

# Prototype of a Data Economy



# Contents

1.	Executive summary	4
2.	A unique opportunity	7
	2.1 A data economy	7
	2.2 The challenge	9
3.	Our approach	12
	3.1 The Data Economy Collective	12
	3.2 Our methodology	13
	3.3 Our approach	16
4.	Opportunity spaces	18
	4.1 We need to define the purpose and goals of a data economy	18
5.	Our Insights	22
	5.1 Creating human ability to trust is core to the creation of a data economy	22
	5.2 Several mechanisms for assuring and enabling trust are required.	23
	5.3 Focus on the end-customers as a driver of progress	23
	5.4 System-wide leadership is required	24
	5.5 A high-performing open data system is one built for emergence	24
	5.6 A high-performing data economy is one built with empathy	25
	5.7 Individual elements exist within a complex whole	25
	5.8 Complexity must be navigated with confidence not certainty	26
6.	Our Recommendations	28
	6.1 Does New Zealand need a consumer data right?	28
	6.2 What form could a consumer data right take in New Zealand?	29
	6.3 How could a consumer data right be designed?	30
7.	Further work	33
	7.1 Further work required	35
	7.2 Proposed next steps	35
	Appendix One: Responses to the MBIE Discussion Document Consultation Questions	38
	Appendix Two: Glossary of Terms	88

8 Insights

26 Questions

1 Purpose

# A Collective Response

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At the time of submission, the Collective was comprised of ākahu, APImetrics, ASB Bank Limited, BlinkPay, Common Ledger, Kiwibank, Middleware Group Limited, TSB Bank Limited and Westpac New Zealand Limited.

The Data Economy Collective (Collective) is comprised of a diverse range of participants who each recognise that a significant shift is required to build an effectively functioning consumer data portability system in New Zealand. That shift will necessarily include changes to technology, processes and capability, but also the establishment of a united vision, purpose and meaning.

Data, and the use of data, has the power to drive material consumer and economic benefits. We believe that the design of a New Zealand consumer data right framework should be open, inclusive, multi-sector and focused on a clear set of outcomes which place New Zealanders as the primary beneficiaries of the data economy.

The Collective has worked together to prepare this response through workshops and commissioned research over the last two months. The Collective is a newly formed entity that will build and grow over time, integrating opinions and expertise from a wide range of stakeholders to form multi-faceted view of the data economy design that is the best fit for New Zealand.

As of October 2020, this submission represents our first view, a prototype, of what such a system could look like. Like any prototype, the views outlined in this submission should be iterated, questioned and considered. It is through this process that we can build a system that accelerates and achieves meaningful and improved outcomes for all New Zealanders.

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# EXECUTIVE SUMMARY

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Thank you for initiating a conversation on consumer data portability in New Zealand. We have framed our response to the MBIE Discussion Document on a Consumer Data Right (CDR) around our vision for a data economy and the steps we see as required to free up the movement of data for the benefit of all New Zealanders.

Our efforts are focused on pursuing a fair and sustainable, consumer-centric data economy in which all New Zealanders are empowered to use their data in a way that makes a material difference to their lives. We are supportive of a system of secure and consented sharing of Consumer data to trusted third parties. We see a CDR framework as a key enabler and ongoing component of a data economy, and accordingly have a strong interest in the design and implementation of any CDR framework.

A data economy will require strong vision, governance and independence to be effective. A degree of enabling legislation will be required, together with an overarching data strategy, iterative planning and cross-sector engagement. Above all, the framework must focus on the consumer, Kiwis and the organisations they work within. There are several compelling areas of opportunity that this data economy could further, such as financial inclusion, small business resilience, and the empowerment of people to exercise their agency to control their own digital data and identity.

Our digital enablement as a country is starting to behind lag that of some of our overseas peers. To turn this around, there is a need to build more trust across the entire ecosystem of participants. Consumers are not sufficiently empowered to control their data and good examples of how this could work in practice are few.

In order to forge a successful future in this space, we believe that stakeholders across the economy need to open up to new possibilities, enable movement of data and provide leadership with vision and representation. In this paper, the Collective has collaboratively answered the MBIE Discussion Document questions, distilled insights and started work on a blueprint for how an effective CDR system might work in New Zealand. We have observed lessons from other jurisdictions, but also recognised the need to increase diversity, so that we can leverage our own unique culture, understanding and context to build something great for Kiwis.

There are several elements that need to be done well, including licensing and authorisation, accreditation and third-party participation. There are also opportunities to align with other work already underway in New Zealand especially in relation to digital identity, trust, privacy and understanding how best to secure data services.

We believe that pragmatism drives progress. Planning, and resolving system issues such as liability and redress at a central level is sensible, as is the need to reduce complexity. However, we feel an iterative approach for delivery and scope is helpful and realistic. We would also advocate for targets, to start quickly and for specific outcomes but not for a highly layered or heavy-handed set of rules. The CDR framework should help manage risk for all parties, level power in the new system and start pragmatically.

We have attempted to work through some of these issues, unpack them, and propose a way forward. There have been two persistent insights that have arisen from this collaborative process, namely:

- to achieve optimal outcomes, Consumers must be central to the CDR's design and all design and implementation decisions should be approached from a Consumer-centric perspective; and
- given how quickly technology supporting data portability is developing it is extremely challenging for detailed, regulation-heavy frameworks to keep pace – it is essential that industry engagement and involvement is at the forefront of CDR design and implementation, as well as ongoing continuous improvement initiatives.

Our next steps are to determine how to accelerate the availability of data services, engage further with cross-industry and multi-sector perspectives, encourage others to join the discussion and conduct further research into the design of a NZ data economy. This discussion has prompted the formation of the Collective. We are here to enable a fair and sustainable data economy for the benefit of all Kiwis.

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# A UNIQUE OPPORTUNITY

## 2.1

# A DATA ECONOMY

Our vision is to help build a world-class data economy from which all New Zealanders can benefit equally.

We believe there is a unique opportunity to design and deliver a blueprint for a data economy that doesn't just prevent New Zealand from being left behind in the global race for data-driven value, but that gets us out front.

The expectation that data initiatives will drive a transformation in the way that goods and services are developed is important for New Zealand as a small, advanced nation, and not just as an economic stimulus in traditional terms.

The free flow of data could:

- facilitate the creation of new personalised services and Consumer experiences across a range of different sectors from FMCG to education;
- promote competitive markets by enabling innovation based on previously unavailable information;
- identify and improve services for overlooked Consumer segments such as those with access needs;
- improve the measures and drivers of productivity, and generate new revenue streams, profits and jobs;
- create new efficiencies in public infrastructure (for example, transport); and
- encourage in-bound investment in emerging technologies (including in fields such as robotics and biotechnology), and the development of new weightless export sectors clustered around digital innovation.



We envision a smart data economy for New Zealand that is fully up-to-date with international developments without blindly following; that protects us as a small economy by encouraging the type of local innovation that Kiwis can be proud of; that fosters our well-respected national profile with international partners and investors; that allows for fresh-thinking and not just structures inherited from overseas; and that establishes a framework to ensure that data in New Zealand is deployed for maximum benefit and least harm.

For the Collective, our initial priorities are to provide independent leadership and engagement to support the understanding of all New Zealanders about why and how a New Zealand data economy should develop. We are bringing together diverse expertise and significant experience for shared benefit.

We do not have all the answers yet, but we are making real and practical progress in designing outcomes and objectives that are fit for purpose for New Zealand.

## 2.2

# THE CHALLENGE

Unlike other economic assets, advancements in technology mean that the quantity and quality of data is increasing at an exponential rate; it is capable of being shared and not just transferred; it has innumerable forms; it can be subject to a range of different rights and interests concurrently; and it can be accessed and used from anywhere in the world. International understanding is still evolving as to what these distinctive and complex characteristics of data mean.

However, data and traditional economic assets do have some features in common.

One is the 'oil rush' phenomenon: policymakers and businesses from all around the globe are presently intensively engaged with the question of how to realise maximum economic value from data. Several jurisdictions, including the UK, Europe and Singapore have launched ambitious data strategies to support this. We believe that a widely communicated overarching purpose and leadership for a national data economy is also required in New Zealand.

Another is the risk that data assets become controlled by a relatively small number of organisations and/or large nations. A significant factor for success in any new data economy is the ability to access and use rich data from multiple sources.

Other challenges include the issue of data being at risk of political sabotage, malicious activity and security threats (much like other valuable assets in previous eras). A significant concern is making sure that people and organisations in New Zealand can feel confident about security and confidentiality in sharing data.

The danger for New Zealand in attempting to address all these challenges is creating a framework for a data economy that is as knotty as the conundrum of data itself. Our insights show that a heavy-handed, unduly layered or over-regulated approach to dealing with data will not be effective. That approach has led to sub-optimal outcomes in other jurisdictions, and we must be careful not to assume that larger countries, such as the UK or Australia, have got the right settings to achieve optimal outcomes. In any case, New Zealand systems need to be proportionate and appropriate in a New Zealand context. That is not to say that New Zealand's systems should lack international standards of rigour, rather that we should look for smarter ways to go faster and do this better.

We want to ensure that New Zealand as a whole (all New Zealand businesses and all New Zealanders personally) can benefit from the data economy. New Zealand should not be left behind because of our limited size or resources: we must turn this to our advantage. We're here to enable this to happen, with an

open and collaborative Kiwi approach and the capability to drive progress with practical and adaptive solutions. The development of a data economy for New Zealand is a complex challenge, but we believe the important thing is to start.

For the Collective, our initial areas of focus for this challenge are:

- Leadership - navigating complexity; developing a vision; supporting a mind-set shift; and assisting with the effective implementation of appropriate initiatives which keep pace with ongoing change.
- Trust - coordinating and balancing the voices of Consumers, government and businesses; bringing credibility through experience and expertise; and creating workable solutions that consider and take advantage of New Zealand's unique context and culture.
- Consumer empowerment - engaging and communicating at all levels to develop a fair and sustainable data system designed by and for all New Zealanders.

- 3.1 The Data Economy Collective
- 3.2 Our methodology
- 3.3 Our approach

# 3

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# OUR APPROACH

# 3.1

## THE DATA ECONOMY COLLECTIVE

There is consensus across many stakeholders that increased data portability and usability will improve the lives of all New Zealanders. We all want to see a world where data is portable across our economy, where enhanced competition and productivity benefits are realised, and where Consumers have the tools to take control of their data and how it is used. Indeed, the Collective could not endorse this proposition more strongly.

There is strong alignment on these outcomes being the destination and it appears we all agree emphatically on where we want to get to. The glaring question therefore becomes, very simply: How do we get there?

Without a collective approach to the design of NZ's data economy, there is a risk that Consumers become a secondary consideration for all interested parties and Consumer interests take a back-seat in industry engagement. This could lead to the Government, believing themselves to be the only ones "in the Consumers' corner" taking a more heavy-handed, interventionist regulatory approach. This in turn risks a CDR framework that is detached from the realities of how Consumers think about their data, and which therefore produces sub-optimal outcomes.

