



**ASIC**

Australian Securities & Investments Commission

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**Productivity Commission  
draft report on data  
availability and use:**

**Submission by the Australian  
Securities and Investments  
Commission**

December 2016

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## Overview

- 1 ASIC welcomes the publication of the *Productivity Commission draft report on data availability and use* (draft report) and the opportunity to provide further input to the Productivity Commission’s inquiry.
- 2 This is ASIC’s second public submission to this inquiry. Our first submission – *Productivity Commission inquiry into data availability and use: Submission by the Australian Securities and Investments Commission* – was submitted to this inquiry in August 2016. That submission outlined that:
  - (a) ASIC is committed to promoting open data;
  - (b) increased availability of machine-readable data, from other agencies and the private sector, could improve ASIC’s ability to achieve its regulatory objectives; and
  - (c) increasing consumers’ access to data could help consumers make better decisions, potentially through the use of third parties such as comparison websites and data aggregators.
- 3 This submission sets out observations from our regulatory experience in relation to the Productivity Commission’s draft recommendations about:
  - (a) giving consumers more control over their data (Section A);
  - (b) enabling broad access to private sector datasets of national interest (Section B); and
  - (c) data access and sharing in government agencies like ASIC (Section C).

### **Giving consumers more control over their data**

- 4 The draft recommendations to give consumers more control over their data may improve consumer and business decision making and promote competition in relevant markets.
- 5 However, whether there will be positive changes to consumer outcomes or market structures will depend on consumer awareness and understanding, how easy it is for consumers to exercise their rights and other factors relevant to promoting data-driven innovation.

### **Enabling broad access to private sector datasets of national interest**

- 6 ASIC welcomes the draft report’s recognition of the community-wide benefits that can arise from making private sector data publicly available, and that the private sector may lack incentives to release data.

- 7 The types of data that ASIC is able to collect, and the form in which this data is collected, may limit the number and usefulness of financial sector datasets available to be designated as national interest datasets.
- 8 Data standards will be important for usability and comparability of national interest datasets. The standard-setting process may be most effective if developed using a framework that creates incentives for coordination and wide consultation.

### **Data access and sharing at ASIC**

- 9 ASIC welcomes the draft report's recommendations to make data sharing between agencies simpler.
- 10 ASIC also acknowledges that greater availability of datasets may improve policy making.

## A Giving consumers more control over their data

### Key points

The draft recommendations to give consumers more control over their data may improve consumer and business decision making and promote competition in relevant markets.

Whether there will be positive changes to consumer outcomes or market structures will depend on:

- the extent to which consumers are aware of and understand their rights and how their data may be used;
- how easy it is for consumers to exercise their rights; and
- other factors relevant to promoting data-driven innovation.

- 11 The draft report proposes that the Australian Government should introduce a new broad definition of ‘consumer data’ and that individuals should have a ‘comprehensive right’ to access digitally held consumer data about themselves. This comprehensive right would include a right to direct data holders to copy data in machine-readable form, either to the individual or to a nominated third party. The draft report does not propose a particular format in which this machine-readable data should be copied.
- 12 It is also proposed that the Australian Competition and Consumer Commission (ACCC), the Office of the Australian Information Commissioner (OAIC) and existing industry ombudsmen be given key roles in handling consumer complaints.

### Effects of giving consumers more control over their data

#### Information request

*Further views are sought on the effects of providing access to ‘consumer data’, as defined.*

#### Effects for consumers

- 13 The proposed ‘comprehensive right’ may enable the creation of more tailored or new products and services which help consumers to make better decisions. Some of these products and services may be developed by third parties, such as comparison websites or data aggregators, that could make personalised recommendations based on revealed preferences drawn from data about a consumer’s past behaviour.

