

Submission on discussion document: *Options for establishing a consumer data right in New Zealand*

Your name and organisation

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This submission is provided by ICNZ on behalf of itself and its members, noting that members are of course welcome to separately submit expressing a different view.

By way of background, ICNZ’s members are general insurers that insure about 95 percent of the New Zealand general insurance market, including about a trillion dollars’ worth of New Zealand property and liabilities. ICNZ members provide insurance products ranging from those usually purchased by individuals (such as home and contents, travel and motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability, business interruption, professional indemnity, commercial property and directors and officers insurance).

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?*

The additional problems that we see as preventing greater data portability in New Zealand include:

- **Data quality issues.** Throughout the discussion document it is assumed that greater data portability will improve consumer outcomes (including making it easier for them to compare offerings and switch) which is not necessarily the case. In addition to the challenges from a general insurance perspective (see details in the ‘Other comments’ section below), this analysis assumes data transferred between providers is accurate, which will not always be true, for reasons that are outside of the provider’s control.¹ There is also a risk that the integrity of data is compromised as it is transferred between providers. In situations where incorrect data is being relied upon this could lead to poor consumer outcomes because they may be treated differently than they would have been had correct data been provided. This may also cause issues later down the track when the consumer seeks to rely upon an aspect of the product/service but the provider

¹Data quality issues may arise because the information the consumer relays to the provider is incorrect or misunderstood, or due to some unintended treatment or corruption.² For example, drawing upon the sectorial approach adopted in Australia and focusing just on regulator costs, the planned roll out for open banking is taking longer than expected. The ACCC is receiving approximately \$20 million over the next four years to determine the costs and benefits of designating sectors that will be subject to the CDR, as well as develop and implement rules that govern the data right and content of standards. A further \$11.5 million will be spent to support the CSIRO in its role as data standards setter, along with \$1.4 million in capital funding in 2018-2019. Over the next four years the Office of the Australian Information Commissioner is receiving \$12.9 million to assess the privacy impact of designating sectors subject to the CDR, and to ensure the rules fit within the guidelines of the Privacy Act 1988, <https://www.cmo.com.au/article/640952/budget-2018-government-set-shake-up-consumer-data-rights-44-6m-investment/>.

refuses citing that the circumstances they had relied upon in providing the service/product were incorrect. From a provider perspective, data quality issues may undermine their confidence in any consumer data right (CDR) regime and its value.

- **Data ownership and commercial data licensing.** Issues of data ownership require more careful consideration than is evident based upon the simple description of a CDR model as outlined in the discussion document. To explain, from a general insurance perspective, in addition to information sourced directly from consumers, insurance providers rely upon complex data/mapping/modelling sourced from multiple providers on commercial terms. Other information is derived from public data sources (e.g. LINZ or NZTA). The complex ecosystem of data and associated contractual licensing terms needs to be carefully considered in any CDR regime to ensure data can be shared without breaching contractual obligations or negatively impacting legitimate commercial interests. The appropriate treatment where data ownership is shared between parties also need to be considered. Additionally, as outlined below, regard needs to be had to protecting insurers' intellectual property rights and commercially sensitive information.
- **Investigation and IT implementation costs.** While in the discussion document reference is made to expected implementation costs if a CDR was introduced, in our view insufficient regard is had to this matter and very little attention is given to the particularly extensive and resource intensive (both time and cost) task of regulators completing detailed analysis and providers and regulators implementing any CDR within their computer systems.² Implementation is likely to be particularly challenging when a provider has multiple systems³ or is a small to medium sized business.⁴ These additional costs have to be met somehow and are likely to be passed onto consumers in some shape or form.⁵ These costs also potentially raise the barrier for market entrants.⁶
- **Lack of access to technology and the assumption that more data leads to improved outcomes in all cases.** An underlying assumption to the proposed CDR is that everyone has access to technology that will allow them to benefit from this development. While more data may lead to more accurate pricing and better prices for groups with good access to technology (e.g. access to smartphones, broadband internet and wifi), it may further entrench disadvantages of already disadvantaged groups who do not, who lack financial or digital literacy, have accessibility or disability issues or who are underage.⁷ Market forces may create a disadvantage for certain vulnerable or disadvantaged groups

² For example, drawing upon the sectorial approach adopted in Australia and focusing just on regulator costs, the planned roll out for open banking is taking longer than expected. The ACCC is receiving approximately \$20 million over the next four years to determine the costs and benefits of designating sectors that will be subject to the CDR, as well as develop and implement rules that govern the data right and content of standards. A further \$11.5 million will be spent to support the CSIRO in its role as data standards setter, along with \$1.4 million in capital funding in 2018-2019. Over the next four years the Office of the Australian Information Commissioner is receiving \$12.9 million to assess the privacy impact of designating sectors subject to the CDR, and to ensure the rules fit within the guidelines of the Privacy Act 1988, <https://www.cmo.com.au/article/640952/budget-2018-government-set-shake-up-consumer-data-rights-44-6m-investment/>.

³ Which is common in the general insurance industry, where some providers have merged or been acquired over a series of decades.

⁴ Ironically, this could lead to these small to medium size operators pivoting their businesses to go 'offline' so that they do not have to comply with any CDR requirements.

⁵ In addition to meeting its own implementation costs, a provider may need to meet the cost of the regulators' own implementation costs through paying fees or levies as indicated in the discussion document.

⁶ For completeness, the scale of the technological impact will depend upon, amongst other things, when data is required to be provided (e.g. in real time or within a certain timeframe), the amount and type of data to be provided and the prescribed format of this, noting that currently providers have their own data formats and being able to take parts of this and put it into a prescribed format will require substantial costs and resources even at its most basic level.

⁷ See for example, Citizens Advice Bureau report which revealed huge numbers of people suffer from 'digital exclusion' – those who have limited or no access to, or won't or can't use digital technology, <https://www.cab.org.nz/what-we-do/social-justice/digital-exclusion/>.

who are unable to meaningfully engage with the digital economy and provide relevant data to providers (e.g. because such data is a requirement for access to a better deal). This may result in them being further disadvantaged, misunderstanding what they are signing up for and/or paying more for goods and services than may otherwise be the case.⁸

- **Unsuitability for insurance.** Any CDR regime as proposed would not materially improve consumer outcomes in so far as general insurance is concerned in our view, due to the various discrete/specific data points relied upon by insurance providers (including information from consumers and other sources), bespoke provider/underwriting decision-making processes and product variabilities and complexities. There is also a risk that the narrow focus on comparing prices and the ability to switch will constrain innovation and result in a ‘race to the bottom’ with lower specification products being developed so providers can appear cheapest in a category to ‘win’ business while ignoring other factors relevant to good consumer outcomes. Further details about this are set out in the ‘Other comments’ section below. Any CDR regime would need to avoid those outcomes.