The Collective was established as a collection of businesses and organisations from across New Zealand's economy, open for any interested parties to join, coming together with a common purpose:

- to pool together our collective experiences and expertise;
- to jointly commission cutting edge research from external experts to inform our thinking; and
- to debate, and ultimately agree, what shape and size NZ's data economy should take.

The establishment of the Collective is broader than for the purposes of this initial CDR consultation. Its purpose is to provide a collaborative forum for the design and implementation of NZ's data economy framework as a whole, which of course includes partnering with Government in its CDR consultation.

The Collective is not limited to current members. We would like participants from across NZ's open data economy to join the Collective, including Data Holders, Data Recipients, intermediaries, Consumer representatives, and others. This includes participants from outside the financial services sector, given that NZ's data economy will be multi-sector by nature. Our work is distinct from the work already underway in that sector with respect to API standards (relating to payments in particular), led by the API Centre.

We expect that the Collective will experience growth over time, as ecosystem participants see the Collective's work, build awareness its importance and relevance to them, and better understand the benefits of a collective approach.

## 3.2

# OUR METHODOLOGY

Moving data is a social problem, inherently human and involving a deeper understanding of identity, personal agency and what it means to have control of your own information to drive a positive outcome. Data, and its impact on our lives, is a pressing social issue, be this from the ability of others to collect information on us, to the ethics of how this information can be used.

Technology platforms have made the use of information pervasive, but often the actual mechanism of how this data is collected, curated and used is opaque and poorly understood.

### **WE HAVE USED THE UK DESIGN COUNCIL'S DOUBLE DIAMOND TO FRAME OUR JOURNEY AND STRUCTURE THIS REPORT**

The Double Diamond framework, advocated by the UK's Design Council, is a visual representation of the design process used in Design Thinking. Simple to understand, but difficult to master, the framework proposes a series of expansions and contractions of scope to understand a solution to a difficult problem.

We used the questions in the MBIE Discussion Document on the CDR as a starting point in engaging in the consultation process, and to help frame the challenge. The questions focused on why, how and what a CDR could involve and while these are more systemic, than human centric goals, they offered a good frame to explore the topic. In that sense, Collective views the CDR, and this consultation process, as an enabler of a broader discussion regarding the size and shape of NZ's open data economy.

### **WE STARTED OUR DISCOVERY BY COMMISSIONING RESEARCH, WORKING TOGETHER TO UNDERSTAND THE ISSUES AND SPENDING TIME WITH OTHERS IMPACTED BY DATA PORTABILITY.**

The Collective spent time with people who will be impacted by the design of a data economy. Starting with financial services, we encouraged the formation of a Collective where participants had different roles. These roles included Data Holders, Data Recipients, Consumer representatives and ecosystem enablers.

We had a strong willingness to engage others from other industry sectors but found this difficult and resolved to prioritise this later. We also deprioritized direct Consumer research as it was felt that we needed to understand the underlying components and issues before a meaningful survey could be compiled.

We derived an information architecture from the 26 questions, clustering the responses in themes. Reviewing the themes, we chose to proceed with direct drafting, workshops or leverage our research team.

- **Direct drafting.** Leveraging research from other geographies, our team compiled an initial response which was then considered and agreed by the Collective.
- **Workshops.** We explored the questions through working groups and consulted others with specific expertise. We targeted our working groups to explore questions that were likely to involve trade-offs and ambiguity. We focused on four themes from the questions - outcomes and measures; scope; options and benefits, costs and risks. We established a process to draft answers, manage contention and a regular cadence of workshops to agree, resolve issues and manage collaboration within the bounds of a competition law protocol.

**External research.** We commissioned three research reports focusing on service design, CDR frameworks and ecosystem structure. We engaged three external researchers, Russell McVeagh, Think Place and DLA Piper, to conduct research in the context of the development of New Zealand's CDR framework. A summary of those pieces of research are set out in Table 1 below.

*Table 1 – Research commissioned by the Collective*

TOPIC	RESEARCHER	DESCRIPTION
Service Design: Building a functioning Open Data system in New Zealand	Thinkplace	The current open data economy has formed organically, with no one entity having totally controlled the design of data portability across NZ's economy. The objective of the study is to identify insights of how the current system works and to propose a go forward plan to nudge the system forward to the next phase of growth.
A CDR Research Framework	Russell McVeagh	This research considers what New Zealand can learn from overseas experiences (including Australia, the European Union, the UK and several Asian countries) in designing and implementing a CDR framework.
A Data Infrastructure for New Zealand	DLA Piper	Use international and local precedent, best practice principles and New Zealand context to propose how a data infrastructure (particularly, the roles and interactions of different entities) should develop and function to support a data-driven economy in New Zealand.

## **WE COMPILED OUR ANSWERS AND REPORT RECOMMENDATIONS INTO INSIGHTS THAT WERE AUTHENTIC, REVEALING AND NON-OBVIOUS**

We wanted to use the lessons learned overseas to help define the challenge in a different way for subsequent consultations and the further work by the Collective. They serve as a navigation point and allow others to reflect and consider the core issues impacting the emergence of a data economy in New Zealand. The insights were compiled through a facilitated session with the research teams to distil the core themes.

Insights in hand, we wanted to highlight how data portability could lead to great outcomes for Kiwis. For this response, we chose to identify these spaces, but not define them. Identifying the possibilities and brainstorming how data can be used to drive these opportunities is the next logical step.

The design process is not intended to be static. It can be started, stopped and new information used to define the next step. Through our work, we wanted to point to how a blueprint could be designed, but not to attempt to provide a full answer of how it could be done – this needs to be facilitated and further understood. This is a work in progress, and we recognize the complexity of the system. To this end, to conclude our report we highlight areas of further work and next steps.



## 3.3

# OUR APPROACH

The Collective's approach to preparing this submission, and our ongoing engagement with Government in relation to the establishment of New Zealand's CDR, is governed by four key design principles:

The Consumer is at the heart of what we do. We are focused on creating solutions that are workable on the ground and which deliver intended Consumer experiences and benefits.

We are engaged in honest, open communication internally and with external stakeholders, to establish points of commonality and difference in furtherance of our objectives.

We take a collaborative, co-creation approach, recognising that we all have a role to play in achieving the Collective's vision and that there are plenty of opportunities for us to "expand the pie" by identifying opportunities for us to work together to create value for Consumers.

We understand that the initial design and implementation of the CDR is not the end of the road, but only the beginning. We know that the improvements to our system will be a continuous, iterative process that will require us to be adaptable, innovative and continuously engaged. We are committed to that process and are in it for the long haul.

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# OPPORTUNITY SPACES

## 4.1

# WE NEED TO DEFINE THE PURPOSE AND GOALS OF A DATA ECONOMY

We were keen to identify areas of opportunity (opportunity spaces) that NZ's data economy presents. There appears to be a convergence around themes of how data could be used to drive real change and we identify them for your consideration in the following pages.

A system's purpose is derived from participant behaviours. There are often a set of unstated assumptions that work to define a system. If we want our CDR system to be optimal and achieve better outcomes, we need it to have a well defined and understood purpose.

Following on from the deployment of their Open Banking system, the UK Government has recently launched a Smart Data Strategy, co-designed by the UK Government and a range of businesses, trade bodies and Consumer organisations. This strategy represents an overarching approach to data and aims to "unlock the power of data" by ensuring that regulation, policy decisions, priorities and potential trade-offs are all considered and administered in a deliberate, cohesive and evidence-driven way.

We need to understand, select and communicate a purpose that talk to how data manifests itself in Consumers' lives.

We believe that it should then be possible to galvanise people around a communicated purpose, to achieve buy-in as to the new possibilities of using their data and to drive meaningful change.

# Where data portability could be used\_



1. Financial Inclusion



2. Small Business Resilience



3. Personal agency, ethics and identity

- 5.1 Creating human ability to trust is core to the creation of a data economy
- 5.2 Several mechanisms for assuring and enabling trust are required
- 5.3 Focus on the end-customers as a driver of progress
- 5.4 System-wide leadership is required
- 5.5 A high-performing open data system is one built for emergence
- 5.6 A high-performing data economy is one built with empathy
- 5.7 Individual elements exist within a complex whole
- 5.8 Complexity must be navigated with confidence not certainty

# 5

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# OUR INSIGHTS

As a result of our research process, the collective compiled a significant collection of information and insights, all with a similar focus but from different perspectives.

We then engaged in an iterative process of distilling that initial source material into the insights on the following pages.

## 5.1

# CREATING HUMAN ABILITY TO TRUST IS CORE TO THE CREATION OF A DATA ECONOMY

This form of trust (the innately human sensory experience of trustworthiness) is bigger than any entity can create, yet all ecosystem participants have a role in this foundational paradigm. It is ultimately connected to individuals' own confidence to make informed and appropriate decisions with their data.

To form an effective system for the exchange of data this type of trust can be enhanced by balanced power, collective vision, established digital identity and Consumer education.

## 5.2

# SEVERAL MECHANISMS FOR ASSURING AND ENABLING TRUST ARE REQUIRED

Mechanisms for assuring and enabling procedural trust must exist to support the creation of sufficient perceptual trust in the system.

Investment in procedural trust must occur at different layers (data interactions, organisational, and systemic) and will of course benefit from being independent of vested interests. Procedural trust can be addressed through managing distributed risk, introducing transparency and reporting as well as consequences of compromised trust.

## 5.3

# FOCUS ON THE CONSUMERS AS A DRIVER OF PROGRESS

Delivering value to all New Zealanders is a collective aspirational outcome that enables stakeholder collaboration regarding the future, whilst not inhibiting the effective operation of competitive markets. Any effective data ecosystem will have Consumers close to, or at the core of its function.

A focus on Consumer empowerment in a rapidly changing digital world can act as a compelling driver of change.



## 5.4

# SYSTEM-WIDE LEADERSHIP IS REQUIRED

Leadership in the ecosystem is different than leaders within the ecosystem. For a CDR system to function effectively, a degree of legitimacy across all stakeholders is required.

Ensuring that ecosystem leadership is comprised of balanced perspectives, potentially including the use of committees and advisory groups, will be important.

Leadership with a clear role, power and vision, enabled by regulation, can drive the sector forward to a more open data environment.

## 5.5

# A HIGH-PERFORMING OPEN DATA SYSTEM IS ONE BUILT FOR EMERGENCE

Given the dynamic nature of Consumer data, the system will evolve over time as new learnings, technology, and needs emerge.

Consistency and standardisation that maintains pace with innovation can enable new opportunities to surface for the betterment of New Zealanders.

This requires an iterative approach to support flexibility and adaptability, with a particular emphasis on developing strong feedback processes.

This must be connected to a funding roadmap that is sustainable, considering both implementation and maintenance costs.

## 5.6

# A HIGH-PERFORMING DATA ECONOMY IS ONE BUILT WITH EMPATHY

Different organisations are at different stages of their journeys to a more open-data system.

