

<https://www.mbie.govt.nz/business-and-employment/business/competition-regulation-and-policy/consumer-data-right/>

## Options for establishing a consumer data right in New Zealand

Fidelity Life's submission

22 September 2020

### Introduction

#### **About Fidelity Life**

Fidelity Life is New Zealand's largest locally-owned life insurer and the 2017, 2018 and 2019 ANZLIF New Zealand Life Insurance Company of the Year. We've paid more than \$1.1 billion in claims since we were founded in 1973. We distribute our products through a network of 2,000+ independent financial advisers, as well as through strategic alliance partners, and employ around 250 people.

Less than 40 per cent of New Zealanders have a life insurance policy<sup>1</sup> which means under-insurance remains the burning issue our industry needs to address. Evolving consumer and regulatory expectations, legacy technology constraints, rising claims costs and increasing pressure on profitability and solvency are other challenges facing life insurers. And that's before we even get to Covid-19.

That's why at Fidelity we are all about delivering sustainable growth, building trust and continuing to deliver on our promise of protecting New Zealanders' way of life.

#### **Our views on a consumer data right in New Zealand**

Our submission is in the life insurance context.

We recognise the desired outcomes of establishing a consumer data right (CDR) in New Zealand so that consumers and businesses can have greater choice and control over their data, they benefit from increased competition and innovation, and contribute to boosting productivity and the broader economy.

In our view, further consideration needs to be given to balancing business and consumer expectations, and the issues being addressed by introducing a CDR. This is particularly important regarding the nature of life insurance and to ensure a sustainable insurance sector that delivers for New Zealanders in their times of need. It is difficult to compare the life insurance industry with banking and electricity sectors as life insurance products are often not easily comparable.

It's also important to ensure there are no unintended consequences for the sector and for consumers, as there would be significant costs and resource associated with implementation of

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<sup>1</sup> [Financial Services Council: Moments of Truth – Key Insights into the New Zealand Life Insurance Industry, September 2019](#)

a CDR regime which would likely impact consumers. This is particularly important given the current economic outlook and for New Zealand customers who are already underinsured.

There are a number of risks specific to the life insurance industry that need to be considered. These are highlighted in our submission. It is our view life insurance should be excluded. This aligns with Australia, who chose to exclude insurance from the scope of its Australian CDR.

### Responses to discussion document questions

#### Does New Zealand need a consumer data right?

1

*Are there any additional problems that are preventing greater data portability in New Zealand that have not been identified in this discussion document?*

No comment

2

*Do you agree with the potential benefits, costs or risks associated with a consumer data right as outlined in this discussion document? Why/why not?*

We don't agree that a CDR would necessarily lead to strengthened privacy protection (the second to last benefit listed):

- It could lead to parties receiving more information than they need, especially if there is transfer across sectors. There are concerns about personal information being transferred which is not strictly necessary for differing sectors. There is also concern that including all transaction data on a consumer would include information on the interactions between the consumer and the data holder that would not currently be obtained.
- Whilst the proposed regime requires consumer consent, many consumers will have little comprehension of the scope of personal information held by businesses and what they are agreeing to. Our concern is not limited to consumers with vulnerabilities, most consumers won't have full awareness. There is already difficulty with getting consumers to take the time to understand what they are consenting to. An explanation may be comprehensive but it doesn't mean the consumer will read it. This is particularly relevant, and may have significant consequences, for life insurance where a significant amount of historical medical and financial data is stored.
- There are also concerns that businesses which see data portability as advantageous may treat potential customers who don't consent to their information being transferred less favourably. Conversely those businesses that view data portability as disadvantageous may look to discourage customers who give consent.

In addition, the innovation benefits described in paragraph 12 of the discussion paper wouldn't likely apply to insurance.

In the life insurance sector, we don't necessarily agree that consumer welfare will be improved (the last benefit listed):

- Life insurance is unique, and a CDR won't necessarily give consumers the power to make informed buying decisions. While a CDR might enable consumers to seamlessly switch product providers more easily this might not always be in the consumer's best interests.
- It can be difficult for a consumer to assess whether switching/replacing a policy is better or worse for them. There are risks associated with consumers switching/ replacing life insurance policies as they may lose some benefits under their existing policy, including:
  - "different policy exclusions (a consumer could have a medical condition that is excluded from the new policy)
  - differences in cover (a consumer may have a medical history of heart disease, but the new policy has less coronary cover)
  - a change in premium (a consumer may end up paying for insurance they don't need, or may pay lower premiums in the short term but higher premiums in the long term)
  - a difference in customer experience, service or claims processes (a consumer may find it harder to deal with their new insurer)."<sup>2</sup>

The implementation and resource costs for the industry associated with establishing and complying with a CDR regime should not be underestimated. There is a real likelihood that these costs would then be passed onto to consumers. New Zealand already has one of the lowest rates of life insurance in the developed world. We know one of the critical drivers of consumers' decisions to take out life insurance is the price of the product. In our view the increased costs arising from the introduction of a CDR will likely worsen rather than improve this issue.