It is expected that further problems will be identified during the detailed analysis to be completed referred to in the discussion document, which we would welcome the opportunity to comment on in due course. It is critical in our view that this exercise is completed so all issues are known (in so far as this is possible) and properly considered before this matter is progressed.

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?

While we support giving consumers greater choice and control over their data and appreciate the potential for this to improve customer experiences’ online and open up new opportunities in general terms, we have concerns about how some of the potential benefits associated with a CDR have been characterised in the discussion document. Specifically:

- We consider there is a risk that a CDR, rather than enabling innovation, facilitating competition and increasing productivity, detracts from these matters by introducing additional compliance costs and regulatory hurdles. Further, the resources required to implement an CDR would effectively mean that they may not be used for other customer centric initiatives (for example, addressing under insurance and financial literacy). This should be weighed up against the perceived possible consumer benefits of introducing a CDR.
- While we accept that greater consumer data portability would lead to improved consumer outcomes in some cases, this will not always be the case particularly when the consumer does not have access to technology (as outlined in our response to question 1 above), or vulnerability issues exist (as outlined in response to question 17 below).
- We consider that characterising a CDR as ‘strengthening privacy and data protections’ misstates the position somewhat. A better way of characterising the position in our view is that a CDR, as a mechanism enabling greater data portability, raises greater risks from a privacy protection and data security perspective that will need to be mitigated in the form of greater privacy and security protections.

As outlined under the ‘Other comments’ section below, we also question whether the benefits of a CDR will be realised in the general insurance industry given the range of data and information sources, product variability and complex decision-making that needs to

⁸ Reflecting the provider’s uncertainty about the circumstances due to the lack of data.

occur in this regard. We agree with the identified costs/risks.

We note that in the discussion document reference is made to obtaining the consumer's informed consent to share data, which presumably would need to be explicit. In the situation where historical data is intended to be used in a new way, due to the CDR, we anticipate this will require the provider to notify⁹ and/or obtain the consumer's consent to do so. An opportunity should also be given to correct this information.¹⁰

There may also be complications and delays for consumers associated with the introduction of a CDR. For example, in the general insurance context, where a consumer wants to add another driver to their motor vehicle insurance policy and potentially data about that individual needs to be obtained and the appropriate consents provided before this can occur. This may prolong the process and dissuade the consumer from completing this exercise.

3

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

An additional potential benefit could be for the CDR to facilitate greater consumer awareness of the data held about them by providers. This improved transparency would be fundamentally beneficial across all industries (including the insurance industry) and could lead to reduced complaints and improved levels of consumer trust. As outlined in response to question 1 above, this would also mitigate the risk of incorrect consumer data being relied upon in provider decision-making as outlined above.

Additional potential risks/costs include:

- That any CDR regime does not keep pace with technological developments and industry-initiated data portability changes, inhibiting innovation and improved consumer outcomes and experiences in this regard. To that end, the introduction of Artificial Intelligence and Machine Learning, which could otherwise bring positive consumer outcomes (e.g. faster insurance claims processing), may be delayed because providers now need to consider the implications and costs of doing so with a CDR overlay. Implementing a CDR would also require resources to be diverted that would otherwise be used to implement this technology.
- There is also a risk of underestimating the significant increase in information required to be provided to consumers as part of any CDR. For example, in the general insurance context, this potentially could include information about data provided to the insurer by the consumer and other sources, data processed by the insurer, the consents the consumer has provided, how data is relied upon in decision-making, and potentially an outline of the right of review and process to correct data. All this information may overwhelm the consumer and they may never read it as a result.
- A CDR requires strong consumer understanding for its benefits to be realised. In our view this would require strong awareness and a targeted, sector-specific education campaign that reflects the specific value-added data consumers are providing when seeking to 'search and switch', the benefits for them in doing so and the risks they need to be aware of in this regard.
- A risk that consumers will inadvertently provide permissions to a provider regarding the use of their data not realising this and not understanding how this data is being used. Related to this, there is a risk that consumers who do not have good financial or digital literacy may be persuaded to change providers when this is less beneficial (i.e. because

⁹ Consistent with the notification requirements under principle 3 (collection of information from subject) of the Privacy Act 1993.

¹⁰ Consistent with principle 7 (correction of personal information) of the Privacy Act 1993.

what they are getting is an inferior product/service and/or at a higher cost). We expand upon this matter in our response to question 17 below.

- Enabling third parties to access CDR data streams creates liability issues including, amongst other things, related to privacy and other data security breaches, obtaining and revoking of consent rights and in so far as incorrect data provided is relied upon.¹¹ In this regard, it is noteworthy that in Australia where a consumer data right is being rolled out to the banking sector currently, those seeking accreditation to receive banking data have seen up to a 300% increase in their insurance premiums.¹²
- That a CDR could lead to loss of intellectual property rights or commercially sensitive information. In particular, an insurer's underwriting data which is essential to the proper functioning of the insurance sector and an essential commercial asset for insurers which underlies their core underwriting function; assessing and pricing risk. Further details about this are set out in the 'Other comments' section below.
- A move to data sharing and aligning data formats for a CDR would require insurance providers to collect and share the same information and likely its context (i.e. meta-data),¹³ noting that currently each insurance provider relies upon various discrete data points, with myriad variations existing between providers. Developing, implementing and then maintaining the required common standards and protocols for data exchange and interoperability will require a significant amount of investment and consultation with all stakeholders. This could restrict changes that are able to be made, inadvertently promoting homogeneity of thinking, design, products and services, resulting in a lack of differentiation and innovation in product choices for consumers.
- While reducing 'search and switch' costs is generally positive, we are concerned this may result in a 'race to the bottom' with a focus solely on price; with lower specification products being developed so providers can appear cheapest in a category to 'win' business. This ignores other attributes of good customer outcomes. Further details about this are set out in the 'Other comments' section below.
- Also, in the general insurance context, there is a risk that due to the introduction of a CDR consumers will not seek advice from their insurance provider or their independent insurance broker, instead relying upon a digital platform or advice of a recipient provider who may have little knowledge or experience about insurance policies and the implication of their longform wording amongst other things. This would lead to consumers being less informed and poorly advised, leading to poor outcomes.

Also see our response to question 1 above in this regard (data quality, IT implementation and lack of access to technology issues).