- 14 Our first submission outlines some of the risks and benefits of these third-party services. The potential benefits for consumers include enabling more meaningful comparisons between products and more effective management of personal finances. The risks raise questions about the need for more specific regulation of these third party providers. These issues are most acute where the third party's interests may not be aligned with consumers' interests and consumers may not be aware of the consequences that flow from this.
- 15 There is also the potential for negative consequences to flow from increased consumer access to data. For example, in financial services, fraudsters (set up to look like legitimate operations) may more easily gain access to considerably more data by convincing consumers to make the necessary direction. Further, easier access to consumer data may create new avenues for mistreatment of vulnerable consumers (e.g. elder abuse).
- 16 There are also risks arising from potential impacts on consumers' access to financial products and on firms' pricing practices, due to more detailed segmentation of customers based on risk or other characteristics. Again, these risks will likely be most difficult to manage where there is a conflict between a firm and a consumer's interests and the consumer may not be aware of the impact of the conflict.
- 17 Whether there will be positive changes to consumer outcomes from the introduction of a comprehensive right will partly depend on matters identified in our first submission, such as the need for impartial and trustworthy third parties and a consumer-focused approach in the design of communications using the data. Other relevant factors (considered below) include the extent to which consumers are aware of and understand their rights and how their data may be used, and how easy it is for consumers to exercise their rights.

### **Effects for businesses**

- 18 There may be improved business decision making and processes in relation to individual consumers if consumers exercise the right to share data with other providers. For example, lending decisions may improve if lenders are able to consider greater, and potentially more accurate, data about a borrower's financial situation. There may also be greater confidence in data received from another provider and this may minimise opportunities for customer fraud.
- 19 The development of new products and services using consumer data also has the potential to promote competition. For example, in retail financial services there may be increased demand-side pressures if consumers use their increased access to data to switch between or compare financial products. On the supply side, if consumers share their data, this may

reduce some barriers to entry in retail financial services, but the emergence of new entrants will also depend on other factors relevant to data-driven innovation (considered below).

- 20 The experience in the United States may be instructive in considering the effect of a proposed comprehensive right in retail financial services.

#### US experience

The Dodd-Frank Wall Street Reform and Consumer Protection Act (US) (Dodd-Frank Act) provides for consumer rights to access financial account and account-related data in usable electronic form. Specifically, s1033 requires that '[s]ubject to rules prescribed by the Bureau, a covered person shall make available to a consumer, upon request, information in the control or possession of such person concerning the consumer financial product or service that the consumer obtained from such covered person, including information related to any transaction or series of transactions, to the account including costs, charges, and usage data.'

On 17 November 2016, the Consumer Financial Protection Bureau (CFPB) issued a *Request for information regarding consumer access to financial records*.

In the request for information, the CFPB states that it understands that market participants are developing their working arrangements in relation to privacy, security and liability for consumer data – often bilaterally. However, the CFPB believes that such market participants do not necessarily share common views about consumer interests, and that consumer views have not been adequately represented in this market.

The CFPB is currently seeking comments from the public about consumer access to consumer financial account data, including access by entities acting with consumer permission, in connection with the provision of products or services that make use of that information. The request for information is intended to cover practices – and potential practices – concerning consumer-permissioned access to consumer financial account data.

The responses will assist market participants and policymakers to develop practices and procedures that enable consumers to realise the benefits of safe access to their financial records, assess necessary consumer protections, and spur innovation.<sup>1</sup>

- 21 We understand that the CFPB request for information is a consultation on the industry practices that are in place in response to the Dodd-Frank Act requirement and whether industry practice is meeting what was envisioned by the requirement.
- 22 Similar to what the CFPB is currently doing, there may be merit in closely reviewing current Australian financial services and credit industry practice to consider the extent to which the level of data access envisioned by the proposed 'comprehensive right' is currently provided. As the draft report notes, it appears that the levels and methods of data access differ across

<sup>1</sup> Consumer Financial Protection Bureau, *Request for information regarding consumer access to financial records*, 17 November 2016, <http://www.consumerfinance.gov/policy-compliance/notice-opportunities-comment/open-notice/request-information-regarding-consumer-access-financial-records/>

financial services and credit providers and product types. Greater understanding of the circumstances where there does not appear to be commercial incentives to readily share consumer data will help to identify the specific areas where there may be a role for Government in facilitating greater data sharing in the finance sector.

