Australian Business Software Industry Association

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5 October 2020

Consumer Data Right Project Team
Commerce, Consumers and Communications
Ministry of Business, Innovation & Employment

Via email: consumerdataright@mbie.govt.nz

Dear Consumer Data Right Project Team,

Re: ABSIA's Submission to Options for Establishing a Consumer Data Right in New Zealand

The Australian Business Software Industry Association (ABSIA) welcomes the opportunity to make this submission on behalf of our members and the software industry. This submission has been prepared with input from ABSIA members.

ABSIA has many members that are either based in or have a presence in New Zealand. We have been involved in representing our members in the development of Australia's Consumer Data Right rules and continue to advocate for our members as rules around intermediaries are developed.

We broadly agree with the points laid out within the discussion paper and wish to highlight some extra learnings from Australia's experience especially when it comes to additional costs and risks. In summary, our submission has made the following recommendations:

- There are a number of learnings from Australia's implementation of CDR that New Zealand can learn from;
- A holistic consumer centric approach rather than a sector by sector approach to managing CDR consents should be taken;
- Both read and write access should be included from the beginning;
- Option two is the best approach for New Zealand's CDR;
- New Zealand should align their CDR approach with Australia's as it will benefit businesses wishing to participate in CDR both both countries;
- Existing bodies should be involved where applicable rather than establishing new bodies for sectors; and
- The regulatory approach should consist of multiple regulators with an overseeing body.

ABSIA would appreciate the opportunity to engage further on these issues. For further information about this submission, please contact Maggie Leese, ABSIA Marketing and Membership on

Yours faithfully,

Chris Howard,

President & Director, ABSIA.

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

Your name and organisation

Name	Maggie Leese
Organisation	Australian Business Software Industry Association (ABSIA)

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?*
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?*
	We broadly agree with the benefits, costs and risks outlined in the discussion paper. However, there are some issues that fall under the existing benefits, costs and risks that MBIE should consider as they develop New Zealand's CDR approach. Many of these issues stem from what our industry has learnt from Australia's CDR implementation so far and New Zealand has the opportunity to learn from this process while much of this is "still fresh" from Australia's experience. *Barriers to entry* MBIE should be wary of the high costs of accreditation requirements as well as the ongoing compliance costs that are currently creating huge barriers to entry or ongoing participation, especially for intermediaries, in Australia. Here banks and similar institutions are allowed to access streamlined methods of accreditation that already exist within the banking sectors. Meanwhile Accredited Data Recipients (ADRs) and intermediaries cannot currently access alternative accreditation options nor use those already existing within their industries. In resolving these issues within Australia, ABSIA has recommended offering tiered accreditation and/or approving existing accreditation methods that already apply to ADRs. We recommend a similar approach for New Zealand's CDR implementation. In Australia, we have recommended the Australian Taxation Office's Digital Service Provider (DSP) Operational Framework[1] and ABSIA's Security Standard for Add-on

[1] https://softwaredevelopers.ato.gov.au/operational_framework

Marketplaces (SSAM)[2] as alternative accreditation methods as these would reduce costs and meet the relevant security requirements. Without alternatives, smaller developers and intermediaries will struggle with the costs of CDR. We recommend that New Zealand examines these security frameworks and/or looks to approve existing standards within sectors in New Zealand to assist in reducing costs.

Need for prescriptive security controls
To ensure that privacy and security for consumers is upheld, we recommend the creation of prescriptive security controls for ADRs and intermediaries. This will assist in providing clarity on what is considered to be the best practice approaches to security within CDR and create consistency across the implementation of CDR in different sectors.

If security controls are left open to interpretation, it will create the potential for auditing issues and will leave decisions open to costly technical disputes. It will also avoid large players feeling as though they can dictate the terms to smaller, less influential organisations. Information should also be provided in New Zealand's CDR rules on how to efficiently and fairly resolve such disputes.

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

Through establishing and working through Australia's implementation of CDR, various issues have been identified. As New Zealand goes through this process, we would recommend considering the issues outlined below earlier rather than later to potentially avoid these at the creation stage.

Confusion about which data is subject to CDR legislation
With Open Banking in Australia, there has been confusion around whether all types of financial data (rather than just banking data) are subject to Open Banking and therefore CDR rules. More specifically, this confusion lies around whether the financial data that flows through to intermediaries is in scope and therefore if CDR rules apply to this data. We are in need of more clarity around where CDR data becomes "non-CDR data" with accounting software, for example, and therefore when CDR rules no longer apply to this data.

We recommend that MBIE, and the applicable regulators for each sector, are as clear as possible about which types of data are in scope and those that are not as CDR is applied to different sectors.