¹¹ For this reason, we suggest that third parties be required to meet agreed minimum technical and security standards prior to being able to share data. An in-depth analysis will be required to develop these requirements and they should be regularly reviewed and updated given the evolving nature of cyber security issues. While the Privacy Act 2020 should address issues of liability for data breaches where a third-party data loss occurs, the potential for associated brand reputation damage and loss of trust due to consumer confusion/misattribution of fault may be significant.

¹² <https://www.innovationaus.com/open-bankings-majestically-slow-start/>

¹³ For example, data classification, collection dates and the applicable collection channel.

We do not consider that it would be appropriate to apply CDR to businesses and other entities because:

- Doing so goes beyond the intended scope and underlying issue the proposed CDR seeks to address, namely giving consumers greater choice and control over their data so that they can more easily compare products and switch between providers. If an issue exists with businesses and other entities in this regard this has not been explained in the discussion document.
- Extending a CDR to businesses and other entities would involve significant additional complexities due to the differing nature of their relationships with providers (e.g. as fellow commercial parties negotiating at 'arm's length') and their more sophisticated data and product/service requirements and the increased complexity and variation of commercial general insurance products.¹⁴
- If a CDR regime was to be extended to businesses and other entities, the only appropriate time to do that would be after any consumer data portability right has been implemented and the outcome of that reviewed.
- Also, in a general insurance context, in the vast majority of cases businesses purchase their insurance via independent insurance brokers who carry out the 'search and switch' process on their behalf. Brokers also provide advice on the best product for their needs and price. Accordingly, arguably there is no identified problem to solve in this context.

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')?

We agree that a CDR should only encompass provided and observed data. We have significant reservations about this regime extending to product data from a general insurance industry perspective and have seen no examples of what that use case would be. The nature of insurance products/services is fundamentally different to banking for example and the data held by insurers is fundamentally different to that held by banks or utilities (i.e. there is not the transactional (banks) or use (energy/telecommunications) data that applies in these sectors.

To explain, there will be little value in sharing product data for general insurance because generally the products offered are so different and difficult to compare. On one hand, these complexities could be summarised up for such a high level for comparison purposes that important details are missed in the consumer's decision-making. Alternatively, if full details are provided for comparison purposes, this may lead to the consumer being overwhelmed. Either situation reflects poor consumer outcomes. The complexities and variabilities regarding general insurance products reinforce the importance of consumers taking time to engage with the information provided themselves and/or relying on advice from their insurance provider or their independent insurance broker in this regard, as part of a broader advice-based discussion. Further details about this are set out in the 'Other comments' section below.

We also have serious concerns about a CDR extending to write access as this increases the risk that changes are made to consumer data which the consumer is not aware of and/or

¹⁴ For example, in the general insurance industry, even a small business operator has much more complex insurance requirements than a consumer of residential/domestic insurance. This includes them providing detailed information about the nature of their occupation/trade/work, activities and assets. The specific insurance products themselves are also more complex and potentially cover various liability exposures and business interruption which are not relevant to residential/domestic insurance consumers.

which are incorrect. This would reduce transparency and undermine consumer confidence in the regime. These issues would be made worse where the consumer was vulnerable, underage, lacked financial literacy or had poor access to technology. If data that is relied upon turns out to be incorrect this could also result in liability issues.¹⁵ Without a clear regulatory framework, working through these issues (including who has responsibility for correcting the data and ensuring the right outcomes occurs) is likely to be complicated, may take some time and could result in poor consumer outcomes. These issues will be compounded if incorrect data is passed on through multiple providers in a chain.

We agree that derived data should not be included in any CDR and it is critical that any CDR regime implemented has sufficient checks and balances in place so as not to compromise providers commercially sensitive information or intellectual property rights. General insurers may apply their own intellectual property or commercially sensitive information (e.g. data sets, models and mapping) in assessing whether to provide insurance and/or on what terms, which will have been acquired or developed at significant cost. If this information was transferred to competitors this would discourage further innovation in understanding risk, result in an uneven playing field and prejudice commercial interests. Further details about this matter are set out in the 'Other comments' section below.

We agree with the comment at paragraph 22 of the discussion document that market data is less likely to be used by consumers and should therefore be excluded from any CDR. To the extent that a need for such data exists, a commercial solution should follow in our view and again this functionality does not align with the problems sought to be solved by introducing a CDR.

In respect of the comments made in paragraph 24, we note that:

- in a number of industries consumers are already able to quickly and easily switch between providers (including regarding their insurances in some cases)¹⁶
- generally online banking platforms include functionality to export transaction and payment data, and
- the Privacy Act already includes a power for individuals to correct personal information held by providers.¹⁷

6

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

See the response to question 5 above.

As highlighted in the response to the previous question, write access introduces an additional level of cost and complexity that may compromise the benefits sought by the introduction of a CDR. Based upon the discussion document, it would appear that the primary value of providing write access is to correct information, facilitate workflows (such as payments) or establish/dis-establish services between providers. Each of these use cases have unique costs and benefits that require careful consideration with reference to how they specifically operate within the specific sector concerned.¹⁸

Understanding these costs also requires a deep understanding of the operating model

¹⁵ Either an action being brought by the consumer or recipient provider against the provider who provided incorrect data. In the general insurance context, this could include circumstances when incorrect or false information is relied up by an insurance provider in applying a premium loading, or once the truth of the matter identified, declining a claim.

¹⁶ See 'Other comments' section below for more details.

¹⁷ Privacy Act 1993, Principle 7 (Correction of personal information).

¹⁸ At a technical level, it may assist to distinguish between right access underlying fundamental functionality of any CDR proposed, as opposed to product/service provisioning/de-provisioning, which is the responsibility of the provider and their processes.

selected for any CDR. In this regard, a fundamental design decision needs to be made about whether porting data is to be a persistent (i.e. an active and ongoing flow of data) as opposed to being transactional data exchange only. These two approaches have radically different operational considerations and cost implications.

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?

We consider that the proposed ‘increasing access to more affordable products and services’ outcome is a narrow framing of what good consumer outcomes should look like. An additional and broader outcome that should be sought to be achieved is improving consumer understanding to make informed decisions. In this regard it is helpful to consider how implementing a CDR will improve consumer understanding about the products/services they are purchasing.

As outlined in the ‘Other Comments’ section below, in a general insurance context affordability is only one factor to consider in good consumer outcomes (in terms of them making a fully informed decision).¹⁹ As indicated above, we would be concerned if singular attention is being drawn to price in decision-making because this may lead to a ‘race to the bottom’ in terms of price with lower specification products/services being offered so providers can appear cheapest in a category. In a general insurance context, this would mean that other important product considerations (such as whether the product was fit for purpose and well understood) were being ignored. It would also be a poor consumer outcome if an individual was significantly underinsured under their house and household contents policies. This would be particularly undesirable given New Zealand’s high natural hazard risk.