This is in terms of preparedness and legacy challenges, organisational priorities, and views regarding potential risks, opportunities and compliance.

Barriers to entry exist for all organisations in the ecosystem and a degree of empathy will support the collective goals of the system.

## 5.7

# INDIVIDUAL ELEMENTS EXIST WITHIN A COMPLEX WHOLE

Components must be created with a holistic view of the entire ecosystem to promote effective interoperability, efficiency, and waste minimisation. For example, detailed and prescriptive regulation and/or standards will invariably lead to sub-optimal outcomes.

A principles-based approach will enable the system to grow in an integrated way.

## 5.8

# COMPLEXITY MUST BE NAVIGATED WITH CONFIDENCE, NOT CERTAINTY

Think big, start small. This is a complex system comprised of layers of uncertainty and unknowns.

A phased approach with experimentation and piloting will best support development.

- 6.1 Does New Zealand need a consumer data right?
- 6.2 What form could a consumer data right take in New Zealand?
- 6.3 How could a consumer data right be designed?

# 6

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# OUR RECOMMENDATIONS

# 6.1

## DOES NEW ZEALAND NEED A CONSUMER DATA RIGHT?

The Collective's view is that, yes, NZ needs a CDR. But it should be designed and implemented pragmatically, and taking into account the following recommendations:

- **Leadership with legitimacy, credibility and representation.** A successful CDR would include system leadership representative of all participants and which bears legitimacy with all stakeholders. To achieve this, it will be necessary for clearly defined roles and responsibilities to exist, with regulation as an enabler, not the driver, of data leadership.
- **Grow and strengthen the local digital economy.** Introducing a CDR could help to enable local innovation by ensuring that large global players play by the same rules in relation to New Zealanders' data.
- **Standards development to be market-directed.** To help foster innovation, the development of standards should be responsive to what the market dictates and prioritises, rather than reacting to a strongly prescribed list or sequence.
- **Collaborative regulation design.** A combination of industry and government is preferable for developing, implementing and operating the most sustainable CDR system.
- **Modernisation and alignment of related legislation.** Data generation, its use and prevalence has grown stratospherically in the years since related legislation, such as the Privacy Act 1993, was enacted. The creation of a CDR would be a useful reset moment for all other related legislative constructs to ensure they are all aligned, compatible and mutually reinforcing.
- **Phased introduction.** Using a phased approach to introduce something of the magnitude of a CDR appears sensible. This ensures high-value and/or low-risk areas are tackled first to allow learning and value to be delivered, whilst still maintaining Consumer trust. This principle would ideally apply to sector phasing, Consumer types, access types, etc.

## 6.2

# WHAT FORM COULD A CDR TAKE IN NEW ZEALAND?

The Collective's view is that, yes, NZ needs a CDR. But it should be designed and implemented pragmatically, and taking into account the following recommendations:

- **Measurable outcomes.** When the desired outcomes for a CDR are explicitly stated and quantifiable targets established, consideration should also be given to unintended consequences to ensure that critical societal areas do not suffer in the pursuit of the CDR's objectives.
- **Perceptual trust.** A potential trust deficiency is preventing greater data portability in New Zealand. The success of the CDR will be realised from the extent to which Consumers understand, and trust, the integrity and security of the system. Building trust will require a clear, consistent and transparent framework, strong Consumer communication and engagement strategy and appropriately formed oversight that is sufficiently independent of vested interests.

## 6.3

# HOW COULD A CDR BE DESIGNED?

While an inherently complex, multi-faceted exercise, key elements of the CDR design should include:

- **Define the scope of data, while allowing flexible data specifications.** Data standards can be fleshed out by the market on a per-sector basis. Allowing a variety of data standards will help Data Holders deliver faster and open the door for ecosystem innovation such as the creation of intermediaries and integration providers.
- **Accessibility and vulnerability controls to be explicit and comprehensive.** To help ensure a 'no New Zealander left behind' result for Consumer data, requirements to protect vulnerable Consumers and assist New Zealanders with impairments must be baked-in to the CDR from the beginning.
- **Consumer value proposition must form the primary "why".** Empowering Consumers by placing them at the centre of the ecosystem will be crucial in combatting apathy and driving Consumer uptake. Consumer education and engagement will be central to this. All design decisions should be made about the underlying Consumer value proposition, which should inform the wider data strategy.
- **Strong protections are required to address the data privacy risks inherent in a CDR regime.** The introduction of a CDR is an opportunity to significantly improve consumer welfare in respect of privacy rights and data control. On the other hand, the increased frequency of data sharing will increase data security risks. Robust accreditation, privacy and redress frameworks will be required to ensure that data is not shared without a Consumer's consent.
- **Appropriate funding and resourcing will be key to building confidence and trust.** Appropriately capable and resourced implementation and operational oversight, which can respond nimbly to change and participant concerns, will be vital to building confidence and trust, maximising uptake of the CDR.
- **Elements to be done well / Organisational Capability and Capacity.** There are several complex functional elements to the CDR which all need to be designed in an adaptable manner and in furtherance of the wider objectives of New Zealand's data strategy. Phasing and staged implementation will be essential to success, as will ensuring that the various components are aligned and interoperable, producing intended outcomes. Participant organisations will need to be supported by oversight structures to effectively implement and manage their participation in the ecosystem, backed up by a robust framework for redress where issues arise.

- **The CDR regime should avoid complexity wherever possible.** Getting the simple things right will be central to the realisation of the expected benefits of the CDR. Excessive detail in the CDR framework risks inefficient and sub-optimal outcomes, which will create barriers to entry. A focus on simplicity in implementation is necessary to ensure the foundations of the CDR framework function before further detail is added.
- **The CDR regime should not create unnecessary barriers to entry.** Participating in the CDR will undoubtedly carry significant cost. These costs may be unpredictable and take effect in unexpected ways, particularly in sectors that do not already have data portability work streams underway. To maximise uptake, it will be vital for the CDR to be designed and implemented in a manner which seeks to maximise value and avoid the creation of counter-productive barriers to entry.
- **Interoperability and consistency within New Zealand are key.** Government's core priority in the development of a CDR regime should be to ensure that we build a regime that is right for the local context, including New Zealand's unique culture. We do not believe the focus should be on replicating any overseas regime in New Zealand, and we support the position that Te Tiriti o Waitangi should have a foundational role in shaping the CDR. The Collective supports a CDR which facilitates consistent and interoperable standards across the wider ecosystem.
- **Risk mitigation and fair outcomes.** A fault-based regime with end to end traceability will be essential to maintaining trust in the ecosystem. No participant should be required to bear a disproportionate or asymmetrical level of risk, rather risk should be equitably distributed through a system which directly regulates all participants.



- 7.1 Further work required
- 7.2 Proposed next steps

# 7

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# FURTHER WORK

# 7.1

## FURTHER WORK REQUIRED

The Collective has worked diligently to respond in detail to the MBIE Discussion Document questions with unanimously agreed position statements. However, the establishment of the CDR is a necessarily complex and multi-faceted task.

There are several matters that the Collective has not reached a settled view on, and which require further work prior to implementation of the CDR:

- **Disclosure to non-accredited third parties:** The Collective agrees that an accreditation model is the best way to provide a minimum standard of protection for Consumer data. Permitting the sharing of CDR Data with non-accredited third parties is, in the Collective's view, a complex and fluid area which requires further research and consideration in the context of the New Zealand CDR. The position is not yet settled even in jurisdictions like Australia, which already has an established and operational CDR. Several different roles exist within a CDR ecosystem and how accreditation should work in respect of each of them requires careful further analysis.
- **Reciprocity:** The Collective is of the view that a successful CDR regime in New Zealand will need to be designed with the principle of mahitahitanga (to work as equals to create and share valuable knowledge, a principle highlighted by the Social Wellbeing Agency for use when managing data) at its core. However, the Collective is not in unanimous agreement that a blanket rule of reciprocity (like that deployed in Australia) is the best mechanism to achieve effective mahitahitanga. The Collective agrees that a Government-developed strategic data policy layer could speak to these issues and provide overarching guidance as to how we can give effect to the core principles of mahitahitanga at a sector level. However, how this will be deployed in practice through the CDR regime requires further consideration.
- **Fees for access to CDR Data:** The Collective's position is that the fees for access to CDR Data must facilitate the commercial viability of the CDR and give effect to core CDR principles of fairness, equity and sustainability. However, further work is required to determine which specific fee model will best give effect to those principles, and therefore should be implemented as part of the overarching legislative framework and/or sectoral designation instrument(s).

- **Regulatory bodies overseeing the CDR framework:** As set out in Q24-25 of Appendix One, the Collective has agreed several design principles that should underpin the regulatory body(s) charged with overseeing and enforcing the CDR framework. No existing Government body is likely to have all the relevant expertise to oversee the CDR. The Collective has not sought to specify a final view on the precise division of responsibility between regulatory body(s) overseeing the CDR framework. Instead we have listed four potential approaches to governance and oversight.
- **Consequences of Data Sharing:** The Collective agrees that increased data portability is a good thing for NZ. However, protecting Consumers their data is increasingly used by third parties (including via artificial intelligence tools) remains an ongoing priority for the Collective.

## 7.2

# PROPOSED NEXT STEPS

We are encouraged by, and grateful for, MBIE's early indication that it intends to design, implement and once implemented, work to continuously improve, the CDR in partnership with industry participants. We are optimistic that the establishment of the Collective and the detailed submission provided demonstrates the willingness of industry participants to engage constructively and helpfully in that process.

There are a few work streams that the Collective intends to undertake as its "next steps", including:

- the establishment of the Collective as a not for profit entity, including:
  - establishing a governance framework and technical and other working groups as required;
  - delivery of a detailed work plan and sustainable funding roadmap; and
  - establishing a continual improvement process to maintain and strengthen engagement, inclusivity, diversity of perspective and healthy conflict in the Collective;
- continuing the work already commenced to establish a vision (plus outcomes and objectives) for a New Zealand data economy, including by engaging further with identified experts on further questions arising from this process;
- further investigate and agree on system goals and possible system use cases that align with the goals of the nation and the Collective members; and
- identifying ecosystem stakeholders and inviting them to join the Collective, growing our representation of ecosystem participants. We are particularly interested in increased consultation and coordination with Consumer-led advocacy groups to support engagement with New Zealanders.

The Collective participants would of course be pleased to meet with MBIE and other Government officials to discuss any aspect of this submission further, as well as to participate in any workshops that MBIE facilitates as part of this consultation process. The Collective's intention is to also submit on any further rounds of formal, written consultation that MBIE engages in.

For the purposes of further engagement with the Collective, in the first instance please reach out to:

**Matt Haigh**

Westpac New Zealand

**Contact points at Collective member organisations are as follows:**

ākahu	Josh Daniell
APImetrics	Daniel Spector
ASB Bank Limited	Andrew Dodd
BlinkPay	Daniel Karehana
Common Ledger	Carlos Chambers
Kiwibank	Jade Coyle
Middleware Group Limited	Sera Skinner
TSB Bank Limited	John Evans
Westpac New Zealand Limited	Matt Haigh

Thank you again for considering our collective views.