## Consumer awareness and action

- 23 The draft report says that, under the proposed data regime, the onus remains on individuals to make responsible choices. The draft report also acknowledges the importance of consumer awareness for making meaningful choices.
- 24 Developing effective disclosure is one of the means through which we can hope to achieve improved consumer awareness, but it should not be considered an end in itself and it is not always successful in driving behaviour. Even if consumers are aware of their rights, this does not mean that they will make choices that reflect their preferences. This is because choices are frequently influenced by behavioural biases and the decision context, including the choice environment. It may be very difficult for consumers to understand how their data may be used and what the consequences will be (particularly where their data will be aggregated with data about them from other sources) and thus to make an informed judgement about providing it. This is particularly problematic where the data may be used in ways that is contrary to the consumer's interests.
- 25 Accordingly, there may be a role for tempering consumer responsibility, and introducing additional protections, in circumstances where it is not reasonable to expect consumers to understand or foresee the consequences of making a particular decision in relation to their data. The proposed comprehensive right goes some way towards this – for example, by including a right to be informed about the intention to disclose or sell data to third parties, and a right to appeal automated decisions based on data – but further, and more specific, protections may be needed.

### **Information request**

*The Commission seeks views on what methods of disclosure would be most likely to result in consumers making a meaningful choice about how their personal information is being used, and how these disclosure requirements might best be implemented.*

- 26 While ASIC has acknowledged the limitations of financial product disclosure, we have also identified some factors which may make disclosure more or less effective.



- 27 As the draft report acknowledges, complex and lengthy disclosures are unlikely to enhance consumer outcomes and typically impose significant costs on providers of disclosure.
- 28 Instead, disclosure is more likely to resonate with, and be useful to, consumers where:
- (a) the source of the information is both trusted and trustworthy;
  - (b) the information being communicated is simple enough to be able to be presented, understood and compared in an easy, clear and balanced way (e.g. in a consistent and digestible format and structure, with no jargon);
  - (c) the disclosure occurs at an appropriate time and in an appropriate manner during the decision process so that it has the best chance of having an influence on the decision; and
  - (d) the information and engagement is partnered with appropriate ‘nudges’ or defaults that either harness or help overcome inertia and other behavioural biases (e.g. automatic reminders, comparison tools and opt-out settings).
- 29 There are also some situations in which disclosure by itself is less likely to be effective, such as when:
- (a) the information being communicated is complex;
  - (b) the disclosure cannot be accessed by the target audience (e.g. in the format or language required);
  - (c) the design elements of the disclosure cannot be consumer tested among the target audience and are not refined to maximise consumer understanding and minimise consumer confusion;
  - (d) the relevant process undermines consumer engagement in, or understanding of, the disclosure material; and
  - (e) accompanying nudges or defaults have the capacity to misinform consumers or cause them to disengage entirely when future actions are necessary.
- 30 The elements discussed above are each critical to whether consumers notice, read, engage with, understand and, most importantly, incorporate disclosures into their decision making. Robust consumer testing and evaluation are necessary to refine any disclosure documents and also to ensure they are as effective as possible.
- 31 It is also important that these disclosures do not become ‘set and forget’ as some messages can become less effective over long periods of time, or if encountered repeatedly. Evaluating and post-implementation measurement of messages over time can help contribute to their ongoing relevance and effectiveness across changing contexts.
- 32 Facilitating new ways of providing information to consumers, including the use of technology and electronic delivery, could also be considered. This

could include presenting information in interactive or video formats or offering online tools for investors to assess their understanding of particular data issues. The regulatory framework could provide incentives for data custodians to be more innovative in providing information in different forms and channels, as long as this assists in consumer awareness and understanding.

### **A note on defaults**

- 33 The draft report makes a number of references to the potential use of opt-in and opt-out arrangements in different contexts. Behavioural evidence supports the power of defaults, but there are also some circumstances in which the underlying policy intent of a default can be undermined by market behaviour. In different circumstances, defaults can be ‘sticky’ or ‘slippery’. A default may be more likely to be ‘slippery’ (and will not have the desired effect) if motivated firms have reason to oppose the default, these firms have access to the consumer, consumers find the decision environment confusing, and consumer preferences are uncertain.<sup>2</sup> It is likely that consumer decision making in relation to consumer data will involve many, if not all, of these factors. Careful consideration should be given to whether a default is in fact the right policy tool, and then to the potential for commercial incentives to undermine the default effect.