We recommend the need to protect providers’ legitimate commercial interests in data they have derived themselves as be reflected in the desired outcomes (including the need to protect their intellectual property rights and commercially sensitive information).²⁰

For completeness, as outlined in our response to question 2 above, we do not consider that a CDR could be characterised as strengthening privacy rights or as necessarily enabling innovation. We also consider that as proposed, any CDR could potentially have a negative impact on business productivity (due to the significant costs associated with implementation and then ensuring ongoing compliance). There is also a risk that, as outlined in our response to question 3 above, any CDR regime does not keep pace with technological developments and industry-initiated change. These matters reinforce the need for a detailed analysis to be completed to properly weigh up the pros and cons of developing a CDR.

8

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

We suggest an additional consumer welfare criterion be added to reflect improved consumer outcomes beyond affordability (and ease of switching and comparing products/services). See

¹⁹ Other factors include ensuring the product is fit for purpose, there is a good understanding of the specifics of what is being covered (and not), the consumer’s risk appetite (i.e. the ability and willingness to cover any loss themselves), judgment calls about cover limits and reinstatement options (e.g. whether they are happy to receive indemnity/present day value in the event of loss or prefer replacement/‘new for old’ cover), and service and claims standards (amongst other things).

²⁰ Related to this, we would be concerned if a provider, as a recipient of information, was able to provide a lower cost option leveraging the substantial investment in data the original provider had made.

our previous comments for further details in this regard.

We also query the appropriateness of including 'reach' in the proposed criteria. This:

- pre-supposes a particular option (e.g. option 3: economy wide), and
- is superficial in that it fails to have sufficient regard to the fact that each sector, how they use consumer data, and the bearing this has on the products/services offered is very different. While in some sectors, a CDR may improve the ability of consumers to compare offerings and switch, as outlined in the 'Other comments' section below, this is not the case for general insurance.

A quantified cost benefit analysis of all options needs to be completed before any proper consideration based on criteria can occur. This will ensure these options can be evaluated in full context with regard to their respective viability and merits (including whether the costs outweigh the benefits in each respect). In completing this analysis, attention should be drawn to what has worked (or has not) overseas, reflecting upon experiences and lessons learned in this regard. Failing to complete these steps before consideration of options occurs is likely to result in poor policy decisions which may have to be reworked later down the track.

In light of these matters, we query whether the timeframe referred to in the discussion document for recommendations to the Minister is appropriate or realistic, and consider that further consultation is required once the aforementioned analysis is completed, before this matter is progressed.²¹

9

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

As outlined directly above (in response to question 8), we consider it would be inappropriate to express a conclusive view on this matter before the quantified cost benefit analysis of all options is completed and examined, leveraging relevant insights from overseas, and us having an opportunity to comment on this.

We disagree with the characterisation that overall progress has been slow. For example, within the general insurance industry significant moves have been made toward improving and streamlining the consumer experience in recent years. COVID-19 outbreak and the resulting Government lockdown has accelerated progress. This includes improvements to streamline business acquisition processes, improving online platforms and the automation and digitisation of processes and arrangements with claims.

Additional 'pros' for this option include:

- The flexibility of the current regime to accommodate changes, noting that as outlined above, one of the risks we see with developing a CDR is that it does not keep pace with technological change or industry-initiated developments, for example the rise and ongoing evolution of Artificial Intelligence and Machine Learning, block chain technology, The Internet of Things and Big Data.
- There are no additional compliance costs for providers that may need to be in turn passed onto consumers, or potential additional barriers for new market entrants.
- The significant heightened risk of privacy breaches and security concerns associated with potentially wide-ranging government mandated data portability are avoided. See our comments in response to question 2 above for more details in this respect.

In respect of the 'cons' outlined for this option, we do not consider it is accurate to

²¹ The discussion document refers to a recommendation to the Minister on whether to develop a consumer right in New Zealand by late 2020.

characterise inconsistencies in the approaches taken as resulting in a potential economic hinderance because:

- A quantified analysis needs to be completed before a position can be legitimately taken on this matter.
- Each industry, how they use consumer data, and the bearing this has on the products/services offered is going to be very different. Viewed in that light, it would seem more important that any CDR regime is 'fit for purpose' for the particular sector concerned.

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

As outlined in response to question 8 above, we think it would be inappropriate to express a conclusive view on this matter before the quantified cost benefit analysis of all options is completed and examined, leveraging relevant insights from overseas, and us having an opportunity to comment on this.

In that last respect, it is worth noting that while the framework for the sectorial model under The Australian Consumer Data Right (**ACDR**), which this option appears to be modelled off, has been in place for some years and rules have been developed for one sector (banking), this is taking much longer to roll out than expected and is proving to be very expensive.²² In this context, it would also be helpful to understand what the tangible benefits gained from the ACDR are at this stage, noting that Australia is still at the beginning of their consumer data right journey.²³ For these reasons, a sectorial approach modelled off the ACDR should be approached with caution.²⁴ New Zealand also generally has smaller sized businesses than in Australia which accordingly may mean they are less able to afford the technical investment required under this model.

In respect of the 'pros' outlined for this option, we reiterate our comments above about the need for any regime to carefully reflect specific sector's attributes (rather than a consistent CDR rolled out across all sectors as proposed without regard to these differences), and concerns about this regime being extended to businesses and/or 'product data' in the general insurance context.

In respect of the 'cons' outlined for this option:

- We consider that it is premature to comment about any implementation costs being 'partially offset by overall efficiency gains' given the quantified cost benefit analysis referred to above is yet to be completed.
- We do not consider that it is necessarily a poor outcome that a sectorial-designation approach could lead to some sectors of the economy utilising CDR long before others.

²² See footnote 3 above for more details.

²³ For completeness, we note that in September 2020 the Select Committee on Financial Technology and Regulatory Technology in Australia released an interim report recommending that the consumer data right extend to other financial services, starting with the superannuation sector and then including sectors such as general insurance, https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024366/toc_pdf/SelectCommitteeonFinancialTechnologyandRegulatoryTechnology.pdf;fileType=application%2Fpdf. However, in this context, ACCC submitted that "[w]e have not yet considered which of the above sectors may be best suited for priority rollout of the CDR. For some sectors, substantial benefits may be captured through the release of product reference data to facilitate reliable and independent price comparisons, but there may be significant challenges and complexities in sharing consumer data, such as where contractual terms must be reduced to machine readable format. There will no doubt be lessons from implementation in banking that are relevant to other sectors, but each sector will raise novel issues that need to be closely worked through as part of the ACCC's sectoral assessment. The scope for facilitating innovation and new services, the privacy risks and the costs of implementation will differ across sectors".

