



## **Data Availability and Use**

Submission by the Australian Communications Consumer Action  
Network to the Productivity Commission

July 2016

## **About ACCAN**

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards availability, accessibility and affordability of communications services for all Australians.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN represents the views of its broad and diverse membership base to policy makers, government and industry to get better outcomes for all communications consumers.

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# Contents

1. Executive Summary.....	4
1.1. List of recommendations .....	4
2. Introduction .....	6
3. Consumers’ access to and control over data about them .....	7
3.1. Consumers face barriers to accessing and using data about themselves .....	8
3.2. There are barriers to the use of consumer data by third party intermediaries .....	9
4. Privacy .....	11
4.1. De-identified data runs the risk of re-identification .....	11
4.2. There are issues of consent .....	12
5. Mandatory credit reporting .....	13

# 1. Executive Summary

ACCAN supports the Productivity Commissions inquiry into Data Availability and Use but has the following comments and recommendations, which are addressed in greater detail later in this submission.

The increased availability of consumer data to consumers in an open, standardised and accessible format will lead to a more competitive marketplace and improved consumer decision-making. Tools and guidance that enable individuals to use their data effectively need to be developed to maximise consumer empowerment and engagement. At the same time, private and public sector entities need standardised guidance on how to present consumer data sets.

Third party intermediaries represent an opportunity for consumers who want to find the best product or service based on their personal data, but there are currently barriers to prevent third parties accessing consumer data directly. Ways in which third parties can access this data securely and safely and in which consumers give genuinely informed consent must be investigated, and existing barriers addressed accordingly.

Increasing the availability of personal data, even when de-identified, presents risks to the privacy of individuals. Before the availability of any consumer data is increased, government needs to undertake an extensive analysis of the risks of re-identification of de-identified and anonymised data. Enforceable rules should ensure that the risk of re-identification is negligible, and deter any non-compliance through pecuniary penalty or a requirement to compensate. The investigation of privacy concerns should also address any issues surrounding consent to the collection and uses of personal information.

Finally, mandatory credit reporting will not be beneficial for consumers or providers of telecommunications services and other utilities.

## 1.1. List of recommendations

In response to the issues paper ACCAN recommends:

1. That government, industry, consumers, and stakeholders develop guidance for organisations and agencies so that data provided to consumers is in a standardised, accessible, and open format.
2. That government, industry, consumers, and stakeholders develop a set of guidelines for publishing data so that it can be used by everyday consumers.
3. That tools and resources that enable consumers to access and use their data are developed to encourage consumer engagement and empowerment.
4. That the introduction of an open application programming interface (API) standard is investigated to improve competition and make it easier for consumers to access their own data.
5. That ways to give service providers direct access to consumer data safely and securely and in which consumers give genuinely informed consent are investigated.

6. That government, industry, consumers, and stakeholders develop a code of practice for intermediaries for the ethical use of personal data.
7. That government undertakes an extensive analysis of the risks of re-identification of de-identified data, and its approach to data protection and privacy.
8. That government, industry, consumers, and key stakeholders develop a set of enforceable rules for de-identification that hold non-compliant entities accountable.
9. That government undertakes an extensive analysis of the issues surrounding consent that arise from increased data availability and big data.
10. That the comprehensive credit reporting scheme remains voluntary.

## 2. Introduction

ACCAN would like to thank the Productivity Commission for the opportunity to comment on its Data Availability and Use issues paper (the issues paper). ACCAN supports the Productivity Commission's decision to investigate further the recommendations arising from the 2014 Financial System Inquiry (Murray Inquiry) and the 2015 Harper Review of Competition Policy, namely that it should:

- review the benefits and costs of increasing the availability and improving the use of data; and
- consider ways to improve individuals' ability to access their own data to inform consumer choices.

By increasing the availability and use of data across the private and public sectors, and to individual consumers about themselves, there is potential to stimulate innovation and competitiveness in the marketplace. This will lead to increased choice and better decision-making for consumers, as well as increased transparency and accountability in Government.