3

*Are there additional benefits, costs or risks that have not been explored in the above discussion on a consumer data right?*

As noted in the answer to question 2 above there are concerns that the risks related to consumer protection of personal information may not be fully understood.

4

*What would the costs and benefits be of applying the consumer data right to businesses and other entities, in addition to individuals?*

No comment

5

*Do you have any comments on the types of data that we propose be included or excluded from a consumer data right (i.e. 'consumer data' and 'product data')?*

<sup>2</sup> Financial Markets Authority, 'Replacing life insurance – who benefits', June 2016, page 17

The CDR should exclude certain personal information such as health and lifestyle information due to its sensitivity.

We agree with the view that, like the GDPR, it should not include derived data.

Product data shouldn't be included in a CDR regime. If there is a need for product data to be regulated this should be dealt with separately. Consumer data and product data need to have different levels of security standards and including them in the same regime risks confusion.

6

*What would the costs and benefits be of including both read access and write access in a consumer data right?*

We consider that a CDR should provide for read access initially due to the privacy concerns and the risk of data being incorrectly amended.

### What form could a consumer data right take in New Zealand?

7

*Do you have any comments on the outcomes that we are seeking to achieve? Are there any additional outcomes that we should seek to achieve?*

Another outcome related to consumer welfare should be ensuring parties do not receive more consumer data than is necessary for their purposes. Again, the outcomes for consumer welfare and economic development need to be considered for different sectors.

8

*Do you have any comments on our proposed criteria for assessing options? Are there any additional factors that should be considered?*

No comment.

9

*Do you have any comments on the discussion of Option one: Status quo?*

No comment.

10

*Do you have any comments on the discussion of Option two: A sectoral-designation process?*

There are some sectors where there are strong policy reasons for not having a CDR and so sectors should be differentiated. The reference to shared standards and the possibility of a CDR that is interoperable across multiple sectors (e.g. allowing a consumer to share data across sectors) is of concern. There should only be access within the sector not across different sectors. A company in the energy sector should not be able to access the consumer's bank data, even if there is a consent as it will provide information that is not necessary for that sector's purposes.

11

*Do you have any comments on the discussion of Option three: An economy-wide consumer data right?*

The implementation of an economy wide right would be significant and would be difficult to realise the benefits being proposed.

12

*Do you have any comments on the discussion of Option four: Sector-specific approach?*

If there is to be a CDR introduced there needs to be a sector-specific approach.

The sensitivity of the personal information held by an electricity provider versus a bank versus a health or life insurer varies significantly. A consumer notified of a data breach by their electricity provider will in most cases not have the same concern as with a life insurer who will have broader information. A consumer notified of a data breach by a life or medical insurer will have multiple concerns around the sensitive medical information held. In our experience, customers often choose to keep their health information private.

The level of sensitivity of the information held by life insurers means they should not be included at this time. We note that Australia chose to exclude insurance from the scope of its Australian CDR that went live on 1 July 2020.

Differing sectors also have differing consumer interactions. There is usually a direct relationship in sectors like energy, telecommunications and banking whereas other sectors such as life insurance have a high prevalence of representation by an intermediary (financial adviser) which need to be considered.

A sector specific approach would allow an incremental approach beginning with sectors which hold less sensitive data. As confidence increases that the regime is benefitting consumers, consideration could be given to adding sectors who hold more sensitive data.

Any CDR needs to recognise the differing types of information held by different sectors.

13

*This discussion document outlines four possible options to establish a consumer data right in New Zealand. Are there any other viable options?*

No comment.

14

*Do you have any comments on our initial analysis of the four options against our assessment criteria?*

No comment.

15

*Do you agree or disagree with our assessment that Option two is most likely to achieve the best outcome using the assessment criteria?*

We disagree as it contemplates data sharing across sectors. Option four is most likely to achieve the best outcome as it allows for full differentiation between sectors and recognises the unique characteristics of each sector.

How could a consumer data right be designed?

16-  
26

no comment