²⁴ We understand that while other jurisdictions are considering a similar sectorial consumer data right (e.g. Singapore, India and California) their investigations are not well advanced.

This staged approach ensures that sectors where there is clear benefit to introducing a CDR right can be prioritised (i.e. high volume simple transactional products/services, where provider decisions are based upon a small number of data points, not insurance) and enables regulators and industry participants to efficiently test, learn, and refine the regime before other more complex industries are brought under it.

We also refer to our response to question 2 above regarding a CDR purportedly improving privacy protections and security concerns and note that sectors yet to be designated will avoid the heightened risk of privacy breaches and security concerns associated with greater data portability.

For completeness, if this option was selected, before any decision is made to designate a sector, a legislative decision-making process needs to be established setting out clear criteria that needs to be satisfied before any designation occurs, including a clearly defined problem that the introduction of a CDR will address.²⁵ This process would also require a thorough and quantified cost benefit analysis and proportionality assessment to be completed before any sector is designated.

11

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

Based on the limited information provided this would be our least preferred option. However, as outlined in response to question 8 above, we think it would be inappropriate to express a conclusive view on this matter before the quantified cost benefit analysis of all options is completed and examined, leveraging relevant insights from overseas, and us having an opportunity to comment on this.

In this last respect we note that, while open banking has been pursued in many jurisdictions and data portability has been provided for in the European Union (as a component of privacy rights under The European Union's General Data Protection Regulation (**GDPR**)), an economy wide CDR is still a very new concept so should be approached with extreme caution in our view. In this context, it would also be helpful to understand what the tangible benefits gained from the GDPR are at this stage.

In terms of the 'pros' outlined for this option, while we can see the initial attraction of a CDR being applied across the entire economy for consistency, for the reasons outlined above and directly below we are sceptical whether this could be achieved or would make sense in practical terms.

In respect of the 'cons' outlined for this option:

- We agree with comments that this option is likely to take much longer to put in place than others. As stated, this option would require significant initial and ongoing investment and enforcement mechanisms, which could also act as a barrier of entry.
- This option may also not be viable for small to medium-sized operators who cannot afford the technical investment involved and we agree with comments about potentially disproportionate costs in this regard and in relation to certain sectors.
- We also have concerns about the ability of such a regime to ensure the desired behaviour is occurring across the economy or that such a uniform approach could actually work in practice as commented, noting our earlier comments about the need for a regime to carefully reflect specific sector attributes.

²⁵ A similar approach is proposed in Australia, where the Minister's power to designate a sector is proposed to be subject to a requirement to obtain a public sectorial assessment for suitability, <https://treasury.gov.au/consultation/consumer-data-right-legislative-amendments>.

- For the reasons outlined above, we think that limiting a CDR to individuals and not including businesses or ‘product data’ would be appropriate (at least in so far as general insurance is concerned).

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

As outlined in response to question 8 above, we think it would be inappropriate to express a conclusive view on this matter before the quantified cost benefit analysis of all options is completed and examined, leveraging relevant insights from overseas, and us having an opportunity to comment on this. As this option appears to closely align with the model used overseas for open banking, it is positive that there are a number of jurisdictions that can be drawn upon in this regard.

In terms of the ‘pros’ outlined for this option, in addition to the comments made directly above, this option is attractive in that it provides for a tactical and focussed solution for an identified problem (e.g. high volume simple transaction products/services where providers decisions are made based upon a small number of consumer data points).²⁶ This option also enables a CDR to focus on where the benefits are clearest and the likelihood of reducing search and switch costs are readily apparent, without broader impacts or regulatory burden.

This option also constitutes a measured and appropriately cautious response, consistent with the fact that consumer data rights are in their infancy, consumers are not familiar with these and it will take a number of years for any benefits to be realised. We also note that committing to this option would not prevent a CDR being provided for other sectors once more is known and a clear demonstrated use case for doing so is established.

We consider that the comment about sectors yet to be subject to a CDR regime, referred to as a ‘con’, is better characterised as a ‘pro’, because these sectors will avoid the heightened risk of privacy breaches and security concerns associated with greater data portability.

It is difficult to meaningfully scrutinise the other stated ‘pros’ and ‘cons’ for this option because the accuracy of these matters is dependent upon a quantified cost benefit analysis being completed.

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

While we are not aware of any, it is possible that other options are identified during the detailed analysis to be completed. As outlined above, this should include looking to insights about consumer data rights being developed overseas.

We also note that none of the options identified contemplate consumers having the right to transfer data held by government and other public agencies to providers. This warrants consideration given the wealth of potentially useful information public agencies hold about individuals that could be relied upon.

Consideration should also be given to extending any CDR to parties who sit between the consumer and provider and hold and share relevant consumer data in this regard. For example, independent insurance brokers, who act as the consumer’s agent to secure the most appropriate insurance for them.

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

²⁶ As outlined in the ‘Other comments’ section below, this contrasts with the complexity and variabilities of insurance products.

It is difficult to meaningfully scrutinise the assessment of ‘time’, ‘cost’, ‘consumer welfare and economic benefits’ and ‘efficiency gains’ because the accuracy of these matters depend upon a quantified cost benefit analysis being completed, which is yet to occur. It is also unclear to us what (if any) investigation has been undertaken to validate the comments made about ‘trust’ with consumers themselves (e.g. by way of surveys, testing or other evidence) and accordingly these observations appear theoretical at best.

We refer to our specific comments about each option as outlined above. Please also see our responses to question 8 above (regarding the unsuitability of the ‘reach’ criterion) and question 2 above (regarding the characterisation of a CDR purportedly improving privacy protections and security concerns).

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 consider that it is inappropriate and premature to form a view on this matter before the quantified cost benefit analysis of all options is completed and examined, leveraging relevant insights from overseas. It is disappointing that a view appears to have been formed on this matter before this analysis has been completed, as it presupposes a particular outcome without any analysis to back it up.

That said, based upon the limited information provided at this stage and without prejudicing our position to take a different position at a later stage once more is known, for the reasons outlined in response 12 above, it appears that option four is most appropriate.

How could a consumer data right be designed?

16

Do you agree with the key elements of a data portability regime as outlined in this section? Are there any elements that should be changed, added or removed?

We consider that it is inappropriate to express a view on this matter until such a time as:

- the quantified cost benefit analysis of all options is completed and examined, and
- a preferred option is subsequently decided upon based upon those finds.

Failing to complete these steps is likely to result in poor policy decisions which may have to be reworked later down the track (at great cost and inconvenience).