Most of ACCAN's comments on the issues paper stem from the proposal to improve individuals' access to information about themselves. As ACCAN is the peak body representing telecommunications consumers, this submission will primarily focus on how the increased availability and use of data will impact on consumers of telecommunications products and services.

For all of its benefits, the increased availability of data must be balanced against an individual's interests in their privacy. This submission will therefore also address the concerns that ACCAN has regarding the privacy of individual consumers, including issues surrounding third-party access to personal information, consent, and the risk of re-identification of de-identified data.

This submission will also outline ACCAN's concerns about the potential impact of expanded credit reporting obligations on data quality and the ability of telecommunications consumers' to access services and financial assistance in the future.

### 3. Consumers' access to and control over data about them

ACCAN strongly supports the Harper Review's recommendation that the Government should investigate ways to improve individuals' ability to access their own data and inform consumer choices. Increasing consumer access to data about themselves, especially transactional data, may lead to better functioning of competitive markets, increased consumer choice and empowerment, and redress the imbalance of power between citizens and the public and private sectors. However, increasing the availability of consumer data also raises consumer protection issues.

Previous attempts to improve consumer decision-making have focussed on the limitations and behavioural biases impacting on our decisions. Behavioural economics recognises that consumers have limits on the amount of information they can take in, are affected by presentation, tend to be poor at anticipating the future, care about people and fairness, and are more concerned about losses than they are about gains.<sup>1</sup> To combat these biases and improve decisions, overseas governments have developed ways to harness the growing collection of consumer data and simplify decision-making. The UK midata scheme is the leading example of this, with its aim to release data back to consumers.

*The UK midata Scheme is an example of how increased data availability data can empower consumers*

The United Kingdom's midata scheme is a voluntary government scheme that allows bank customers to compare current accounts using their own transactional data. To use midata, a consumer downloads their spending data in a .csv file format from their online banking and then uploads it to the 'Gocompare' website. The site then uses the data to create an account comparison and an 'estimated value' of the amount an individual stands to lose or save by switching accounts or banks.<sup>2</sup> Midata thus demonstrates the potential for similar schemes to be developed in Australia, ideally across multiple service industries including telecommunications, banking, and utilities.<sup>3</sup>

In the Australian telecommunications industry context, if consumers were able to access the data held about them in a consistent and accessible format and use it to compare products and providers, the barriers to switching – such as a lack of access to information – would be lowered leading to a more competitive market. This follows the efficient market hypothesis that informed markets are efficient markets.

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<sup>1</sup> Office of Fair Trading, 2010, 'What does Behavioural Economics mean for Competition Policy?', March 2010, at p5.

<sup>2</sup> <http://www.which.co.uk/money/bank-accounts/guides/switching-your-bank-account/what-is-midata>; (accessed 20 July 2016).

<sup>3</sup> It is important to note that a scheme such as midata still presents privacy risks for consumers, which are addressed later in this submission.

### 3.1. Consumers face barriers to accessing and using data about themselves

As stated in the issues paper, much of a consumer's data is already available to them through the *Privacy Act 1988 (Cth)* (Privacy Act) and the *Freedom of Information Act 1982 (Cth)* (FOI Act). However, when provided to the requestor the information is not necessarily in an easily understandable or consistent format.

ACCAN would like to see government and regulators taking similar steps to the UK to facilitate consumer data sharing. As part of a research project already conducted by ACCAN a preliminary audit of the process and ease of gaining usage information from each of the major telecommunications providers was undertaken. The research found that each provider formats its bills slightly differently. While scripts were coded to automatically read bills, slight variations between each meant that manual checking was also necessary.<sup>4</sup>

For consumers to gain the most benefit from their data, the information must be easily machine-readable and reusable. It should be in a consistent 'open' format, so that it can be uploaded to multiple comparator websites for analysis. Participants in the scheme would therefore need to be consistent in terms of fields of data and the period covered. Data files should be able to be read by any device, software, and operating system. Government, industry, consumers, and key stakeholders should develop guidance so that data is provided in a standardised and accessible form.

