out**

RESPONSE TO ISSUES PAPER

1. Future role of the consumer data right

Write access

CHOICE supports expanding the CDR to allow for write-access for appropriate third-parties.

Write access will take the usefulness of the CDR to the next level for consumers. Under the current CDR system, data can be used to advise or recommend better products or services for people. Write access will allow for trusted third-parties to take the next step by, with consumer consent, switching people into better services. Finding ways for technology to reduce the friction consumers experience in switching services should help more people pay less and increase competition.

Write access requires additional protections to make sure that innovations truly work for consumers. Businesses trusted with write access should meet the highest standards of consumer care. They should only be acting in a customer's interest and not for another commercial party. We need to ensure at the outset that write-access services are not used to direct consumers into products, services or other decisions to benefit parties other than themselves. For example, a write-access energy switching service should only be moving customers to the best deal they can find, rather than a deal from a company paying the highest commission.

To protect the integrity of the CDR system, write access should only be granted to businesses who commit to acting in the best interests of customers and who will not be receiving payments from third-parties that would cause them to put other commercial interests ahead of consumer outcomes. This should be a requirement that is backed up with monitoring and enforcement for parties that fail to comply, with commercially significant penalties for parties using write access in ways that harm consumers.

Recommendation

- The CDR should be extended to allow third-parties to have write access to support consumer decision making. Write access should only be granted to businesses acting in the best interests of customers and not receiving payments from other commercial entities when offering write-access services.

Expansion to additional industries

CHOICE would like to see the CDR rolled out to additional industries. Any sector that offers complex products or services or uses significant amounts of data in decision making should be included in the CDR system. Two sectors that should be considered early are insurance and the automotive industry.

Insurance

Insurance products are complex. At CHOICE, we frequently hear from people who purchased insurance but found they were not covered for what they hoped or expected when they go to make a claim. This has been particularly the case recently, as many people with travel insurance have found they are not covered for loss caused by a pandemic.

One of the major challenges with insurance is matching consumer needs with multiple products with numerous variations in cover. Being able to access information held by insurers would have multiple benefits:

- **People could better understand what insurers know about them and, ideally, how this information is used to set pricing.**
- **People could transfer information about claims history and relevant personal information, such as registration details, to make switching smoother.**
- **Third-parties could more easily match consumers with recommended products and facilitate switching.**

The automotive industry

The automotive industry is one sector that could easily adopt the CDR. This is due to the increasing amount and depth of proprietary information held by consumers' cars, via on-board computers. Given the increasingly sophisticated operation of motor vehicle software, this issue will have significant impacts on consumers' rights and also the subsequent costs of vehicle repair and maintenance. Providing consumers, and independent repairers of their choice, with access to car service and repair data will empower consumers to engage more effectively with the market and will encourage a more competitive marketplace.

Recommendations

- **The CDR be implemented in the insurance industry**
- **The CDR be implemented in the automotive industry**

2. Unleashing the benefits of government held data

There is substantial data held by government agencies that would benefit consumers if it were released in an appropriate format. CHOICE would like to see further initiatives to release government-held data to help people make informed decisions about what they buy, compare and switch.

In particular, product safety reports made to the ACCC and consumer complaints are both invaluable datasets. The information they contain, when shared with consumers, have the potential to provide consumers with useful information about the products they buy and the businesses they support.

There may be a role for extending the remit of the Data Standards Body to consider these issues. Alternatively, government agencies could act independently to release data in useful forms, like NSW Fair Trading has done with complaints data.

Product safety data

Australian consumers should have a right to information about the nature of product-related injuries and deaths, including the steps taken by suppliers in response to the incidents. Unsafe products can have long-lasting and irreversible impacts on people's lives – physically, emotionally and financially. The ACCC's estimation that unsafe consumer products cause around 780 deaths and 52,000 injuries each year³ is not only shocking but points to a failure within the current product safety system.

Under the current regulatory regime for product safety, substantial data on product safety injuries and deaths is collected and stored, but is kept confidential. CHOICE believes that the Australian public has a fundamental right to know the nature of these injuries and deaths, including the steps taken by suppliers in response to the incidents.

In other jurisdictions information of this nature is made available. For example, in the United States, the Consumer Safety Protection Bureau publishes a public portal and a publicly accessible, searchable database of consumer product incident reports. CHOICE would like to see a similar model adopted in Australia. A public, searchable system like www.saferproducts.gov is a transparent way of seeing how businesses respond to legitimate concerns from members of the public, such as those raised above by CHOICE members.

³ ACCC 2019, *Unsafe goods should be illegal to sell*, accessed on 22 November 2019, <https://www.accc.gov.au/media-release/unsafe-goods-should-be-illegal-to-sell>

Recommendation

- The ACCC or other appropriate body develop an online, search database of product safety reports

Complaints Data

Providing Australian consumers with information on businesses that have had high levels of complaints made against them would address existing asymmetries of information, where only businesses and not consumers are aware of the volume of complaints made against them. This will also empower consumers to make more informed purchasing decisions, and pressure businesses to improve their practices.

NSW Fair Trading's pilot complaints register is one example that could be adopted nationally. CHOICE strongly supports the decision to create a consumer complaints register that will publish information about individual traders who are the subject of a high number of complaints and encourages other States and Territories, and the Federal regulators such as the ACCC and ASIC, to follow suit.

In order to facilitate innovation by third parties and app developers, regulators should endeavour to release as much information as possible. At a minimum such complaints registers should include information about the trader, the product or service complained about, the problem or practice complained about and the practice method used.

It may also be desirable to publish the outcome of dispute resolution between consumers and businesses, as it done by the United States' Consumer Financial Protection Bureau or the Netherlands' consumer advocacy organisation, Consumentenbond.⁴ In these examples, the provision of data goes beyond simply increasing transparency but also provides consumers with a pathway towards public complaint resolutions that can benefit other consumers.

Recommendation

- That Australian Consumer Law regulators, at the Federal and State and Territory levels utilise the CDR to make consumer complaints data publicly available

⁴ See the Consumer Complaints Database, <http://www.consumerfinance.gov/data-research/consumer-complaints/> and Klachtenkompas <http://www.klachtenkopmas.nl/>.

3. Consumer protection

Consumer protection must be an underlying feature of Australia's CDR regime. If it is not effectively implemented and enforced, there is a risk that the regime as a whole will lead to the exploitation of its users, rather than fostering competition and the development of better products and services.

Education Programs

The CDR introduces a new system for consumers to navigate, and it will take time and resources to educate consumers about their rights within this new system. CHOICE is concerned that education for consumers and businesses participating in the CDR is merely a possibility, rather than a core part of the CDR. It is crucial that consumer education programs are appropriately funded, designed, implemented and evaluated in order to ensure that consumers are able to reap the benefits of the CDR. Special attention should be paid to educating consumers about accredited parties under the CDR, as well as dispute resolution mechanisms that are available to them.

It is also vital that data holders and accredited parties receive appropriate education in order to understand their new responsibilities within the CDR regime. Businesses should be encouraged to proactively let consumers know about their new rights as they relate to the products and services that they're providing them with, and be given access to appropriate tools to assist them with the process. CHOICE notes that 'the consumer data rules may require CDR participants to have internal or external dispute resolution processes that either relate to the consumer data rules or meet criteria which are outlined in the consumer data rules.' It is crucial that the establishment of internal and external dispute resolution processes is not left to chance. CDR rules must require CDR participants to provide access to effective dispute resolution processes so that consumers have appropriate safeguards in place.

Recommendation

- Consumer and business education is provided for each roll out