Notwithstanding that, in general terms, we consider that it would be important for any CDR to also reflect the need to protect provider’s intellectual property or commercially sensitive information. Further details about this matter are set out in the ‘Other comments’ section below. We also suggest that any regime include a positively framed consumer data portability right because, as we understand it, this would be the central pillar of any CDR.

17

Do you have any feedback on our discussion of any of these key elements?

See our response to question 16 directly above.

Regarding the comments made about the proposed designation process, we consider that it would be important to make clear that any sector designation should only occur where it has been clearly established that doing so will materially improve consumer outcomes/welfare overall, noting the need to establish a clear link between greater data portability and:

- lower search and switch costs
- an improved ability to compare relevant products/services, and/or

- other elements of consumer benefit (e.g. price, fit for purpose, understanding to make informed decisions).

As outlined in the 'Other comments' section below, general insurance does not meet these criteria. Further, we also challenge the assertion that insurance necessarily has high search and switch costs.

In any CDR regime it will be critical that the accreditation process for provider recipients has rigorous checks and balances in place to protect privacy, commercial sensitivity and ensure the relevant systems are secure, noting that as cyber security risks are evolving, this is something that will need to be regularly monitored, reviewed and updated as necessary rather than implementing a 'set and forget' regime.²⁷ In this context it would also be important to consider what the position with transferred data should be when an accredited provider who is the recipient of information becomes insolvent, closes or merges or is acquired by another entity.

We acknowledge the comments about the need for consumers to give consent before information is transferred and the need for them to have a degree of financial or digital literacy to benefit from a CDR regime. There may also be issues for those who are disabled, who have accessibility issues or individuals who are, or were, of an age where they cannot legally consent.²⁸ The comments made in response to question 2 above about those with poor access to technology are also relevant in this regard.

The impacts of a CDR on vulnerable consumers warrant special attention and there is a particular need for sufficient checks and balances to be put in place in this regard, so as to mitigate the risk that a CDR causes them significant harm. At a minimum, any CDR regime should ensure sufficient mechanisms are in place to ensure that those who are vulnerable clearly understand:

- what specific data they have agreed to share and to whom – with an opportunity to validate its accuracy and correct any errors
- how the data provided is being used and by whom, and
- what product/service are ultimately being signed up for and the relevant key terms and conditions and costs that apply.

Where potentially underage individuals are involved this would also require effective mechanisms to verify age,²⁹ refer to parents or guardians for approval (if appropriate) and enable previously underage individuals to challenge data previously provided by a parent or guardian which they object to.

These matters will be particularly problematic when consumer data is automatically transferred between providers and/or a provider automatically generates a product/service offering decision without manually engaging with them (e.g. by a person-to-person conversation). The types of vulnerabilities may differ between sectors and would therefore need to be specifically considered for each sector.

In some industries, for efficiency and costs saving, a preference may develop to rely upon information a consumer has provided to a previous provider rather than extract the most up-to-date data from that consumer first-hand. This would be an issue if the consumer's circumstances have changed and could lead to poor consumer outcomes because the

²⁷ The risks of a cyber security breach would substantially increase as more providers become accredited as this means there are more attack vectors or possibility of inadvertent breaches.

²⁸ Consent issues that may arise where an underage individual is involved and reference to the parent or guardian does not occur such that there was no legal consent. Issues would also arise when the parent or guardian of a previously underage individual provides data which that individual (now an adult) does not agree to.

²⁹ Any such mechanism would need to address the risk that the child simply states they are older than they are.

provider's decision is not understood and underlying consumer data examinable. As outlined above, if data is relied upon that turns out to be incorrect this could result in liability issues. This is a particular risk in the insurance industry where issues of non-disclosure may arise due to consumers not providing up-to-date and accurate information.

It should not be assumed that these issues can be solved by displaying the necessary information as text prompts during part of the online process, as these may not be properly understood or engaged with by those who are vulnerable. There would also seem to be a need for wider education in this regard. It will also be important to work closely with organisations who care for and advocate for these vulnerable groups.

For completeness, we note that the prices potentially charged by providers for accessing their data referred to in this section is another example of costs that may be ultimately passed onto the consumer.

18

Are there any areas where you think that more detail should be included in primary legislation?

See our responses to questions 16 and 17 above.

19

How could a consumer data right be designed to protect the interests of vulnerable consumers?

See our response to question 17 above.

20

Do you have any suggestions for considering how Te Tiriti o Waitangi should shape the introduction of a consumer data right in New Zealand?

No comments.

21

How could a consumer data right be designed to ensure that the needs of disabled people or those with accessibility issues are met?

See our response to question 17 above.

22

To what extent should we be considering compatibility with overseas jurisdictions at this stage in the development of a consumer data right in New Zealand?

Compatibility with overseas jurisdictions is important because New Zealand operates within a high interconnective global consumer market. One challenge in this respect is that there is no one best practice model for a consumer data right internationally (although a sector-specific approach focussing on open banking seems to be the most prevalent at this stage).

In this context it will also be important to consider how any CDR regime would treat a provider in an overseas jurisdiction offering goods and services to New Zealand consumers. In our view, it is important that there is an even playing field (with foreign providers ideally subject to the same consumer data portability requirements as those based in New Zealand).

23

Do you have any comments on where a consumer data right would best sit in legislation?

While we do not have a position on this matter at this stage (given the analysis that underlines this decision is yet to be completed), consideration should be given to separating the operational parts of any CDR regime from the more principled element (related to a right to personal data portability) which may sit better under the existing Privacy Act. This would also enable the CDR regime to be more flexible/adaptable to technological change and

capture the collection, use and storage of personal information data, ensuring a consistent consumer experience and assist with building consumer data literacy.

We envisage this would require a complete revamp of the Office of the Privacy Commissioner and the establishment of a regulatory monitoring unit (e.g. a Data Protection Board or similar).

This approach aligns with the Privacy Commissioner's submission in the context of the previous Privacy Act reforms,³⁰ and the approach taken under GDPR in relation to personal data portability. This approach may make it easier for any data portability right to apply to public agencies as with other privacy rights.

24

Do you have any comments on the arrangements for establishing any new bodies to oversee parts of a consumer data right?

We consider that it is inappropriate to express a definitive view on this matter until such a time as the following has been completed (as they inform what a regulatory framework should look like):

- the quantified cost benefit analysis of all options
- a preferred option is subsequently decided upon, and
- the key elements of a data portability regime are formulated.