### **Education**

- 34 Other mechanisms to educate consumers about data issues may also have a role.
- 35 ASIC’s MoneySmart website already contains some resources about data-related issues, including:
- (a) credit reports: [www.moneysmart.gov.au/borrowing-and-credit/borrowing-basics/credit-reports](http://www.moneysmart.gov.au/borrowing-and-credit/borrowing-basics/credit-reports);
  - (b) identity fraud: [www.moneysmart.gov.au/scams/other-scams/identity-fraud](http://www.moneysmart.gov.au/scams/other-scams/identity-fraud); and
  - (c) requests for account information (phishing): [www.moneysmart.gov.au/scams/banking-and-credit-card-scams/requests-for-account-information-phishing](http://www.moneysmart.gov.au/scams/banking-and-credit-card-scams/requests-for-account-information-phishing).

## **Exercising rights**

- 36 The easier the process that must be followed to exercise any rights to access consumer data, the more likely it is that consumers will overcome inertia

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<sup>2</sup> See, for example, Lauren E. Willis, ‘When nudges fail: Slippery defaults’, University of Chicago Law Review, vol. 80(3), 2013, pp. 1155–1229.

and take advantage of any new opportunities that the proposed ‘comprehensive right’ may provide.

## Application programming interfaces

### **Information request**

*The Commission seeks more information on the benefits and costs of a legislative presumption in favour of providing data in an application programming interface (API) format, specifically:*

- *In which sectors would consumers benefit from being able to access data in an API format?*
- *What are the main costs and barriers to implementing APIs?*

37 Systems and technical requirements can affect the ‘friction costs’ associated with a particular process. Using APIs may make it easier for consumers to access their data and reduce these frictions.

38 Our first submission describes the midata project in the United Kingdom. The UK Competition and Markets Authority (CMA) recently found that, although midata was a positive development, limitations around its current implementation meant that it had not been used by many customers or third parties in retail banking. The limitations described include that midata did not offer a seamless experience as it required customers to download and then upload files. Open APIs are part of the CMA remedies to address these implementation challenges.<sup>3</sup>

39 The finance sector is one sector where consumers may benefit from having access to data using an API standard. In addition to consumer data, there may be consumer benefits from making data about financial product terms and service quality indicators available using an API standard, as is proposed in relation to certain retail banking products in the United Kingdom.

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## International developments

### **UK open banking framework**

As part of a package of remedies announced by the CMA, it is proposed that the nine largest banks in the United Kingdom will be required to set up an Implementation Entity (chaired by an independent Implementation Trustee) to agree, implement, maintain and make widely available, without charge, open and common banking standards (including open API standards) to a specified timeline.

The open and common standards must be for:

- read-only access to product reference data (e.g. branch and ATM locations),

<sup>3</sup> CMA, *Retail banking market investigation: Final report*, 9 August 2016, p. 184, <https://assets.publishing.service.gov.uk/media/57ac9667e5274a0f6c00007a/retail-banking-market-investigation-full-final-report.pdf>

## International developments

product information for certain products (e.g. charges, benefits and eligibility) and prescribed service quality indicators; and

- read-and-write access to up-to-date transaction data for certain products.<sup>4</sup>

The UK open banking Implementation Entity steering group has initially budgeted £2 million to mobilise the proposed Implementation Entity and scope out the further work required.<sup>5</sup>

### Singapore API playbook

The Monetary Authority of Singapore (MAS) has stated that it aims to establish Singapore as a centre of excellence for APIs in financial services. MAS has published 12 APIs for access to its most heavily used datasets.<sup>6</sup>

In November 2016, MAS and the Association of Banks in Singapore released the *Finance-as-a-service: API playbook*, which provides guidance for financial institutions on identifying key API candidates, as well as data and security standards. It also identified interoperability, data security and cooperation between organisations as key challenges for the finance industry in an API economy.<sup>7</sup>

In relation to costs after implementation of API standards, MAS has indicated that APIs 'lower the cost of implementing projects and reduce the cost of maintenance as changes in business strategy can be more easily effected via APIs rather than making extensive changes across many different applications'.