In addition to making consumer data easily readable by different technologies and comparator tools, government should also work with industry and key stakeholders to develop a set of guidelines for publishing consumer data so that it is usable by consumers themselves. As an example, the United States Government has released a set of guidelines in its "smart disclosure" policy memorandum. The guidelines describe some of the characteristics of smart disclosure, including accessibility, machine readability, standardisation, timeliness, interoperability and privacy protection.<sup>5</sup> ACCAN agrees that each of these characteristics should form part of the criteria for the responsible release of consumer data.

Some of the barriers to accessing information about themselves that consumers face might include: confusion or lack of knowledge of how to get such information; what personal information is; and how it can be easily applied for consumer benefit. Most consumers have also had little opportunity in the past to access and use their own data. In light of this, ACCAN suggests that if and when consumer data sets are made more readily available and usable to individuals, tools that enable them to interpret and apply the data are developed and released at the same time. These tools might include comparator websites such as the UK's Gocompare, and should be proactively advertised to consumers. Comparator sites should be neutral and transparent to avoid any commercial bias. This will encourage consumers to engage with their personal data from the outset, and avoid the risk that the Government's work on increasing data availability goes unnoticed or is underutilised.

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<sup>4</sup> ACCAN, 'Megacharge' research, <http://accan.org.au/our-work/research/1176-megacharge>

<sup>5</sup> United States Government, 'Federal Smart Disclosure Resources', <http://www.data.gov/consumer/smart-disclosure-policy-resources> (accessed 20 July 2016).



*Introducing an open API standard?*

APIs (application programming interfaces) are instructions that allow data to be communicated between software and systems. Open APIs are accessible and usable by everyone. The UK open banking working group and retail banking sector are currently working to introduce a requirement for the adoption of open APIs which “would improve competition by making it easier for customers to access their transaction and spending data, share that data with other provider or with price comparison tools, and compare different financial services.”<sup>6</sup>

An open API standard for the holders and providers of consumer data in the telecommunications and other industry sectors in Australia would be one way of increasing the benefits of increased availability of consumer data.

**Recommendations**

1. That government, industry, consumers, and stakeholders develop guidance for organisations and agencies so that data provided to consumers is in a standardised, accessible, and open format.
2. That government, industry, consumers, and stakeholders develop a set of guidelines for publishing data so that it can be used by everyday consumers.
3. That tools and resources that enable consumers to access and use their data are developed to encourage consumer engagement and empowerment.
4. That the introduction of an open API standard is investigated to improve competition and make it easier for consumers to access their own data.

### 3.2. There are barriers to the use of consumer data by third party intermediaries

Making consumer data more easily available creates the opportunity for an innovative secondary industry that develops tools to help consumers interpret their data. One example stemming from the midata initiative was the development of a mobile phone contract comparison tool, ‘billmonitor’.<sup>7</sup>

*Billmonitor*

This tool helps consumers to find the right mobile contract for their usage. After entering some basic details, the tool collects and compares a consumer’s bills to the approximately three million plans available on the UK market and gives the consumer a shortlist of appropriate plans with more value. To date, billmonitor has analysed over one million bills<sup>8</sup> and it estimates that collectively UK consumers waste £6 billion per year from being on the wrong mobile phone plans.<sup>9</sup>

<sup>6</sup> <https://theodi.org/news/uk-open-banking-working-group-publishes-report>

<sup>7</sup> <https://www.billmonitor.com/>

<sup>8</sup> <http://blog.billmonitor.com/post/48733513308/billmonitorcom-defines-12-different-kinds-of>

<sup>9</sup> <http://blog.billmonitor.com/post/48733514754/billmonitorcom-prescribes-a-tariff-diet-to-he>

The issues paper references the increasing opportunities for third party intermediaries to provide services to consumers based on personal data. However, in most cases third parties face barriers such as not being able to access personal information directly from service providers.<sup>10</sup> Developing methods for service providers to access consumer data directly, in a way that is safe and secure for consumers and in which consumers give genuinely informed consent, would make it easier for businesses to offer consumers better value products and services and to inform decision-making.