That said, in principle, based upon what is known, we would be supportive of a single regulator. Having to liaise with multiple regulators is likely to add regulatory burden and raise barriers of entry for potential market entrants. Differences in approaches between the different regulatory bodies also has the potential to cause confusion and promote a risk-adverse approach to interpreting the CDR, which may lead to higher compliance costs.

Future privacy law reform to bring New Zealand further in line with other jurisdictions, in particular with the GDPR, may require aspects of the CDR to be incorporated into the Privacy Act.³¹ As such, we would recommend incorporating CDR-related enforcement mechanisms into the powers of the Office of the Privacy Commissioner.³²

For completeness:

- In general terms, in considering the regulatory framework and roles, and so as to minimise compliance costs, careful consideration needs to be given to the avoidance of disproportionate regulatory burden and raising barriers of entry to potential market entrants, as well as constraining innovation. Regard should also be had to the potential significant time and costs involved in establishing a consumer data right based upon the experience in Australia (as outlined above) and that costs may be

³⁰ The Privacy Commissioner recommend a 'data portability' right in its Report to the Minister of Justice in 2017 in relation to the reform of the Privacy Act, <https://www.privacy.org.nz/assets/Files/Reports-to-ParlGovt/OPC-report-to-the-Minister-of-Justice-under-Section-26-of-the-Privacy-Act.pdf>.

³¹ This may be required for New Zealand to maintain its adequacy status as a third country under the EU Data Protection Directive, something which Australia does not have. The European model incorporates enforcement into the GDPR enforcement framework which is led by Information (Privacy) Commissioners in each jurisdiction. See NZ's 'Adequacy' under the EU Data Protection Directive, <https://privacy.org.nz/blog/update-on-nzs-adequacy-under-the-eu-data-protection-directive/>. In December 2012 the European Commission formally ruled that New Zealand's privacy law provided an 'adequate level' of privacy protection to meet European standards. This means that personal data information can legally be sent here from Europe for processing without special additional measures being taken by the European companies. This privileged status is shared by only a handful of countries outside Europe.

³² This would align New Zealand's approach with the European approach and best position the country to maintain its adequacy status in future.

ultimately passed onto consumers.

- Any CDR should have a substantial transitional period where enforcement powers do not take effect.³³ This will allow appropriate time for impacted sectors to adapt given the significant cost and technical barriers to achieving an effective CDR.

25

What are the pros or cons of having multiple regulators, or a single regulator, involved in a consumer data right?

See our response to question 24 above.

26

If government decides to establish a consumer data right, do you have any suggestions of how its effectiveness could be measured?

- change in consumer switch/search costs (i.e. improved or lessened)
- change in costs of consumer products/services (i.e. reduced or increased)
- changes in consumer outcomes (e.g. price and other matters such as that the consumer is well informed and understands the product/service they have purchased)
- privacy breach and security issue trends (i.e. do these get worse or reduce, and are there any unforeseen issues which emerge)
- impacts on vulnerable consumers (e.g. have they been further disadvantaged)
- impact on market competition (e.g. new players or market consolidation)
- impacts on innovation e.g. improved or inhibited
- cost of development and implementation for both relevant sectors and the Government (relative to the overall consumer benefit)

It is expected that further criteria will be able to be identified during the analysis work still to be completed.

Other comments

The comments in this section reflect additional feedback regarding the proposed CDR which is not captured in response to the questions outlined above. We also take the opportunity to expand upon some of our comments above and provide further context.

Search and switch costs in the general insurance industry

In the discussion document several references are made to the purported high search and switch costs in the insurance industry. This is not necessarily the case, so it is disappointing that the sector has been singled out as one of the problem areas. To properly understand consumer transactions for general insurance products it is necessary to outline the various data points (including information from consumers and other sources), provider/underwriting decision-making processes and product variabilities associated with general insurance that inform consumer decision-making in this regard.

At their core general insurance products respond to the specific consumer's risks and the relevant insurance provider's risk appetite. To explain:

- **From a provider/underwriting decision-making perspective**, before the insurance provider makes a decision about what insurance product is offered, they must satisfy themselves that the

³³ A two-year period was given for the GDPR.

risk the consumer is seeking to insure falls within their risk appetite. On occasion, further inquiries are required, conditions applied or cover restricted to ensure it does. In other cases, the nature of the risk may mean that the insurance provider is not able to insure the risk and they will need to go elsewhere.³⁴ The processes and decision-making undertaken are specific to the relevant provider.

- **From a data perspective**, in making the decision about whether to take on a risk, reliance is placed by the insurance provider on a number of data sources. Decisions are not made solely on information earlier advised by the consumer (i.e. information potentially provided via a CDR) as this does not provide the full picture, and as this may be out of date or inaccurate, noting that the provision of full, accurate and up-to-date information is critical to underwriting insurance.³⁵ Additional information generally relied upon in decision-making includes details about the consumer's previous losses (both insured and uninsured),³⁶ any other previous/current insurances, any changes in circumstances since last contact, complex data/mapping/modelling information sourced from multiple providers on commercial terms and information derived from public data sources,³⁷ amongst other things. In some circumstances reference is made to an external expert (e.g. a registered electrician and licensed valuer) to assist the provider/underwriter to properly understand and assess the risk. While there will be areas of commonality, the specific data points relied upon will be specific to the provider involved, with myriad variations existing between providers. To further complicate matters, in circumstances where the consumer has engaged the services of an independent insurance broker, that broker will act as an information exchange interface between the insurer and the consumer, with the insurer generally being unable to communicate with the consumer directly themselves in this regard.³⁸
- **From a product perspective**, it is important to note that general insurance products are complex and not commodities. A range of consumer general insurance products are available (e.g. home or house, owner/occupier or tenants' contents, private motor vehicle, pleasure craft, travel), each of which have complexities and potential inter-connections,³⁹ with numerous variables and options available between, and even within, products (e.g. selectable cover limits, excesses, optional extensions/benefits). Then there are differences between insurance products offered by one provider (e.g. base and comprehensive offerings) and between providers, with different policy wordings and product structures for covers, extensions/benefits and limits featuring widely. Additionally, it is common for products to be regularly up-dated (e.g. annually), to reflect changes in the market, trends and/or innovation.

In this context, from a consumer perspective, the ability to compare prices and switch are only two factors that lead to a good consumer outcome. A critical overriding principle is ensuring consumers have a good understanding about the insurance product and are making a fully informed decision in this regard. Relevant factors in this context include:

³⁴ This may simply reflect that the risk falls outside the relevant risk appetite rather than simply being a poor risk.

³⁵ This relates to consumer's material disclosure obligation. In broad terms, this requires consumers to inform the insurer about any relevant information that could affect their assessment of the risk they are taking in insuring your property (called 'material facts'). The obligation, which applies at the time insurance is applied for and when it is renewed, reflects the asymmetry of information between the insurer and consumer about their circumstances and any changes to them.