## Complaints

- 41 It is important that consumers have access to remedies if their rights have been infringed and this has caused them to suffer loss or damage. The current financial services external dispute resolution (EDR) schemes – the Financial Ombudsman Service (FOS) and the Credit Investments Ombudsman (CIO) – can each consider disputes about privacy and credit reporting matters. They are approved not only by ASIC but also (in a more limited sense) by OAIC.<sup>8</sup>
- 42 Consumers may experience difficulties pursuing disputes about data-related matters if it is not clear which entity in a chain of data sharers has done something wrong, or which ombudsman or EDR scheme the dispute should be taken to. More fundamentally, it is possible that a third party (with whom a consumer does not have a trust or direct relationship) will not be a member

<sup>4</sup> CMA, *Retail banking market investigation: Draft order – Consultation*, 23 November 2016, Art. 10–14,

<https://assets.publishing.service.gov.uk/media/5835888e40f0b614ff00000a/retail-banking-draft-order-for-consultation.pdf>

<sup>5</sup> Implementation Entity steering group, *Note of the Implementation Entity steering group meeting*, 21 September 2016,

<http://www.paymentsuk.org.uk/sites/default/files/21092016%20Meeting%20note%20-%2021%20September%202016.pdf>

<sup>6</sup> Mr Ravi Menon, *Singapore's FinTech journey – Where we are, what is next*, speech by Managing Director, MAS, Singapore FinTech Festival, 16 November 2016, <http://www.mas.gov.sg/News-and-Publications/Speeches-and-Monetary-Policy-Statements/Speeches/2016/Singapore-FinTech-Journey.aspx>

<sup>7</sup> Association of Banks in Singapore and MAS, *Finance-as-a-service: API playbook*, November 2016,

<https://abs.org.sg/docs/library/abs-api-playbook.pdf>

<sup>8</sup> Note: These arrangements are currently under review as part of the Government's review of the financial system EDR framework. The Interim Report was released on 6 December 2016 and recommends that there should be a single industry ombudsman scheme for financial, credit and investment disputes (other than superannuation disputes) to replace FOS and CIO.

of an EDR scheme, so there are likely to be gaps in a consumer's ability to access remedies.

## Other factors relevant to data-driven innovation

- 43 While the introduction of the proposed comprehensive right may help with the development of new products and services, there are likely to be other factors that may affect the development of new data-driven businesses.
- 44 One relevant factor is the availability and accessibility of data, other than consumer data, in machine-readable formats. For financial services, this would include data about financial product terms and service level indicators. Our first submission outlines some examples of this kind of data and the life insurance claims data discussed in Section B is another example.
- 45 More general impediments to innovation are also relevant. This includes the absence of a national digital identification regime, the need for appropriate skills and venture capital, and regulatory settings. In relation to regulatory settings, we note that ASIC has established an Innovation Hub to assist financial technology (fintech) start-up businesses developing innovative financial products or services to navigate the regulatory system. ASIC has also granted a fintech licensing exemption to allow new businesses to test their ideas and validate the underlying concepts before all the normal obligations apply.

## B Enabling broad access to datasets that are of national interest

### Key points

ASIC welcomes the draft report's recognition of the community-wide benefits that can arise from making private sector data publicly available, and that the private sector may lack incentives to release data.

The types of data that ASIC is able to collect, and the form in which this data is collected, may limit the number and usefulness of financial sector datasets available to be designated as national interest datasets.

Data standards will be important for usability and comparability of national interest datasets. The standard-setting process may be most effective if developed using a framework that creates incentives for coordination and wide consultation.

- 46 The draft report proposes that private sector datasets could be nominated, designated and released or shared as national interest datasets (NIDs). This would occur by legislative instrument.
- 47 It is also proposed that the private sector will be best placed to determine sector-specific data standards. However, if voluntary approaches do not emerge or adequately enable data access and transfer, it is proposed that governments should facilitate standard setting where there is a public interest rationale to do so.