# A1

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## APPENDIX 1: RESPONSES TO THE MBIE DISCUSSION DOCUMENT CONSULTATION QUESTIONS

# A1A

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DOES  
NEW ZEALAND  
NEED A  
CONSUMER  
DATA RIGHT?

Inhibitors to Data Portability  
Benefits, Costs and Risks  
Scope

# Q1

## ARE THERE ANY ADDITIONAL PROBLEMS THAT ARE PREVENTING GREATER DATA PORTABILITY IN NEW ZEALAND THAT HAVE NOT BEEN IDENTIFIED IN THIS DISCUSSION DOCUMENT?

The Collective does not disagree with any of MBIE's observations regarding factors preventing data portability in NZ. However, it is also important to recognise that there is already significant investment and innovation occurring in NZ in respect of data portability (notwithstanding the absence of a CDR framework). It is incorrect to assume that, in the absence of a CDR, little-to-no data portability technology development would occur in NZ. The Collective's experience is that development is occurring across multiple sectors in both the private and public sector (including health, transport and others). The CDR presents the opportunity to enhance that development but, if poorly implemented, may also hinder it.

The valid barriers presented in the MBIE Discussion Document reflect broader challenges preventing greater data portability across multiple NZ sectors. Regulatory settings are an important tool in improving data portability across the economy, but they are not the sole determinant. This submission accordingly refers to both:

- regulatory settings which the Collective believes will assist in designing a system which achieves MBIE's objectives; and
- other potential factors (aside from the regulatory settings) which will assist in meeting those objectives also.



Overseas experiences tell us that designing a CDR which is Consumer-centric is key to its success. Whilst significant existing CDR innovations are already underway in NZ, research commissioned by the Collective suggests bias (conscious and unconscious), a compliance-based mind-set and the high levels of risk that accompany being a first mover in data portability innovation has, in many cases, resulted in a focus on data standards, rather than Consumer experiences.

The Collective's view is that the implementation of the CDR provides a good opportunity to "reset" these underlying drivers and reassert the centrality of Consumers in the ecosystem. To achieve this, the CDR's design should be mindful of not incentivising Data Holders, Data Recipients and intermediaries to adopt an approach which is focused on managing risk, compliance and integration with legacy systems. On the contrary, the focus ought to be creating value for NZ Consumers and businesses, and "bringing them on the journey". We acknowledge that this can be challenging, not least because it is difficult to show Consumers an experience that has yet to be created. However, if, and only if, the CDR is implemented with that overarching goal in mind, greater data portability and utility will be achieved in a way that benefits NZ.

The research commissioned by the Collective suggests that there may be significant hurdles in achieving these objectives in parts of the ecosystem, including:

- the significant costs associated with updating legacy systems to allow for data portability innovations;
- a lack of competitive pressure to innovate; and
- the siloed structures of several large organisations charged with this development.

In that context, many meaningful, Consumer-centric data portability innovations are yet to be realised. The Collective's view is that:

- an ecosystem-wide, cooperative approach, inclusive of all ecosystem participants (including Consumer advocacy groups) is necessary to provide the representative and visionary leadership required to create a Consumer-welfare enhancing framework;
- public education regarding the benefits of data portability is pivotal. In particular, the Government and ecosystem participants must actively push-back against the potential public misconception that "open" data or "data sharing" makes Consumer data less secure; and
- establishing Consumer uptake and trust, including via the mechanisms discussed in this paper and the development of strong use-cases in the public sector and designated pivotal sectors, should be a key tenet of the CDR framework design and implementation.

The Collective's view is that, while this is a complex, multi-faceted exercise, this overarching Consumer-centric mindset is required to achieve a CDR framework that creates sustainable and long-lasting benefits for all of NZ.

## Q2

# DO YOU AGREE WITH THE POTENTIAL BENEFITS, COSTS OR RISKS ASSOCIATED WITH THE CONSUMER DATA RIGHT AS OUTLINED IN THIS DISCUSSION DOCUMENT? WHY / WHY NOT?

The Collective broadly agrees with the potential benefits, costs and risks identified in the MBIE Discussion Document. It makes the following observations about those benefits and costs / risks. (See also the response to Q7 below).

BENEFIT / COST	COLLECTIVE COMMENTS
Enables Innovation	<p>MBIE is correct to identify the CDR as potentially enabling innovation. However, it will be only one component of success for NZ to realise the broader benefits of innovation activity. A broad suite of innovation-focused policies to support tech innovation in NZ could be particularly relevant for domestic post-COVID recovery. Despite perceptions, NZ does not in fact rank highly on most innovation indices (see e.g. the 2020 Bloomberg Innovation Index), and the problem of comparatively low levels of investment in innovation by NZ businesses (and consequent relatively low productivity within our domestic macro-economic picture) is consistently referred to in the work of the Productivity Commission, the OECD and others. The CDR can help to achieve this, but it cannot do so single-handedly.</p> <p>It should be made clearer that one objective of the CDR is to grow and strengthen the local digital economy. While major global data-oriented businesses plainly could have an important role to play in the uptake of the CDR framework, it is important that the Government actively considers how its governance and oversight jurisdiction extends to off-shore businesses. For example, MBIE will need to further consider the circumstances (and sectors) in which overseas organisations:</p> <ul style="list-style-type: none"><li>• should be designated as in-scope "Data Holders"; and/or</li></ul>

BENEFIT / COST	COLLECTIVE COMMENTS
	<ul style="list-style-type: none"> <li>• be subject to other mechanisms promoting participants working together as equals to create and share valuable knowledge (see response to Q16 below).</li> </ul> <p>The development of standards would need to be more responsive to what the market dictates to avoid the unintended consequences of stifled innovation through an excess of prescriptiveness.</p> <p>An ecosystem-wide mindset shift is required in realising what the future could hold for the business model of a traditional large Data Holder. While innovation and opportunity are a significant upside, this will not be realised as a benefit with the current compliance-focused approach of some Data Holders.</p>
Facilitates competition	<p>The Collective agrees that a potential benefit of the CDR is facilitating competition. To deliver this benefit (i.e. to move it from a potential to an actual benefit), the CDR framework will need to have a high degree of Consumer awareness, confidence and uptake. If Consumers do not trust the integrity of the system, it will not deliver the desired outcomes.</p> <p>The Collective supports the sectoral designation approach and encourages MBIE to consider how competition occurs in each sector as and when it designates that sector. For example:</p> <ul style="list-style-type: none"> <li>▪ the extent to which the CDR framework can facilitate Consumer switching and increased competition will vary significantly sector-by-sector depending on, for example, the level of digitisation in that sector; and</li> <li>▪ the Collective has concerns for vulnerable Consumers, who could be harmed if competition in certain sectors moves predominantly to take advantage of the digital CDR framework.</li> </ul>
Increased Productivity	<p>The Collective agrees that the CDR framework has the potential to reduce search and switching costs, and to enable Consumers to have greater visibility as to how those products will best meet their needs. Again, however, the extent to which this will result in actual (rather than just potential) increased productivity will depend on the sector (the existing rate and costs of switching and searching, the elasticity of demand, etc). Work to quantify current switching costs and model the potential uplift benefits of the CDR should be done as part of the designation process.</p> <p>By way of example, the introduction of the UK Open Banking regime is yet to have the significant benefits that its proponents had hoped for. This has been attributed to a failure to prioritise Consumer awareness as part of the initial implementation of the CDR (as advocated for in response to Q16-17), and has meant that there have been very limited numbers of users trying Open Banking-powered personal financial management applications and innovation (above and beyond the established use of such services using earlier data access processes). This has meant that the adoption of meaningful Consumer experiences has been very limited to date.</p>

BENEFIT / COST	COLLECTIVE COMMENTS
<p>Strengthened privacy and data protections / Increased security and privacy concerns</p>	<p>We agree that the CDR framework could provide more protections than data sharing through some current techniques (e.g. screen scraping).</p> <p>The flipside is that the increased frequency of data sharing under a CDR will increase data security risks, as MBIE has identified. It will be important for robust accreditation, privacy and consent, and redress frameworks to be in place. Security and data protection risk mitigation requirements will be further heightened by any write access rights. On balance, this leads the Collective to the view that write access might optimally be provided for in the overall framework, but only introduced in a subsequent phase of implementation (once Consumers have awareness, confidence and trust in their new data rights).</p> <p>As discussed in response to Q16-17, education of Consumers regarding their new data rights, the consent processes and the implications and opportunities of increased data portability will be important. While having robust consent and accreditation processes will of course assist with this process, those processes are only as effective as the Consumers that use them. The Government should prioritise Consumer education as part of its CDR implementation.</p>
<p>Improving Consumer welfare</p>	<p>Subject to sufficient privacy and data protections, and associated Consumer education, being put in place, the CDR has the potential to significantly improve Consumer welfare in respect of privacy rights and data control. (See also Q16 below.)</p> <p>Protection for those Consumers who are:</p> <ul style="list-style-type: none"> <li>▪ unfamiliar with data portability and consent processes (via Consumer education, for example);</li> <li>▪ data poor Consumers, who risk becoming further economically disenfranchised because of the CDR; and</li> <li>▪ other vulnerable Consumers (e.g. those without internet access), will be very important in this context also. (See also Q19 below.)</li> </ul>
<p>Barriers to entry</p>	<p>Being a participant in the CDR ecosystem will undoubtedly carry significant costs for businesses. These costs may be unpredictable and take effect in unexpected ways, particularly in sectors that do not already have data portability work streams underway. The Collective accepts that it is right, and to be expected, that some prospective Participants will not be able to access CDR data until they can meet reasonable accreditation standards. The accreditation process should prioritise Consumer protection but should also aim to be streamlined and not overly complicated. This has been a pitfall in other jurisdictions. Using established global accreditation standards relevant to designated sectors (such as ISO and PCI) should be strongly considered. For example, participants in the Australian CDR consider the inability to use accreditation they already had – passporting – as a shortcoming of that accreditation process.</p> <p>In that context it will be vital for the CDR to be designed and implemented in a manner which does not create insurmountable barriers to entry. The lower the barriers to entry, the higher the uptake of Data Holders and Data Recipients will be.</p>



# Q3

## ARE THERE ADDITIONAL BENEFITS, COSTS OR RISKS THAT HAVE NOT BEEN EXPLORED IN THE ABOVE DISCUSSION ON A CONSUMER DATA RIGHT?

There are several other potential benefits, costs and risks arising out of the CDR implementation that were not directly identified in MBIE's paper.