³⁶ The Insurance Claims Register (ICR) has a role in this regard. This enables insurance providers to check the accuracy of the data submitted with policy applications and claims. Consumers give permission to their insurers to lodge their claim information on the ICR when they make a claim and sign the claim form. Consumers can request copy of the information held about them at any time and to ask for changes to be made to that information if you think it is incorrect.

³⁷ Such as information on public websites, registers or other resources. (e.g. information from LINZ and NZTA).

³⁸ Under the terms of the relevant distribution agreement.

³⁹ For example, the treatment of fixtures and fittings as covered contents or part of the covered home and contents covers triggered off a loss under a home policy. There are also non general insurance products, such as life and health products, to consider.

- ensuring the product is fit for purpose – this is critical and may determine whether the consumer is covered for a loss they suffer
- having a good understanding of the specifics of what is being covered (and not),
- understanding their risk appetite⁴⁰
- judgment calls about cover limits and reinstatement options,⁴¹
- customer service and claims experience (amongst other things), and
- the financial strength of the insurer.

In the case of a simpler insurance product (such as a private motor vehicle, owner/occupied home or household contents policy with no complexities),⁴² working through all of these steps may be as straight-forward as the consumer completing an application process during one interaction online or over the phone with their insurance provider. A critical component of this will be the consumer completing their own due diligence to understand differences between insurance products and options (with reference to useful information made available)⁴³ and/or engaging with a representative of the insurer or their independent insurance broker in this regard. It is also important to reiterate the role a broker may have in this process, with the broker carrying out the ‘search and switch’ process on the consumer’s behalf if they are involved.

Comparison websites

It is also important to reflect on the potential role insurance comparison websites could have in this context. While hypothetically these could help consumers compare insurance providers and their offerings, they also pose significant harm if they are not properly regulated to protect consumers. For example, there would need to be a mechanism to ensure there is transparency in terms of the information provided on the website (e.g. how much of the market is covered) or commercial relationships or other potential conflicts of interests (e.g. commission rates).

Most significantly, comparison websites may reduce a consumer’s ability to make properly informed decisions by focusing primarily on price only, rather than assisting them to look for value in broader terms (including what features most suit their needs and circumstances). Consistent with this, an Australian Competition Consumer Commission report in 2014⁴⁴ found the over-simplification of information on these sites can obscure important differences between products and policies. By focussing on price, comparison websites can also increase the chance a consumer chooses a product only to inadvertently discover at a later date (when they make a claim) that they did not have the cover they thought they had. As outlined above, a focus on price alone also has the potential to encourage a ‘race to the bottom’ in terms of policy coverage.

Suitability of a CDR to general insurance

⁴⁰ The ability and willingness to cover any loss themselves rather than have insurers do so.

⁴¹ Whether they are happy to receive indemnity/present day value in the event of loss or prefer replacement/‘new for old’ cover.

⁴² Such as the relevant property being in a high seismic zone e.g. Wellington region (where additional requirements will need to be satisfied), where a lifestyle block is involved (where general and statutory liability insurance may also need to be considered), or where the consumer has a side-business which is operated from their home (in respect of which additional occupation, housekeeping and other business related questions may arise).

⁴³ Research shows that many consumers prefer a more interactive and on-going approach to their insurance transactions, <https://www.insurancebusinessmag.com/nz/news/breaking-news/the-future-of-insurance-in-the-digital-world-52497.aspx>.

⁴⁴ The comparator website industry in Australia, Australian Competition and Consumer Commission, November 2014.

We are concerned that a CDR would not be well suited for the general insurance industry and it is unclear to us what problem a CDR is trying to solve in a general insurance context. As outlined above, search and switch costs and the ability of consumers to compare products are unlikely to materially change as a result of a CDR being implemented in this regard.

To summarise:

- It is difficult to understand how the addition of a CDR, in requiring data to be in consistent machine-readable format and providing for greater data portability, would provide additional tangible benefits to consumers. As outlined above, the specific processes, decision-making undertaken and data points relied upon are specific to the relevant insurance provider and will take into account much more than information earlier advised by the consumer. Accordingly, there is no obvious transaction or use data that a recipient provider could use in this regard.
- There is little value in a requirement to share 'product data' for general insurance as potentially proposed under a CDR, because insurance products are not commodities and the products offered are different and difficult to compare. As commented above, these complexities reinforce the importance of consumers taking time to engage with the information made available in this regard and discuss these matters with their insurer representative or independent insurance broker.

Also, there is a need to avoid a 'set and forget' approach to general insurance as consumer's circumstances, preferences and product offerings change and need to be regularly (e.g. annually) reviewed. Increased switching between providers could potentially exacerbate this.

The complexities and variabilities of general insurance products, processes, data points and decision-making contrasts with high volume simple transactional products/services (e.g. energy or broadband internet), where provider decisions about what is offered are made based upon a small number of data points, and the consumer's decision-making is more appropriately focussed on a small number of product/service variables and price,⁴⁵ and customer service standards, which are much better suited to a CDR regime.

Other issues with including general insurance in any CDR

If general insurers were to be included in a CDR, it is critical that the regime implemented has sufficient checks and balances in place so as not to compromise insurers' commercially sensitive information or intellectual property rights. To do so would be to discourage further innovation in understanding of risk and prejudice their commercial interests.

We would be concerned if, under a CDR, a FinTech provider could unfairly take advantage of any CDR regime to quickly grow their insurance portfolio by offering inexpensive insurance, leveraging expensive data generated by an existing insurance provider at great cost, which they have not had to contribute to themselves. This would result in an uneven playing field and be particularly egregious if, under a CDR, an insurance provider was required to provide their commercially sensitive 'derived data' or other intellectual property.

The protection of an insurer's underwriting data (including pricing and historic claims data, models and mapping) is essential to the proper functioning of the insurance sector. This data is key intellectual property and an essential commercial asset for insurers which underlies their core underwriting function; assessing and pricing risk.

⁴⁵ For example, the price for the speed and amount of broadband internet or unit of electricity supplied.

A CDR could also potentially result in a heightened risk of inadvertent disclosure and/or misuse by a recipient provider of insurers extremely valuable intellectual property.⁴⁶

⁴⁶ For completeness, we note that existing privacy rights already enable consumers to access and correct non-commercially sensitive data held about them by insurers. However, commercially sensitive information, such as underwriting risk assessments, will remain withheld under existing privacy legislation. Failure to do so would fundamentally undermine the insurance model.