### Private sector national interest datasets

#### Information request

*The Commission seeks further views on datasets that are of national interest and that could feasibly be designated as such under the process proposed.*

- 48 ASIC agrees that there can be public interest benefits from making some private sector data publicly available, and that the private sector may lack incentives to release this data.
- 49 There can be particular benefits from increased access to private sector data in the financial services industry. This is because financial products and services:
- (a) are inherently complex and often require consumers to make important decisions involving risk and uncertainty;

- (b) represent extreme examples of ‘credence goods’, in that the quality may not been known for years or even decades after they are purchased
- (c) can involve critical long-term promises to the purchaser; and
- (d) include examples of products that are infrequently purchased and so provide limited opportunity for feedback and learning

- 50 Against this background, key indicators derived from financial services provider data can provide a more direct and powerful indicator of the quality or value for money of a financial product or service than a detailed comparison of a lengthy disclosure document.
- 51 This has been highlighted by ASIC’s financial adviser register. Launched in March 2015, the new financial advisers register helps people find out where a financial adviser has worked, their qualifications, disciplinary actions, training, membership of professional bodies and on what products they can advise. By June 2015, there had been almost 124,000 visits to the register and it continues to be amongst the most popular content on ASIC’s MoneySmart website.
- 52 Similarly, consumers armed with key indicators about life insurance claims performance are more likely to make a sensible decision about their insurance arrangements, notwithstanding the complexity of life insurance products.

#### Example: Life insurance claims

In October 2016, ASIC released Report 498 *Life insurance claims: An industry review*. Report 498 published (on a de-identified basis), for the first time within Australia, claims-handling data for 90% of the life insurance market over a three-year period.

The breadth of this data enabled both industry and the regulator to identify differences in claims experience between risk type, sales channel and individual insurers. Without this data, it is not possible for the public, industry or the regulator to effectively benchmark performance. With the data, industry and the regulator are more efficiently able to investigate and understand why there are variances from this benchmark, including any compliance issues.

In Report 498, we also identified that, to improve public trust and consumer understanding, there was a clear need for better quality, more transparent and more consistent data on life insurance claims.

ASIC is currently working on establishing a new public reporting regime with the Australian Prudential Regulation Authority (APRA) for claims data and outcomes in the life insurance industry. APRA is leading this work because their data collection and publishing capabilities are better aligned in this instance.

- 53 The draft report contemplates that relevant private sector datasets could be acquired by the public sector through, for example, data collected in the

course of meeting regulatory requirements. The draft report suggests that these regulatory datasets could automatically be included as NIDs.

- 54 Our first submission explained that ASIC's access to data from the private sector varies across different financial markets or services, and that ASIC has been considering the need for more regular data. As there is no legislated obligation for financial services businesses to routinely report statistical data to ASIC, this may limit the number and usefulness of financial sector datasets available to be designated as NIDs.
- 55 ASIC does not have access to as much private sector data as our peer regulators overseas. Our first submission outlined details of data the CFPB in the United States receives. The CFPB has recently released a web-based tool to help the public monitor developments in consumer lending and forecast potential future risks in the mortgage, credit card, auto loan and student loan markets.<sup>9</sup>
- 56 Similarly, the Financial Conduct Authority (FCA) in the UK receives regular data reports from most regulated firms on client money, client assets, product sales and complaints (amongst other things).<sup>10</sup> ASIC does not currently receive this data on a systematic basis or in a readily usable form.
- 57 Recent law reform proposals have recognised the benefits of more regular data for ASIC, as well as the advantages of making this data publicly available. For example:
- (a) The Corporations Amendment (Life Insurance Remuneration Arrangements) Bill 2016 passed the House of Representatives on 29 November 2016. Consistent with earlier Government announcements, the Explanatory Memorandum for the Bill contemplates that ASIC will use an existing provision in the Corporations Act to facilitate ongoing reporting to ASIC on life insurance policy replacement data. This will assist ASIC in its scheduled 2021 review of the life insurance reforms.
  - (b) The interim report for the review into the dispute resolution and complaints framework in the financial sector recommends that financial firms report data on their internal dispute resolution (IDR) activities to ASIC. The interim report also recommends that this data be published and that ASIC be given additional powers to determine the content and format for this IDR data. ASIC supports this recommendation, which