In July 2014 the UK Department for Business Innovation and Skills reviewed the voluntary midata scheme. It was found that all large energy companies in the UK now provide access to a customer data file in a consistent format. The British Government agreed as a result of the review to work with the energy companies and third party intermediaries towards providing third parties automated access to consumers' data in a safe and secure way. As a result it was decided that Government would work with industry, and key stakeholders to "develop a code of practice for intermediaries for ethical use of personal data that is centred on consumer protection and benefit."<sup>11</sup>

Third parties being able to proactively access consumers' data in order to offer them a customised service would be an undesirable outcome. ACCAN believes that genuinely informed consent from a consumer must always be prerequisite to any third party accessing consumer data.

ACCAN believes that if a scheme akin to midata were to be introduced in Australia, a similar approach to that described above should be taken. The Government should work with industry, third party intermediaries, consumers, and other key stakeholders to ensure that third parties can access consumer data in a safe and secure way, while maintaining consumer trust. To do this, a code of practice should be developed in order to uphold consumer protections and privacy.

## Recommendations

1. That ways to give service providers direct access to consumer data safely and securely and in which consumers give genuinely informed consent are investigated.
2. That government, industry, consumers, and stakeholders develop a code of practice for intermediaries for the ethical use of personal data.

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<sup>10</sup> An exemption to this barrier is the pocketbook app, available to consumers in Australia as a savings tool. However, Pocketbook requires users to provide the app with their online banking login details, which many consumers would not be comfortable with doing.

<sup>11</sup> UK Department for Business, Innovation, & Skills, 'Review of the midata voluntary programme' July 2014, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/327845/bis-14-941-review-of-the-midata-voluntary-programme-revision-1.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/327845/bis-14-941-review-of-the-midata-voluntary-programme-revision-1.pdf), at p 3.

## 4. Privacy

### 4.1. De-identified data runs the risk of re-identification

The primary concern that ACCAN has with increasing the availability of consumer data, even when “de-identified”, is the risk of re-identification. It is currently unclear whether de-identified data is subject to the provisions of the Privacy Act and other consumer protections or not, as the line between personal and de-identified data is hard to draw. The risk of re-identification needs to be taken seriously as re-identification could have serious or even life-threatening implications for victims of domestic violence and other vulnerable groups.

The issues paper currently refers to personal information that has been “securely de-identified” (for example page 10: Public sector data). ACCAN is concerned that this assumes too much about the ability of organisations and agencies to successfully de-identify data, and does not suppose enough about the possibilities for re-identification. There has been a recent proliferation of discussion and articles surrounding the risk of re-identification and there are current examples of when information has been successfully re-identified. One such way in which this has shown to be possible is when an individual or organisation is able to compare multiple data sets containing information about the same individuals.<sup>12</sup>

Indeed, Australian Information Commissioner Timothy Pilgrim has advised those dealing with anonymised data to treat it as personal information, and that de-identification will not mean that the protections of the Privacy Act do not apply: “Personal information is not just that which does identify you, but that which may.”<sup>13</sup>

As the advent of big data analytics is relatively recent, the future risks for the individuals the data is about are uncertain. ACCAN suggests that as part of its inquiry, the Productivity Commission undertakes an extensive analysis of the risks of re-identification, the Government’s approach to data protection and privacy, and liability for breaches.

ACCAN suggests that the Government work with industry and key stakeholders to develop a set of rules for the secure de-identification of personal information that can be applied across the private and public sectors to ensure the risk of re-identification is negligible.<sup>14</sup> Organisations and Government agencies should be held to account for non-compliance with these guidelines (and potentially be required to pay compensation for breaches), in order to maintain consumer protections.