BENEFITS	COSTS / RISKS
<p>The CDR implementation process in itself creates a key opportunity for improving Consumer understanding and trust of data portability by, for example, giving Consumers clarity into which organisations are in possession of their data. Without the right narrative, information and communication, this could easily turn into a significant risk if citizens are unhappy with the change. Recent press coverage demonstrates that we are in an age of heightened sensitivity to data usage by organisations in tension with the collective benefits (see for example, the media coverage to the COVID-19 response).</p>	<p>If not thoughtfully designed, the CDR implementation could carry significant implementation costs, particularly for Data Holders. These could include:</p> <ul style="list-style-type: none"><li>▪ technology costs, such as system build and integration;</li><li>▪ business costs, such as change management, risk and compliance;</li><li>▪ industry costs, such as administration of industry-funded or resourced bodies;</li><li>▪ the costs of involvement in the development and maintenance of standards; and</li><li>▪ indirect costs including change impacts, servicing and supporting Consumers.</li></ul> <p>Data Recipients will also incur accreditation and compliance costs, and the regulatory and governance bodies will also have to incur costs in their oversight and enforcement functions.</p>

BENEFITS	COSTS / RISKS
	<p>These costs will be lessened by:</p> <ul style="list-style-type: none"> <li>▪ regulatory certainty and clear communication channels between Government, any regulators that are charged with administering the regime, and Consumer participants will be key in mitigating that potential effect and ensuring equitable distribution of costs; and</li> <li>▪ a weighing of the costs and benefits of the CDR framework prior to designating sectors.</li> </ul>
<p>Some sector-by-sector differentiation regarding the CDR is inevitable due to the proposed sectoral designation approach (which the Collective agrees with in principle). However, the Government should also be mindful of ensuring that its CDR framework caters for Consumers across multiple sectors by, for example, taking steps to ensure appropriate data interoperability between industries (therefore encouraging inter-sector and trans-sector Consumer innovations).</p>	<p>Increased economic inequality and financial exclusion arising from Consumer profiling by businesses. This could occur using granular data that allows for finer tuned risk segmentation or less transparent artificial intelligence (AI) informed decision-making, for example.</p>
<p>The CDR framework and government intervention can support in levelling the playing field, thereby increasing opportunity and constraining bad actors from compromising the system.</p>	<p>A CDR could reinforce a reliance on Government to step in to enable system change. Organisations with very little spare capacity are of course inclined to prioritise resourcing to ensure compliance with legal and regulatory requirements. In a CDR context, this risk participants taking a risk-mitigation approach, stifling innovation. A CDR framework which is designed and implemented via a government / industry partnership structure appears to be preferable for developing a more sustainable system.</p>
<p>The CDR framework creates a strong opportunity to support the creation of a unified digital identity mechanism and system that would have far reaching benefits (e.g. convenience, timeliness, engagement, interoperability) to Consumers as they interact with the public and private sector.</p>	<p>There is a risk that the CDR framework does not become the obvious choice for use cases that require Consumer data portability. If this happens, then there is a risk that multiple distinct Consumer data portability environments emerge undermining the potential value of the CDR.</p>

We bring together diverse voices, forging connections between them so we can find common ground and mutual understanding; our passion is balanced by our pragmatism, because that's how we make true progress\_

## Q4

# WHAT WOULD THE COSTS AND BENEFITS BE OF APPLYING THE CONSUMER DATA RIGHT TO BUSINESSES AND OTHER ENTITIES, IN ADDITION TO INDIVIDUALS?

In principle, we support applying the CDR to businesses and other entities (Non-Individual Entities). However, we are of the view that:

- the specific eligibility of in-scope Consumers (both individuals and Non-Individual Entities) should be considered on a case by case basis at a sector level and the CDR framework should ensure that the scope of CDR Data (or other appropriate definitional element in the applicable designation) appropriately defines Consumer inclusion by reference to a robust cost / benefit analysis (as described below);
- phasing should be used, allowing Data Holders time to first go live with less complex categories of Consumers (e.g. individuals). Once the CDR is live for those Consumers, more complex Consumer categories could be introduced to the system. This phased approach, with building complexity, will:
  - improve viability of the CDR implementation;
  - allow Consumers to build familiarity and confidence in a CDR framework that is accessible for them); and
- the CDR designation or sector-specific rules should include a detailed description of, and "bright line" tests to clearly articulate which Consumers are in and out of scope. Uncertainty around in-scope Consumers adds unnecessary time and cost for Data Holders and Data Recipients as they rework delivery of service.

To the extent that Non-Individual Entities are included in the CDR, the Collective agrees that an initial emphasis on small businesses in the implementation of the CDR is worthwhile. This focus on SMEs will aid in the simplicity of the initial implementation, although the "simplest" account type is those of individuals (hence the Australian approach of excluding all Non-Individual Entities from the implementation of the CDR).

However, for completeness, we note that the benefits and potential use cases of the CDR also extend to big businesses. For example, allowing businesses to connect their bank data to an accounting software provider creates significant benefits regardless of size.



## SECTOR-SPECIFIC APPROACH

Whilst the Collective broadly supports the inclusion of both Consumers and Non-Individual Entities within the scope of the CDR, a basic cost / benefit analysis needs to be undertaken for each sector to ensure that the risks and costs associated with applying the CDR to different categories of 'in scope' Consumers are justified. That analysis needs to be undertaken separately for both individuals and Non-Individual Entities at a sector-specific level in each case.

Factors that should be considered in any such cost / benefit analysis include:

- the level of digitisation of products already made available to different sectors, including small and medium sized businesses;
- the complexity of consents and authorisations (for example, joint accounts or complex business accounts, considered further below); and
- the benefits of the CDR to the relevant Non-Individual Entities.

This approach would be consistent with the position in Australia where Consumer eligibility criteria (for both individuals and Non-Individual Entities) are set at a sector-specific level. For example, in Australia eligible Consumers in the banking sector must hold an open banking account with the applicable Data Holder, with that account set up to allow it to be accessed online. These sorts of outcomes could be prescribed through the definition of in-scope CDR Data or other definitional elements in each relevant sector. There are also further specific provisions dealing with complex Consumer types in overseas jurisdictions which could be reflected in sector designation instruments where appropriate, as discussed below.

Two other types of Consumers which appear to be excluded from other CDR regimes internationally, an approach the Collective agrees with, are:

- *Minors*: In the Australian CDR consultation process, the Consumer Policy Research Centre submitted to the ACCC that the risks of participation outweigh the benefits for minors as they tend to have lower capital and a higher risk of data exploitation than other Consumers.<sup>1</sup> It further submitted that profiling may result in unfair outcomes for minors in accessing products in the future. The Australian regime requires individual Consumers to be 18 years or over.
- *Former Customers*: The inclusion of former customers could, depending on the specific requirements placed on businesses, be anticipated to add significant additional cost to Data Holders, while yielding only marginal benefits. There would also be challenges with identity and authority verification, as most existing methods for doing that in an automated fashion require the party to be a current customer. Excluding former customers would be consistent with the Australian regime.

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<sup>1</sup> Page 7 of Consumer Policy Research Centre's submission to the ACCC on the CDR Rules framework (October 2018), available [here](#).

## PHASING SHOULD BE USED FOR IMPLEMENTATION OF COMPLEX TYPES OF CONSUMERS

The risk to successful and timely delivery of the CDR would be heightened if all Consumer types are required to go live at the same time. To mitigate this implementation risk and ensure Consumer trust in the CDR is preserved, the CDR should first go live with lower-risk straight-forward individual Consumer types. More complex Consumer types (e.g. where complex authorisation procedures are required) should then be phased in later.

Examples of more complex Consumer types which should only be included in later phases of implementation for all sectors are:

- *Complex business accounts:* The access, consent and authorisation structures on complex accounts (e.g. only certain staff being able to view certain accounts or authorise payments from a major business in the banking sector) would need to be accommodated in the CDR regime applicable to the relevant sector.
- *Joint accounts:* A CDR, which would allow one joint account holder to authorise data sharing or a transaction and then require that other joint account holders (a) be notified of that authorisation and (b) given the option to reverse it, will require Data Holders to build complex notification systems (a functionality that the majority of Data Holders do not currently have). Some joint accounts also have different rights and data access permissions for different users. In that context, a process where one Data Holder can authorise transactions and data sharing on behalf of all Data Holders is insufficiently sophisticated. Further, procedures need to be put in place where vulnerable joint account holders are at risk of consent notifications compromising one joint account holder's safety. Again, a sector-specific approach will be required as there will be different issues relating to joint accounts in different sectors. For example:
  - in the energy sector, occupants of a residence may not be the account holder. A situation where a landlord could consent for a tenant's electricity usage data to be shared would, however, be inappropriate; and
  - in banking, joint accounts often commonly have separate users and owners. For example, business accounts often permit the staff carry credit cards and can make payments below a certain threshold, but those staff cannot see or share other data associated with the account (e.g. the size of the business' cash reserves). The application of the CDR to those accounts would be inherently complex.

The Collective does however note that Open Banking UK is currently developing standards to manage consents from multiple signatories, and these will likely be resolved by the time that the initial implementation of the CDR occurs in NZ.

## Q5

# DO YOU HAVE ANY COMMENTS ON THE TYPES OF DATA THAT WE PROPOSE TO BE INCLUDED OR EXCLUDED FROM A CONSUMER DATA RIGHT (I.E. 'CONSUMER DATA' AND 'PRODUCT DATA')?

What data is "in scope" and "out of scope" will be a key determinant of the success of the CDR. The data considered "in scope" should be determined on a sectoral basis in consultation with industry participants, including, for example, loyalty, grocery, finance, banking, telecommunications, superannuation and accounting data. The Collective's high-level views regarding the scope of Consumer and product data are set out below.

### **CONSUMER DATA**

#### **IDENTITY DATA**

The inclusion of identity data within the scope of the CDR regime is likely to support the development of numerous CDR use cases and is aligned with the Privacy Act principle that Consumers should have access to their data.

We used to the term "identity data" in this context to refer to key personal identifiers commonly used to onboard new Consumers (e.g., name, date of birth and address). We expect that "identity data" should include and be consistent with:

- identity information obtained from / transferred by the Digital Identity Trust Framework;
- a permitted use case to allow the use of account name and other characteristics of the standard APIs for the purpose of increasing the trust – say for example to mitigate fraud; and
- subject to the terms of the new Trust Framework, an entirely new service that allows third parties to rely on the Anti Money Laundering (AML) / Know Your Customer (KYC) data from the banks.

To achieve the expected benefits from including identity data, it will be important that:

- the inclusion of identity data as "in scope" is aligned with the existing digital identity work streams that are currently underway at the Department of Internal Affairs ("**DIA**"); and
- the inclusion of identity data as "in scope" is accompanied by a robust and certain liability framework, given the significant penalties for, for example, a breach of NZ's AML regime. For example, it will be important for the liability framework to clarify that, in circumstances where a Data Holder took reasonable steps to ascertain the accuracy of the identity data, it is not liable to compensate a Data Recipient who breaches AML legislation due to receiving incorrect data. To provide otherwise would impose an unreasonably high burden of liability on Data Holders in respect of such data which may be re-shared many times with numerous different CDR participants.