Conflicting data retention requirements
Building upon the previous issue, Australia's CDR rules are currently conflicting with existing data retention requirements. This really becomes an issue when CDR data needs to be deleted when consent is not renewed or it is withdrawn under current CDR rules. If CDR data is being stored in accounting software and one of their customers withdraws a consent, this data should be deleted. However this currently conflicts with other requirements placed on accounting software providers who are

[2] https://www.absia.asn.au/industry-standards/addon-security-standard/

	required to store financial, employee and other business records on behalf of their customers for approximately 7 years. Without clarifying when CDR data becomes non-CDR data, it puts accounting software providers, accountants and bookkeepers in a difficult position regarding when they need to delete CDR-related data but, at the same time, not breach the relevant record keeping legislation. For New Zealand's implementation, we recommend that MBIE provides a clear distinction between when this data stops being CDR data within accounting and similar software. Alongside this, there should be an explanation of how CDR legislation will work alongside existing legislation that outlines data retention requirements to provide more clarity around how deleting CDR data will work. *Complexity of managing consents* The issue of CDR users needing to re-consent every 12 months can be a potential barrier to entry, especially for businesses, in Australia. Even the smallest of business will have a relatively high number of consents to manage to keep their day to day operations running. On a larger scale, businesses with many more systems will find it virtually impossible to manage all of their consents. To encourage participation, New Zealand's CDR implementation must not overwhelm individuals and businesses with the amount of work needed to manage their consents. Here, we suggest that the regulating body takes on a holistic consumer centric approach rather than a sector by sector approach to managing consent.
4	*What would the costs and benefits be of applying the consumer data right to businesses and other entities, in addition to individuals?*
	From our points above, there are potential costs and barriers to participation as managing multiple consents may become a difficult, time consuming and costly task for businesses. Without any additional governance or control, there is an implied overhead that comes with it. This will vary from business to business depending on how they elect to support CDR. To provide more detailed figures, it would require significant industry analysis.
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')?*
	Please take our comments about the confusion surrounding which data is subject to CDR legislation under question three into consideration.
6	*What would the costs and benefits be of including both read access and write access in a consumer data right?*
	We support the inclusion of both read and write access to New Zealand's CDR from the beginning of the process. If CDR were to start with read access only, with write access to be added later, this would mean additional costs and significant development changes down the line for ADRs and/or intermediaries who would then need to support that functionality. This would potentially reduce costs upfront for those wishing to participate.

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?*
8	*Do you have any comments on our proposed criteria for assessing options? Are there any additional factors that should be considered?*
9	*Do you have any comments on the discussion of Option one: Status quo?*
10	*Do you have any comments on the discussion of Option two: A sectoral-designation process?*
11	*Do you have any comments on the discussion of Option three: An economy-wide consumer data right?*
12	*Do you have any comments on the discussion of Option four: Sector-specific approach?*
13	*This discussion document outlines four possible options to establish a consumer data right in New Zealand. Are there any other viable options?*
14	*Do you have any comments on our initial analysis of the four options against our assessment criteria?*
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 agree that option two is the best approach to implementing CDR in New Zealand. This method best aligns with Australia's CDR and it makes sense to align our approaches to make it easier for businesses that operate in both countries to participate in both versions of CDR. Aligning Australia and New Zealand's approaches to accreditation, where it makes sense, would also be beneficial for businesses operating in both countries.
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?*

17	*Do you have any feedback on our discussion of any of these key elements?*
	Please take into consideration our points under question three.
18	*Are there any areas where you think that more detail should be included in primary legislation?*
	Please take into consideration our points under question three.
19	*How could a consumer data right be designed to protect the interests of vulnerable consumers?*
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?*
21	*How could a consumer data right be designed to ensure that the needs of disabled people or those with accessibility issues are met?*
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?*
	As we have mentioned previously, there are benefits to aligning New Zealand's CDR with Australia's version. This will particularly benefit the many businesses that operate in both Australia and New Zealand that are looking to engage with CDR.
23	*Do you have any comments on where a consumer data right would best sit in legislation?*
	As with Australia's implementation, we would suggest creating a standalone legislation and then update the existing competition, consumer and privacy law in New Zealand.
24	*Do you have any comments on the arrangements for establishing any new bodies to oversee parts of a consumer data right?*
	We believe that existing bodies should be involved to some extent as they will bring their knowledge and expertise from their industries to ensure that CDR is as beneficial to consumers and as workable for ADRs and intermediaries as possible. Without their involvement, important factors that affect certain sectors may be missed. However, we acknowledge that new bodies may need to be established where there are no existing bodies.
25	*What are the pros or cons of having multiple regulators, or a single regulator, involved in a consumer data right?*
	As we have mentioned above, by including multiple regulators, you will have access to their expertise and are more likely to reach outcomes that work best for particular sectors. While there may be some inefficiencies when it comes to cross-sectoral

	implementations of CDR, the establishment (or use of an existing body) of an overseeing body would help with navigating these issues.
26	*If government decides to establish a consumer data right, do you have any suggestions of how its effectiveness could be measured?*

Other comments