#### Recommendations

1. That government undertakes an extensive analysis of the risks of re-identification of de-identified data, and its approach to data protection and privacy.

<sup>12</sup> <https://epic.org/privacy/reidentification/>

<sup>13</sup> <http://www.itnews.com.au/news/treat-anonymised-data-as-personal-information-pilgrim-411949>

<sup>14</sup> The OAIC has developed guidance on de-identification and the risks of re-identification: <https://www.oaic.gov.au/agencies-and-organisations/business-resources/privacy-business-resource-4-de-identification-of-data-and-information#assessing-the-risks-of-re-identification>

2. That government, industry, consumers, and key stakeholders develop a set of enforceable rules for de-identification that hold non-compliant entities accountable.

## 4.2. There are issues of consent

From an individual perspective, investigating the opportunities for increased data availability raises issues of consent. Australian Privacy Principle 3 states that an APP entity can only collect personal information that is reasonably necessary for its functions or activities. Information collected by an entity must only be used or disclosed for the primary purpose for which it was collected, unless an exception applies.<sup>15</sup> The entity must disclose the purposes for which the personal information is being collected, and the other entities that they usually share information with.<sup>16</sup>

When information is being shared between organisations and agencies, it becomes difficult for an individual to consent to, or for the collecting entity to provide, all purposes for which the personal information will be used and all agencies and organisations that the information will be provided to. What constitutes informed consent when it comes to big data and increased data sharing therefore needs to be clearly defined. Guidance should be developed to enable entities to more easily fully disclose *all* uses of personal information and entities with which it might be shared. Consent should always be prerequisite to any use of data that is derived from personal information.

Another issue that arises when a consumer accesses a service is that consent is often bundled. That is, to access a service an individual only has two options: to consent to all terms and conditions around the collection of their personal information and access the service; or to not consent and not access the service at all. This could be seen as coercive. ACCAN suggests investigating an approach to privacy policies that unbundles consent and allows individuals to consent or not to each proposed use of their personal information.

### Recommendation

1. That government undertakes an extensive analysis of the issues surrounding consent that arise from increased data availability and big data.

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<sup>15</sup> APP 3, *Privacy Act 1988 (Cth)*, Sch. 1.

<sup>16</sup> APP 5, *Privacy Act 1988 (Cth)*, Sch. 1 s 5.2.

## 5. Mandatory credit reporting

ACCAN opposes a mandatory credit reporting scheme. Such a scheme would require every credit provider, the definition of which includes telecommunications service providers, to share credit information.

An issue arises for consumers of telecommunications services as responsible lending requirements do not apply as they do for other financial institutions.<sup>17</sup> Without a similar set of legislated and enforceable responsible lending obligations, mandatory sharing of credit information should not extend to telecommunications companies. Mandatory credit reporting would see relatively small debts end up on a permanent file, which could lead to serious issues for the consumer in the future.

Mandatory credit reporting and the application of responsible lending requirements would be undesirable for both telecommunications providers and consumers. For providers, implementing the responsible lending requirements would increase costs and the bureaucracy associated with selling relatively low value products. For consumers, mandatory responsible lending requirements would likely mean having to provide more documentation to access products and services. In addition, low-income consumers may be further excluded.

In addition, current credit assessment practices at point of sale in the telecommunications industry are inconsistent. This means the risk of erroneous data being recorded about consumers is higher than in the finance industry. The risk of consumers being sold products they cannot afford and are more likely to default on is also higher. As such, mandatory credit reporting would see debts that should not have arisen in the first place having a more lasting and negative impact on consumers. If industry wants expanded powers for information sharing, particularly of credit reporting information, then it must take responsibility for more robust credit assessment processes from the outset.

### Recommendation

1. That the comprehensive credit reporting scheme remains voluntary.

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<sup>17</sup> <http://asic.gov.au/regulatory-resources/credit/responsible-lending/> (accessed 22 July 2016).