## HISTORIC DATA

An equitable balance needs to be struck between the value to Consumers of having access to historic Consumer data under the CDR, and the potentially substantial cost to Data Holders of making historic data available via the CDR (much of which may not currently be held in a digital form). Other jurisdictions have undertaken this balancing task by including an initial holding date for in-scope CDR data.

For example, the Australian regime required circa 2.5 years of historical banking data to be made available as in scope prior to the go-live date of the Australian CDR.<sup>2</sup> The Australian approach was influenced by the obligation at law to hold transaction data for seven years, but was tempered in the initial stages of a CDR, by the belief that a requirement to provide seven years of transaction data history could impose unacceptably high costs on Data Holders (as it may be longer than the Data Holders would otherwise make such data available via internet or mobile banking).

Using this formulation, the historic data element of the CDR develops organically over time, without imposing an unreasonably high cost on Data Holders to convert historical data to digital form. In our view this is the most efficient approach to the provision of historic data under the CDR.

The appropriate initial holding date for each sector may be different owing to the state of technology in the relevant industry and the level of digitisation of data. We are therefore of the view that, like in Australia, the initial holding date for each industry should be determined at a sector level, taking into account sector-specific factors and costs and balancing that against value to Consumers of having access to a level of historic data initially.

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<sup>2</sup> Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2019 (available [here](#)).

## ENHANCED DATA

We agree with MBIE's preliminary view that data which Data Holders have applied insight or analysis to, such that the value of the raw data has been materially enhanced (Enhanced Data) should not be "in scope" of a CDR. If Data Holders are required to share Enhanced Data (or are required to do so without adequate compensation) they may be disincentivised to invest in generating it. This could lead to poorer Consumer outcomes than if the Data Holders had invested in generating Enhanced Data, which is counter-productive to the objectives of the CDR. Excluding Enhanced Data from the CDR and/or permitting Data Holders to charge a commercially reasonable fee for it is also consistent with the approach taken in several overseas jurisdictions, including Australia, the EU and UK.

By way of clarification, Enhanced Data is distinct from derived data. In a financial services context, an example of derived data is accounting data, i.e. categorised information which is held in a SME's accounting ledger. This does not meet the test of being "materially enhanced" because it is not derived from the application of insight or analysis. Rather, it is derived directly from bank feed information by the SME themselves performing a categorisation activity. Materially enhanced data on the other hand might include, for example, the output once such categorised data has been analysed to form the basis of a credit assessment for the purposes of a lending decision. A growing majority of SMEs increasingly understand and utilise their data through the medium of an accounting ledger rather than a bank account, and so derived data should be included within the scope of the CDR.

## PRODUCT DATA

The value that can be derived from product data will significantly vary sector-by-sector:

- there are some sectors where the provision of product data to, for example, aggregators or other price comparison services would significantly improve Consumer switching opportunities and, therefore, competition between suppliers. Those sectors where suppliers sell homogenous or near-homogenous products on similar terms, with minimal amounts of bundling or ancillary services, are ideally suited to a CDR framework that includes product data; but
- where services are bespoke to the Consumer, commonly involve bundling of products, and have significant variations in the terms and conditions between Consumers, it will require significantly more work for Data Recipients to extract valuable insights from that data.

Given that there is sector-by-sector variation in the potential value to be derived from product data:

- the product data that is "in scope" of the CDR in a particular sector should be determined as part of the sectoral designation process, to ensure that the product data most likely to deliver valuable insights to Data Recipients, and to ultimately improve Consumer switching and competition, is prioritised in the CDR implementation in that sector. Whether particular product data is commercially sensitive could also be considered at this juncture in the process;

- whether product data is required to be included (i.e. has to be provided by the Data Holder on request) or voluntary (i.e. does not have to be provided but can be (e.g. for a fee)) should also be determined on a sector-by-sector basis; and
- the Collective is of the view that a process should be included as part of the sector designation process, whereby feedback is captured from those consuming APIs and a backlog of new features and requests developed, enabling change to be delivered over time incrementally without losing momentum on the development of further standards.

We note that sectors have differing levels of common product specifications. This may require further definition before a CDR regime could successfully apply these standards. An example of this is the financial services sector, where no common product classification standard exists at all.

# A1B

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WHAT FORM  
COULD A  
CONSUMER  
DATA RIGHT  
TAKE IN  
NEW ZEALAND?

## Q6

# WHAT WOULD THE COSTS AND BENEFITS BE OF INCLUDING BOTH READ ACCESS AND WRITE ACCESS IN A CONSUMER DATA RIGHT?

There are demonstrable Consumer benefits to a CDR regime with write access. Without write access, Consumers are less easily able to act on CDR Data and the insights that are generated from it. Not giving write access could therefore limit the Consumer benefits that can be achieved through a CDR.

In their submission to the Australian Government on its equivalent discussion paper, Data Recipient representatives, FinTech Australia and Cuscal claimed that allowing third party write access would be "the biggest reform to empower customers and improve bank competition".<sup>3</sup> Enthusiasm for this is, however, caveated by the increased complexity involved in including write access. This caveat is discussed later in this response.

There are several scenarios where write access could assist in achieving MBIE's objectives, including:

- Consumers switching accounts at one bank, insurance or telecommunications provider to another. Write access would enable both the opening of the account at the new provider, and closing of the Consumer's accounts at the previous Data Holder;
- new services could enable SMEs to understand how healthy their business is with live Consumer Data and Product Data from multiple sectors fed into a single dashboard across a range of metrics; and
- SMEs could choose to optimise parts of their business, with automated adjustment of financial services products (e.g. for lending, business insurance, invoice finance, etc.) to achieve the most competitive and appropriate option for them. Write access is required for both closing previous accounts and activating the transition from and to providers.

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<sup>3</sup> Australian Treasury report entitled "Open Banking" dated December 2017, available [here](#).



These examples, amongst many others, provide a compelling case for why the Collective believes that write access data should form an important part of NZ's medium-term aspiration for its CDR framework.

This compelling case needs to be measured against the sizable complexity in the inclusion of write access in the initial implementation of a CDR regime. While write access data represents a key driver of value for Consumers, successful implementation of write access data will require Consumer knowledge and trust of the CDR regime to be bedded-in first, this will also need to be supported by a strong liability and risk framework to ensure a sensible approach is taken. Accordingly, we think the staggered approach that the Australia has taken in respect of its CDR represents a sensible way forward.

The Australian Government has recently announced its intention to consider the addition of write access in the next phase of its CDR implementation. This was well captured by the submission to the Australian Government of Consumer advocacy group Financial Rights Legal Centre, who noted that “[r]ead only access must be full bedded down and a review undertaken before the CDR functionality is expanded to include write access”.<sup>4</sup> This staggered approach, which focuses on getting the foundations of the CDR right before adding additional layers of complexity, is, in our view, the most sensible to generate and preserve Consumer trust and confidence in the CDR.

The implementation of Option 2 as contemplated by the MBIE Discussion Document, is already an ambitious program for the initial implementation of the CDR in NZ. The scheme in Australia is the most broadly applicable, mandatory regime in the world, applying to a wide range of market participants, a broad range of information and any sector designated as being in-scope (financial services and energy, so far, with telecommunications likely to be the next cab off the rank). By contrast, in Europe where write access is permitted, the CDR framework is much more limited in scope (applying solely to the financial services sector).

Starting with read access only in the initial implementation of the CDR removes some of the risk and uncertainty about the ability of the technology, data security and regulatory standards to support more complex write access and reduces security risks for Consumers accordingly. Providing write access before Consumers have confidence in read access could put the success of a wider single data economy at risk.

Including write access as part of MBIE's Option 2 framework would effectively amount to NZ, on day one, attempting to implement the most far-reaching CDR framework in the world. We agree that this should be NZ's aspiration. But a phased approach, where write access is introduced in a planned second phase of the CDR rather than at the initial implementation phase, is the best way to achieve MBIE's stated objectives to:

- maximise innovation, by ensuring that Data Holders and other ecosystem participants have sufficient resource to participate in the ecosystem in a way that delivers value and insights to end Consumers (vis a vis being burdened by the requirements of such a large system from the outset); and
- ensure achievable implementation targets for industry participants and promote reliability and therefore Consumer trust in the CDR framework.

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<sup>4</sup> Financial Rights Legal Centre May 2020 response to The Treasury Inquiry into Future Directions for the Consumer Data Right

## Q7

# DO YOU HAVE ANY COMMENTS ON THE OUTCOMES WE ARE SEEKING TO ACHIEVE? ARE THERE ANY ADDITIONAL OUTCOMES WE SHOULD SEEK TO ACHIEVE?

The Collective agrees with the outcomes at a high level.

### OVERARCHING VISION AND PRIORITIES

To assist market participants to "operationalise" the decided outcomes for a CDR regime, it may be helpful for the outcomes to sit beneath an overarching vision for the regime (for instance, a vision putting Consumer or societal benefits at the heart of the ambition for a CDR regime or data economy for New Zealand).

It would also be useful for measurable steps to achieve the outcomes to be identified and shared as well as information to guide the prioritisation of objectives.

### QUANTITATIVE ASSESSMENT OF OUTCOMES

While the MBIE Discussion Document sets out a high-level qualitative assessment of the CDR and potential options for its implementation, the outcomes analysis would benefit from further quantitative assessment of the costs and benefits that a CDR framework would generate.

In particular, the Collective encourages MBIE to undertake further quantitative analysis to:

- better understand the current size of the data economy today, absent the CDR framework;
- set realistic socially beneficial targets for the CDR to achieve (e.g. % increase in Consumer switching over a number of years or % change in awareness and support of the CDR by Consumers by a certain date);
- introduce measurement indicators to determine progress on how the CDR is achieving those targets (see Q26 below); and

- compare the costs and risks against the expected, achievable benefits, using that to inform the creation of a broader CDR framework, and its implementation in particular sectors.

It may well be that in some sectors, given existing open data innovations already taking place, the benefits of CDR implementation would not outweigh the costs. We encourage MBIE to take this outcome-oriented view of its role.

#### INNOVATION CREATING OUTCOMES NOT YET KNOWN

It is neither appropriate nor desirable for MBIE to predict or decide the complete set of data portability use-cases and innovations, even those that will be the key to achieving the policy goals underpinning a CDR. Instead, this should be developed in conjunction with work by the private sector, who will be encouraged to undertake this R&D and innovation with a view to the potential benefits of data sharing and portability.

As an example of this, there may be significant trade-off, in the near-term, for banks investing in the conversion to a more data-driven economy. This would be both in terms of implementation and compliance, as well as the opportunity cost of not focussing on bettering alternative services. It is possible that an efficiently functioning CDR would lighten the compliance load for financial service institutions and increase productivity. This should, however, be considered a longer-term outcome, while economic development in the short-term should be pragmatically assessed given the investment in transition.

Natural capital outcomes should also be considered as more open data can also support the sustainability objectives of ecosystem players through the increased efficiency and reduced waste as well as national objectives. Alignment on overarching societal and planetary goals may support the vision behind what the CDR and open data can help to achieve.

