

CBFL SEMINAR SERIES

Lessons from Australia's World-Leading Consumer Data Sharing Regime

31 August 2023
Lee Sheridan Conference Room, NUS Law



Scientia Professor Ross Buckley, UNSW Sydney & Associate Professor Dora Neo, NUS Law

On 31 August 2023, the Centre for Banking & Finance Law (CBFL) hosted a lecture by **Scientia Professor Ross Buckley** from the University of New South Wales (UNSW Sydney). The lecture, titled 'Lessons from Australia's World-Leading Consumer Data Sharing Regime', was moderated by Associate Professor Dora Neo. The seminar explored the legal aspects of emerging consumer data-sharing regimes, focusing on Australia as one of the most innovative jurisdictions in this area.

Professor Buckley started the lecture by drawing a compelling analogy between the vital role of data in the digital economy and the one of water management in modern cities. An effective consumer data-sharing regime is akin to a sanitation system for the digital economy in that ensuring the quality and reliability of data is critical to the overall soundness and functioning of the economic system. Indeed, data has assumed unparalleled significance in today's economic landscape, with numerous business models revolving around innovative data-driven solutions. Data now holds a role as critical to global economies as traditional urban water and sewerage systems. A discernible trend is the shift towards value generation through data. Digital platforms have emerged as dominant business models, and data and digital platforms are inherently intertwined in the digital economy. This relationship poses new economic and legal questions. For instance, by harnessing vast amounts of data, digital platforms have extended their influence not only in retail markets but also into financial services, offering innovative data-driven financial products. In this fast-evolving landscape, ensuring data quality is a primary challenge, as clean and reliable data is essential for economic use.

In Professor Buckley's view, a secure, robust, and efficient consumer-data sharing regime should prioritise

consumers' control over their own data. It must incorporate accreditation for data recipients and processors, underpinned by secure technology and legal infrastructure, in which compliance with data-sharing practices is also paramount. As a case in point, the lecture highlighted the establishment of Australia's Consumer Data Right (CDR) in 2019. This initiative allows consumers to direct personal data to potential service providers offering better terms. The CDR draws inspiration from similar legal reforms in other jurisdictions, such as the EU's Payment Systems Directive II (PSD2) and the UK's Open Banking Initiative. Notably, the CDR transcends banking, extending its scope to other sectors like energy and is also proposed to cover telecommunications and welfare as well.

As Professor Buckley pointed out, implementing the consumer-data sharing regime in Australia is not without challenges. For instance, there is resistance from banks and incumbent firms concerned about losing their data advantage. On the other hand, consumers favour the idea of data control, a concept that is, after all, reinforced by existing privacy regulations. In common law jurisdictions like Australia, however, data cannot be owned; individuals can only exert control over it. But, as data is now regarded as the "new oil", an essential driver of the digital economy, effective data-sharing regimes are essential for unlocking economic potential. Professor Buckley, hence, outlined key aspects of an ideal legal framework to support a secure, robust, and efficient data-sharing regime. This regime, in turn, should encompass all relevant sectors of the economy and establish formal standards for parties to rely on. Ideally, a dedicated policy agency should support the establishment of data-sharing regimes, as policymakers generally suffer from a lack of expertise in technology-related aspects and often are not forward-looking. Overall, this framework should be adaptable and responsive to the evolving interests of various stakeholders.

In commenting on the UK and EU initiatives, Professor Buckley critiqued their choice to begin data-sharing regime development in the banking sector, given its complex and highly regulated nature, making it a challenging domain for implementing changes. He believes that other sectors like energy and telecommunications might serve as better testbeds and welcomed Australia's multi- and cross-sectoral approach to data-sharing as an innovative approach that other jurisdictions should replicate.

The presentation sparked an engaging Q&A session, delving into topics such as the interplay between consumer rights and privacy regulation in the digital economy, the ideal business models for service providers leveraging personal data, the distinction between personal and anonymised data, and the role of democratically elected policymakers in data sharing regimes.