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<sup>9</sup> Consumer Financial Protection Bureau, *CFPB Unveils Consumer Credit Trends Tool to Help Forecast Potential Consumer Risks*, December 15 2016, <http://www.consumerfinance.gov/about-us/newsroom/cfpb-unveils-consumer-credit-trends-tool-help-forecast-potential-consumer-risks/>

<sup>10</sup> Financial Conduct Authority, *Regulatory Reporting* page, last updated 9 June 2016, <https://www.fca.org.uk/firms/regulatory-reporting>



follows ASIC's submission to the review that this kind of data could assist:

- (i) ASIC to inform regulatory priorities;
- (ii) firms to benchmark their performance against their peers; and
- (iii) consumers to compare performance between different firms.

58 At the request of the Minister for Finance Services and Revenue ASIC is conducting a review of the mortgage broking market to determine the effect of current remuneration structures on the quality of consumer outcomes. The conduct of this review has involved the collection on a one off basis of a large volume of data. It is only with access to this data that ASIC as regulator can determine how the market is operating. With growth in processing and analytic capacity, data is becoming increasingly central to the role of a regulator in understanding the market it regulates and identifying problematic products, services, sectors and entities that require greater regulatory focus.

59 Similarly, the same growth in analytic capacity, increasingly provided through third parties, means that access to data is central to improving consumer decision making. The examples noted above from ASIC's work on the financial advisor's register, on life insurance claims handling, on IDR and on mortgage broking are indicative of these trends.

60 In the period ahead, ASIC will have a strong focus on working to ensure that more data, collected on a consistent and comparable basis, is available to it for use in its regulatory work and, where appropriate, to consumers to help them in the complex decisions they face in using financial products, services and markets.

61 The Capability Review of ASIC, established by the Government in 2015, highlighted the critical role that sophisticated analytics and risk assessment processes can play in identifying and mitigating conduct risk. In April 2016 the Government committed \$61.1 million to enhance ASIC's data analytics and surveillance capabilities and to improve ASIC's information management systems. Despite this, the legal framework for the collection of the data necessary to support a more data driven approach remains relatively weak, and the relevant legal provisions remain predominately focussed on formal disclosure in individual transactions and on the collection of data for one off investigations, rather than on establishing appropriate recurrent data sets of use to the regulator, consumers and market participants.

## Voluntary data standards

- 62 A significant challenge in publishing private datasets is the need to establish a consistent and comparable regime for the data. This was highlighted by ASIC's recent life insurance claims work where there was considerable inconsistency in the data provided by different insurers.
- 63 Data standards will play a key role in ensuring this comparability, but there may also need to be some standardisation of underlying product terms and other definitions.
- 64 Where the release of datasets may be relevant to consumer outcomes, it may be desirable to adopt a consumer-focused approach to developing the relevant data standards. Industry may lack incentives to adopt a consumer-focused approach, but ensuring consultation with consumer groups may assist.
- 65 If a voluntary approach for a sector does not emerge, one option – short of mandating outcomes – would be to adjust other regulatory settings to create an incentive for this coordination. For example, requiring financial services or credit providers to have regard to particular consumer data in discharging regulatory obligations may encourage the development of appropriate data standards to reduce compliance costs.

## C Data access and sharing at ASIC

### Key points

ASIC welcomes the draft report's recommendations to simplify data sharing between agencies.

ASIC also acknowledges that greater availability of datasets may improve policy making.

66 The draft report proposes that new legislation will require data sharing between government agencies, that these provisions will operate regardless of all other restrictions and that there will only be limited exceptions.