It should also be noted that given the emergent and rapidly accelerating nature of data usage, there are unknown outcomes that we currently do not understand. The economic outcomes must also be considered in regard to the data flow and access through powerful global tech companies and the impact that would have (positive and negative) through their participation in a data-driven economy in NZ.

## Q8

# DO YOU HAVE ANY COMMENTS ON OUR PROPOSED CRITERIA FOR ASSESSING OPTIONS? ARE THERE ANY ADDITIONAL FACTORS THAT SHOULD BE CONSIDERED?

The Collective agrees with the criteria used for assessing options.

Trust is of paramount importance for the successful implementation of the CDR. While privacy rights and data security protections will be important in building that trust, the Collective's view is that this criterion is of significantly broader application. Consumer trust will also rely on:

- the data portability framework giving rise to outstanding Consumer experiences (see Q16-18);
- a clear consent framework so that Consumers have good visibility on how their data is being shared and with whom (including where businesses are using that data in AI / machine learning processes); and
- ensuring that the framework actively grows the local digital economy (see Q16-18).

The Collective also observes that none of criteria explicitly consider Consumer outcomes. A reflection from Scott Farrell, Chair of the Australian Government's Open Banking Review, on learnings from the Australian experience was "the need to focus on workable outcomes and the need to make it work for customers first, not the holders and recipients of data first".<sup>5</sup> Given the wider objectives of the CDR proposal, a value-driven assessment criteria could be added to MBIE's list, to ensure that the framework selected delivers the most value to New Zealanders without placing undue burdens (for example, risk exposure and cost) on any particular participant.

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<sup>5</sup> The Paypers Exclusive Interview with Scott Farrell on Open Banking in Australia, December 2019, available [here](#).

## Q9-15

# DO YOU HAVE ANY COMMENTS ON EACH OF THE FOUR OPTIONS SET OUT IN THE DISCUSSION PAPER, AND WHICH OF THOSE OPTIONS IS YOUR PREFERENCE?

Our view is that the most programmatic framework for NZ is Option Two. However, the Collective does propose some modifications to MBIE's proposed Option Two framework, including:

- where work is underway and sector-specific thinking on data portability and usability is already advanced, consideration should be given to how that work can be folded into the CDR to avoid losing momentum and duplication and wastage of resources;
- the development of an intermediary strategic layer of policy, as discussed below; and
- while we support the sectoral designation approach, the framework should also allow for parties in non-designated sectors to voluntarily operate within the CDR legislation and some overarching rules. This would allow greater innovation and be more consistent with an ecosystem-led data economy.

The success of the CDR program will arise from the extent to which Consumers understand and trust the integrity and security of the system, and whether it delivers outstanding innovations and outcomes for them. This is the lens that the Collective has adopted in assessing the four options presented by MBIE.

### **A STATUS QUO APPROACH (OPTION ONE) DURING INITIAL IMPLEMENTATION IS IMPORTANT**

There is already significant investment in open data technology occurring in several sectors. For example, in the financial sector, MBIE is encouraging the API Centre work to continue, and the MBIE Discussion Document suggests that regulation could be a backstop for industry led work. The API Centre has a program of work laid out to address the improvements recommended by its participants such as the resolving the inefficiency of the early life-cycle, reforming the approach to on-boarding and bilateral agreements, and the next improvements of payment and account information API feature sets.

It is of paramount importance that in the years that it takes to implement a CDR framework, investment can continue unstifled. There is a risk the commercial parties currently making those investments will press pause on that work until

there is greater regulatory certainty regarding the likely CDR end-state and, in particular, the possibility that the regulatory framework renders their investments unusable. This would be highly undesirable for the NZ economy, putting our open data technology a further two to three years behind front runners around the world.

To mitigate this risk, the Collective recommends that MBIE makes clear as soon as possible the extent to which any eventual CDR framework will be consistent (or inconsistent) with those open data projects already underway. This urgent clarification will ensure that businesses have commercial certainty regarding the worthwhileness of their investments across the next 2-3 years.

## **OPTION TWO IS THE MOST PRAGMATIC OUTCOME FOR NZ**

The Collective agrees that Option Two, with a high-level legislative framework and then the implementation of the CDR on a sector-by-sector basis, is likely to lead soonest to positive outcomes for NZ.

However, the Collective also advocates the development of an intermediary strategic layer of policy. This will ensure the development of coordinated, consistent and non-duplicative initiatives across and within government, regulatory bodies and sectors. This wider strategy would assist policymakers to identify areas of opportunity and define the longer-term vision for how the CDR can maximise data-driven innovation and Consumer outcomes across the wider data economy.

An example of this approach is the United Kingdom's Smart Data Strategy, co-designed by Government and a range of businesses, trade bodies and Consumer organisations. This strategy represents an overarching approach to data and aims to "unlock the power of data" by ensuring that regulation, policy decisions, priorities and potential trade-offs are all considered and administered in a deliberate, cohesive and evidence-driven way.

Under this model, Government would establish the legislative framework and policy layer, in consultation with participant stakeholders. The designation would also be a Government-led process, but the decision to designate a sector in-scope and the definitional elements of the designation (e.g. in-scope CDR Data) would always be determined by reference to the strategic policy layer.

The Collective sees industry participants having a more central role in the development of sector-specific rules which sit beneath the designation, with such rules primarily being developed by industry participants (again, subject always to compliance with and furtherance of the wider strategic policy layer).

## CONTENT OF THE LEGISLATIVE FRAMEWORK

Contrary to the model suggested at Option Four, sector-by-sector implementation of the CDR will require the establishment of some overarching legislation. The key function of that legislation, as in Australia, should be to specify the underlying framework within which the remainder of the CDR is implemented. As set out in response to Q16-18, its content should provide for:

- the designation process;
- liability and dispute resolution mechanisms;
- consent requirements;
- certain rules and standards;
- high level, "baseline" accreditation requirements; and
- if relevant, the outline of an intermediary strategic layer of policy.

We acknowledge that there is no bright line regarding what content should be included in the overarching legislation and what should be specified as part of the sectoral designation process. However, we are in principle opposed to significant quantities of technical requirements being included in the overarching legislation. The time required to amend legislation could risk NZ's framework becoming quickly outdated.

The position regarding charging fees for access to CDR Data must facilitate the commercial viability of the CDR and give effect to core CDR principles of fairness, equity and sustainability in the model. It is in all parties' best interests that the CDR model maximises incentivises innovation and uptake, becoming the "model of choice" for data portability in NZ.

## GUIDING DESIGNATION PURPOSE

As noted above, the Collective advocates the development by Government of an overarching strategic data policy layer to inform the designation process and sector-specific rules. MBIE could also consider (alongside a high-level legislative framework) implementing periodic policy statements which set out the purpose of, and high-level guidance in respect of, sector designation. Distinct from the sector designation instrument (which would be focused on the sector targeted), this policy statement could describe a particular Government goal, such as advancing "personal agency and identity" or "small business resilience". This goal can then inform the decision as to which sectors to designate, and the data that could be defined as "in scope" within that sector.

For example, if the Government specified a priority on consumer welfare and inclusion, it may designate banking, retail and energy as three key sectors, and then prioritise defining the following types of data as "in scope":

- Banking transaction data;
- Energy consumption; and
- Grocery purchase summaries.

This cross-sector information would provide a richness of data to inform the overall purpose. It will be important for the Government not to use this intermediate policy layer to pre-determine which innovations or Consumer experiences will be part of the CDR. Accordingly, the designation purpose should be defined broadly (to capture a wide range of potential innovations across multiple sectors) and in consultation with industry participants.

## DESIGNING SECTOR-SPECIFIC REGULATION

The Collective agrees that, except for the legislative framework that establishes the basic mechanisms required for the CDR to operate and the strategic policy layer described above, the implementation of the CDR (including the definition of in-scope and out-of-scope data, data rules and standards, etc) should be determined on a sector-by-sector basis.

The approach that has been successful overseas has been to have industry participants primarily responsible for the establishment of rules and standards for the CDR's implementation in a sector, with the Government taking a partnership role alongside industry participants to support and oversee that process as required. As noted above, we see this work being guided by (and subject to) Government-directed strategic policy and the Government's assessment of whether the proposed CDR implementation meets societal expectations.

A key learning from overseas has been that a truly successful ecosystem requires Data Holders to see the CDR as an opportunity, and innovate and invest accordingly, rather than approaching it merely as a compliance exercise. Industry involvement would bring Data Holders, as well as Data Recipients, Consumer advocates and others, on the development journey.

Industry involvement also has the benefits of:

- participation from a wider range of sector experts, building trust within the ecosystem and disseminating available knowledge and expertise; and
- potentially reducing the development and design cost to Government through open-sourcing industry resource, knowledge and expertise.

By way of example, in a banking context:

- Singapore's API Playbook has been widely praised as a great example of a regulator (Monetary Authority of Singapore) and industry (Association of Banks) coming together to develop a successful, useful and easy to follow framework of requirements; and
- similarly, Hong Kong's Monetary Authority recommends security standards, but has left the process around on-boarding of Data Recipients to industry to determine. In response to this, the Hong Kong Association of Banks has developed a "common baseline" for the implementation of Data Recipients which has the objective of streamlining the on-boarding process.

Given the innovative outcomes that these industry-led programs have driven overseas, we recommend that NZ adopt a similar approach.



# A1C

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HOW COULD  
A CONSUMER  
DATA  
RIGHT BE  
DESIGNED?

Key elements  
Customer Experience  
Legislative and Regulatory  
Measures

## Q16-18

DO YOU AGREE WITH THE KEY ELEMENTS OF A DATA PORTABILITY REGIME AS OUTLINED AND DESCRIBED IN THIS SECTION?

ARE THERE ANY ELEMENTS THAT SHOULD BE CHANGED, ADDED OR REMOVED?

ARE THERE ANY AREAS WHERE YOU THINK THAT MORE DETAIL SHOULD BE INCLUDED IN THE PRIMARY LEGISLATION?

The Collective has provided the following comments on the different key elements of data portability that should be included in the CDR framework.

### **DESIGNATION PROCESS**

We agree that sectors should be designated in areas likely to have the greatest benefits for Consumers and overall economic benefits for NZ. As set out in response to Q7 above, sectors should be formally identified using quantitative economic analysis to assess the likely costs and Consumer benefits of CDR implementation in a sector.

We acknowledge that it is difficult to know the full range of potential Consumer benefits that could accrue in a certain sector, given that it is impossible to predict all of the products and insights that additional data portability could give rise to. However, as discussed at Q26, we encourage the Government to, prior to

designation, specifically consider how the implementation of the CDR could solve some of the 'big issues' facing Consumers in a particular sector.

While a NZ-specific testing of benefits and costs/risk in each sector will of course be required, and we would encourage the Government to consider overseas experience as part of this exercise.

