

CDR: CHALLENGES AND OPPORTUNITIES IN THE SUPERANNUATION SECTOR

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Legal Briefings - By **Julian Lincoln**, **David J Ryan** and **Audrey Vong**

The [Senate Select Committee on Financial Technology and Regulatory Technology](#) (the **Committee**) is considering the current and future government approach to FinTech and RegTech in Australia, and is inviting submissions until 31 December 2019.

The Committee's recent issues paper¹ flags the introduction of the Consumer Data Right (**CDR**) in superannuation as one of a number of regulatory changes that may support the success of Fintech and RegTech in Australia.

The CDR is scheduled to be implemented in the banking sector as 'Open Banking'. Unlike similar regimes in the UK and the EU, the Australian approach to consumer data regulation is designed to eventually be implemented on an 'economy-wide' basis. It is currently anticipated that a phased roll-out to the energy and telecommunications sectors will occur following the go-live of Open Banking in February 2020, with superannuation and insurance being other probable priority sectors for CDR deployment.

WHY DOES THE CDR MATTER FOR SUPERANNUATION?

Open Banking will initially apply to a range of financial products and services, but does not currently extend to superannuation funds. Superannuation funds may participate in Open Banking by applying for accreditation to receive consumer data, but they are not required to be accredited or to provide consumer data to consumers or accredited data recipients, unlike banks.

The Committee is not the first to note the potential value of the CDR in the superannuation sector. Prior to the Open Banking roll out, the Productivity Commission recommended that superannuation funds should be included as part of Open Banking.² The Commission advised that this would help improve consumer choice of both funds (by addressing the current lack of accessible, quality product information) and products (by incentivising funds to optimise product design informed by consumer data as a customer retention and acquisition strategy).

This outcome would align with the objectives of Open Banking and the CDR more broadly, which focus on empowering consumers and increasing sectoral competition through innovation. It is accordingly likely that the CDR will eventually be implemented in superannuation, particularly given the government's current focus on broader superannuation industry reform. Although the design of CDR can differ across sectors and there is currently no plan for superannuation, the substantial similarities between superannuation and banking mean that a CDR roll out in superannuation could happen rapidly, on a similar model to Open Banking, and on a mandatory basis.

WHAT IS THE CDR?

The CDR regime is comprised of legislation, rules and standards that give consumers the right to access, and direct accredited third parties to access and use, information about that consumer held by a data holder (**CDR data**).

The regime places rights and obligations on the existing holders and accredited recipients of CDR data regarding the collection, use, management by the regulators and disclosure of CDR data. What qualifies as CDR data is determined on a sector-by-sector basis,³ and is designated by Treasury in consultation with the ACCC.

CDR data in banking has been particularly focussed on transactional consumer products, although the scope of available data is expected to broaden over time. In the energy sector, the CDR is expected to target data relating to metering, billing and retail products,⁴ with the objective of facilitating portability between service providers. Superannuation may present specific challenges regarding the designation of CDR data, given the diversity of data involved across both the insurance and investment components of funds' offerings.

The overarching objective of the Australian regime is to ensure that CDR data is accessed in a safe, effective and efficient manner, and can be transferred from the holder to accredited recipients as directed by the consumer.

The ACCC is the lead regulator of the CDR and has developed regimes for accreditation, privacy (with the Office of the Australian Information Commissioner), and other relevant standards. The Australian regime applies broadly in comparison to its counterparts in other jurisdictions, and may drive economy-wide change by potentially disrupting industry incumbents, enabling new data-driven participants and facilitating future cross-sector data sharing. The CDR is a core aspect of the government innovation agenda that recognises the significant role and value of consumer data in the broader economy.

WHY IS THE CDR HAPPENING?

Key policy drivers for the CDR include the desire to foster competition and innovation in relevant sectors, and to enhance consumer outcomes through the use of unbundled data, which will enable customer portability and facilitate easier transactions between companies.

More broadly, the CDR and similar regulatory regimes in other jurisdictions have emerged from an increasing awareness of the market power that digital platforms and other dominant market participants derive from data. There are concerns that unregulated data practices lack transparency and impose consumer biases, in addition to a general public unease about how major digital platforms are using consumer data.

Consumers now also recognise the value of their data, and have greater expectations of their rights in relation to that data. The government has placed an increased focus on consumer rights, and using data practices to enable consumer choice and ease of market access, particularly switching between products or services. This is likely to disrupt market incumbents by enabling new entrants or ancillary services and force innovation in the relevant sectors.

NEXT STEPS

Proactive engagement with the CDR will assist superannuation industry participants in establishing technology systems and data practices that can support a potentially rapid CDR roll out.

There is a valuable opportunity for superannuation funds to make submissions to the Committee (currently, only technology organisations have provided submissions). In other CDR sectors, the input of incumbents has been significant and impactful on the practical implementation of the CDR. Early involvement by superannuation funds can shape the likely roll out of the CDR in superannuation and we therefore encourage incumbent sector members to actively engage with the Committee. Clients are invited to engage with the firm's specialist superannuation and CDR teams for support regarding submissions to the Committee or advice on the broader implications of the CDR.

ENDNOTES

1. *Issues Paper*, Senate Select Committee on Financial Technology and Regulatory Technology.
2. *Superannuation: Assessing Efficiency and Competitiveness*, Productivity Commission, 21 December 2018, 70.
3. *Proposed CDR Rules – August 2019* (lock down version), ACCC 8.

4. *Priority Energy Datasets Consultation – Consumer Data Right*, Treasury, 29 August 2019.

[Please click here to return to our CDR showcase page](#)

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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