67 A new framework is proposed to identify high-value, in-demand datasets, and to designate certain public sector datasets as NIDs. NIDs must be released, either publicly or to trusted users, depending on the sensitivity of the data. It is proposed that other high-value datasets should be released as resources allow, but that agencies should not add value to this data unless there is a clear public interest rationale to do so or other requirements are met.

### Inter-agency data sharing

68 ASIC takes its responsibilities as a data custodian very seriously and welcomes the draft report's recommendations to make data sharing between agencies simpler.

69 ASIC has established a bulk data exchange optimisation framework with the Australian Taxation Office (ATO). We note that the Government is also proposing to amend subsection 127(2A) of the *Australian Securities and Investments Commission Act 2001* to enable ASIC to share information with the ATO without involving the ASIC Chairperson or their delegate.

70 Our first submission outlined the benefits for ASIC from the increased sharing of data across government agencies, and the opportunities for reducing reporting burdens for businesses by removing the need for the same information to be reported to more than one agency.

71 However, as the draft report acknowledges, challenges for increased data sharing between agencies include system requirements, increased data literacy in the public sector and leadership to bring about cultural change. ASIC is investing in all of these things.

## Regulatory Transformation (FAST 2)

- 72 ASIC is investing in transforming our regulatory business by more effectively capturing, sharing and using our data. We call this our Regulatory Transformation (FAST 2) Program.
- 73 Over the next three years, we are building an integrated platform supported by a single repository of internal and external regulatory information, with the ability to search across this information easily. Critical to this work is developing a common language across ASIC to ensure we are using the same name for the same things. We are moving from a fragmented collection of largely Lotus Notes workflow systems and databases to the rollout of Microsoft Dynamic CRM, which will be extended from our markets stakeholder teams to our financial services stakeholder teams.
- 74 The repository will help us to more effectively capture, share and use our own data from consistent workflows across all ASIC regulatory teams and data from third parties.

## Data analytics

- 75 ASIC is also focused on further strengthening our capabilities in data analytics. We are developing both our skill sets and our processes by hiring people with deep experience in data analytics and investing in systems and processes facilitating data capture and analysis.

## Chief Data Office

- 76 ASIC has now established a Chief Data Office. The Chief Data Office will support ASIC to be a data-driven, forward-looking regulator that values our data assets. The Chief Data Office will be responsible for building our data strategy and for implementing clear data governance that optimises the quality, integrity, stewardship and security of our data.

## Releasing datasets

- 77 ASIC acknowledges that greater availability of datasets may improve policy making in financial services and other sectors by providing an evidence base for agencies and by enabling more academic analysis of policy questions. ASIC has previously provided the research community with access to data to inform research, where we hold relevant data in an appropriate format. For example, ASIC provided data to Professor Talis Putnins at the University of Technology Sydney for his research about institutional transaction costs in Australian equities markets.

- 78 Finally, ASIC often adds value to data before making it available on our MoneySmart website to ensure it is user friendly and accessible for consumers (e.g. see the financial counsellor online search, [www.moneySMART.gov.au/managing-your-money/managing-debts/financial-counselling/find-a-financial-counsellor](http://www.moneySMART.gov.au/managing-your-money/managing-debts/financial-counselling/find-a-financial-counsellor)). ASIC believes there is a public interest reason for adding value to this data as it is valuable information for consumers, and private providers may have incentives to provide incomplete or biased information, or charge for the information.

## Registry separation

- 79 The ASIC Registry project was a Government initiative led by the Department of Finance. The process involved a competitive tender process to test the market on the capacity of a private operator to upgrade and operate the ASIC Registry.
- 80 The registry tender commenced in 2015, with the final bid phase closing on Monday, 29 August 2016. On 19 December 2016, the Government announced that it has decided not to engage a private operator for the ASIC Registry.

## Key terms

Term	Meaning in this document
ACCC	Australian Competition and Consumer Commission
API	Application programming interface
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
CFPB	Consumer Financial Protection Bureau
CMA	Competition and Markets Authority (UK)
EDR	External dispute resolution
MoneySmart	ASIC's website for consumers and investors ( <a href="http://www.moneysmart.gov.au">www.moneysmart.gov.au</a> )
OAIC	Office of the Australian Information Commissioner