In respect of the designation process, we also note that:

- the way sectors are defined will need careful consideration and need to be consulted on prior to implementation. Poorly defined sectors could result in a "data arbitrage" effect, where near-identical data has different values because of an unforeseen, unintended application of the definition. We support MBIE's suggestion of conducting this data definition process in consultation with the relevant industry;
- sectors should be identified and defined by looking at the data which is shared, as well as the services provided by businesses in those sectors. The traditionally clear lines between sectors are blurring, and data portability should be applied in a level and consistent way to ensure a level playing field. As an example, the banking has various new entrants offering accounts, lending and other financial services. These entrants hold and use Consumer and product data despite that may be exempt from the traditional definition of "banking data". The sector definitions should therefore include those who use banking data and provide banking services - this would include accounting software providers (Xero, MYOB, Intuit, etc), tech platforms entering financial services (Amazon, Google, Ant Financial, etc) and alternative business lenders (Prospa, Moula, Zip, etc). It would be contrary to MBIE's objective of enhancing competition if banks were required to share the data they held with lenders, but other businesses offering similar services were not required to do the same; and
- the Government should also consider designating parts of its own function, or processes for potential open data innovation. For example, we consider that there would be considerable benefits to data sharing in the context of health, education, transport and internal affairs data. This has been successfully done in the UK.<sup>6</sup> In this context it is worth noting that, for example, the Department of Internal Affairs currently charges the Consumer fees to access passport data via its API.

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<sup>6</sup> <https://www.finextra.com/newsarticle/36505/hmrc-puts-3-million-open-banking-project-out-to-tender>

## RULES AND DATA STANDARDS

### DEGREE OF STANDARDISATION

The Collective's view is that it will be important for MBIE to clarify what data is "in scope" and "out of scope" of the CDR (see the response to Q5 above). However, it is less important for the regime to include rigid standards specifying the format of data that is to be shared. While there is some data that must be shared using a specified standard (e.g. payments information), not every aspect of data formatting etc should be documented in granular rules.

Data Recipients in the Collective have commented that they are often able to receive data in slightly different formats (is "rough around the edges") and still derive significant value from it as long as the CDR data being exposed is well-documented by each Data Holder. Because of this, the Collective believes that:

- some data standards are of course necessary to achieve the desired CDR outcomes;
- standards should not be overly prescriptive. Industry participants can be expected to, over time, ensure the interoperability of their data with that from other organisations; and
- to the extent that this does, in the short-to-medium term, mean that data is in slightly different formats, intermediaries are able to temporarily plug that gap.

While the implementation of the CDR framework must be bespoke to NZ, overseas experience tells us that, regardless of how prescriptive any data standards are, Data Recipients overwhelmingly continue to access data via intermediaries. A good example is the inclusion of trusted business advisors (i.e. accountants) in the latest round of proposals for Australia's CDR.<sup>7</sup> Accountants need to collect accounting data from their SME clients in order to complete core compliance and advisory tasks - a critical service to ensure the survival and success of SMEs. There is not a single data standard or portability infrastructure (i.e. Xero does not integrate with MYOB's Practice Tools), so accountants must collect and transpose this data manually. By allowing specialist, accredited intermediaries to collect and normalise this data, accountants can avoid doing non-value-adding data entry and increase productivity for SME clients.

There is an important trade-off to consider in respect of standards. Over-specification of standards in rigid legislative and regulatory instruments will reduce the nimbleness of the regime in response to technological changes to data portability globally and for compelling future use cases that emerge. The provision of these services will evolve and we need flex to adapt. Accordingly, while the Collective acknowledges that some specification of standards should form part of the sectoral designation approach, this should be limited to those data points absolutely necessary for that sector. This could include providing clear operational guidelines regarding the availability and quality of data, and providing technical specifications for security, connectivity, and exception handling.

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<sup>7</sup> <https://www.accc.gov.au/focus-areas/consumer-data-right-cdr-0>

Finally, any development of data standards should:

- be informed by the existing work streams underway regarding digital identity;
- also consider whether any inter-sector standards should be developed. The Collective agrees that standards should be determined as part of the sectoral designation process, but some interoperability will be required for the cross-sector innovations discussed in response to Q2 above to be realised; and
- should, where possible, aim for consistency with standards used overseas (as is the case for transaction data, which is standardised by ISO). This will assist in ensuring interoperability of data globally. (See Q22 response below.)

## MAHITAHITANGA

The Collective is of the view that a successful CDR regime in NZ will need to be designed with principle of mahitahitanga (to work as equals to create and share valuable knowledge) in mind. The principle of mahitahitanga embodies:<sup>8</sup>

- working with others to create and share value together;
- growing capacity and knowledge; and
- improving the wellbeing of all participants.

In aligning with this principle, the Collective believes that a successful CDR regime should create incentives for both Data Holders and Data Recipients to work together to achieve the best outcomes for Consumers. Designing a CDR regime with mahitahitanga in mind will lead to fairer outcomes for all CDR participants, encourage investment and innovation by all parties, and produce the best possible outcomes for Consumers in the long term.

It will be important for the CDR framework to provide an appropriate way to achieve this. In Australia, the principle of "reciprocity" has been engaged in an attempt to speak to some of these concepts. The Australian Farrell Review stated that:

*"it would seem unfair if banks were required to provide their customers' data to data recipients [...] but those data recipients were not required to reciprocate in any way, merely because they were not banks and therefore did not hold 'banking' data. An Open Banking system in which all eligible entities participate fully — both as data holders and data recipients — is likely to be more vibrant and dynamic than one in which non-ADI participants are solely recipients of data, and ADIs are exclusively transmitters of data."*

However, the Collective was not in unanimous agreement that a blanket rule of reciprocity was the best mechanism to achieve effective mahitahitanga in a NZ CDR. The Collective agrees that the strategic data policy layer described above could speak to these issues and provide overarching guidance as to how the core principles of mahitahitanga can be given effect to at a sector level.

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<sup>8</sup> For more on the principle of mahitahitanga see the Social Wellbeing Agency's discussion of mahitahitanga here: <https://dpup.swa.govt.nz/principles/mahitahitanga/>

The Collective also believes that the Government and participants need to actively consider how the participation of major off-shore global data-oriented businesses could be effectively governed to ensure fairness and sustainability of the CDR model for all parties. The strategic policy could provide direction about how the designation process might create solutions to these issues through the definition of "Data Holders" and in-scope "CDR Data".

## ACCREDITATION

The Collective agrees that an accreditation model is the best way to provide a minimum standard of protection around Consumer data that is shared with third parties, and that the intermediaries and suppliers required for the proper functioning of the CDR ecosystem are also able to be accredited.

We are cautious regarding the prospect of tiered accreditation by sector or data type (e.g. Data Recipients require a higher standard of accreditation to receive sensitive data). Lesser security and data privacy standards in some sectors or in relation to certain data could erode Consumer trust and limit inter-sector innovation between sectors. However, there are also strong arguments for tiered accreditation, namely that the imposition of the "high watermark" of accreditation standards across all ecosystem participants could unnecessarily inflate the cost of participation and thereby deter adoption.

Balancing those two factors, the optimal framework would involve:

- a minimum set of fundamental accreditation criteria being set at a central level to ensure baseline interoperability and the protection of Consumer data (striking a fair balance between costs of participation and value to Consumers); and
- a more detailed accreditation process being specified at the sectoral designation level, with the tiering taking into account the amount of Consumer data being accessed, its sensitivity, whether it is write access or only read access, and the criticality of the services being provided by the party.

Australia is currently consulting with stakeholders as to whether Data Recipients may share CDR Data with non-accredited third parties in limited circumstances (broadly, professional advisors who are regulated by an industry body or derived "insight" data). In the Collective's view, this remains a complex and fluid area which requires further research and consideration in the context of the NZ CDR.

A number of different roles exist within a CDR ecosystem and how accreditation should work in respect of each of them requires careful analysis. The CDR framework should fundamentally aspire to create a method of data portability that people want to migrate to as the preferred mode of data sharing. Unlocking the detail of the accreditation model is a key aspect of this and the Collective believes that additional research will be required to get this right.

For completeness, we note that the CDR regime should, alongside accreditation of ecosystem participants, also take steps to ensure the responsible and ethical use of Consumer data by Data Holders, Data Recipients and Intermediaries. Misuse of data should be dealt with under the liability framework.

## CONSENT

NZ's existing privacy framework is a permissive regime, rather than being consent-based, and only relates to "personal information" about "identifiable individuals". Additional consent requirements will therefore need to be built into the NZ CDR, to ensure that data is not shared between a Data Holder and Data Recipient prior to obtaining a Consumer's consent. While global best practice regarding Consumer consent is constantly developing, NZ can leverage significantly from overseas experiences in designing its consent processes, in particular some of the work already undertaken under the Australian CDR regime and the GDPR consent rules. These regimes both require consent prompts to be communicated concisely and to contain sufficient detail to ensure informed and meaningful consent is obtained in a transparent way.

The consent design process seeks to strike a workable balance between protecting the privacy of Consumers by ensuring that Data Holders and Data Recipients cannot "cut corners" by reducing friction during the consent process and managing system complexity. These other issues include set-up costs, compliance costs and creating barriers to entry for smaller participants. In particular, a balance will need to be struck between Consumer transparency and ensuring users do not suffer "notice fatigue", inevitably increasing risk.

Issues of consent will have to be considered in detail during subsequent sets of consultation. The Collective's view is that providing Consumers the ability to see where their data has been used in a data economy may assist them to feel empowered by the system. Central to this, is the idea of transparency, allowing Consumers to identify when and for what purpose they have provided consent to the disclosure and processing of their data.

The Collective agrees that:

- a Consumer should be able to easily revoke consent provided to a third party, and the obligations of the third party in those circumstances (regarding the deletion of data, for example) should be made clear;
- a Consumer should be able to easily request erasure from a third party, so that they have the right to be forgotten (subject to limitations specified by, for example, data retention regulations);
- similarly, Consumers should be able to amend / correct their data;
- Consumers should be able to access a record of active consents they have provided, together with some form of access to historic or archived consents;
- MBIE should consider further whether, to protect against the risk of any negative outcomes from Consumers "setting and forgetting", consent has to be re-provided after a fixed period of time (12 months like in Australia, for example). MBIE should also consider whether this re-consent can be implied in cases where
  - the Consumer continues to use the service; and
  - the use/transfer of data necessary for that service is transparent to the Consumer.

## LIABILITY, ENFORCEMENT AND REDRESS

### FRAUD PROTECTION

Fraud protections will naturally need to form a part of the CDR regime and be aligned with other pre-existing regulatory obligations of participants, such as in relation to anti-money laundering and counter financing of terrorism.

### LIABILITY FRAMEWORK

A strong liability framework will be important for ensuring Consumer trust in the security and integrity of the CDR system, and to ensure that the CDR is implemented with fair and equitable risk distribution between participants. The liability regime will need to be very clear so as to provide certainty to participants about where liability will lie. Uncertainty as to liability is likely to limit uptake of the CDR. The Collective's view is that, conceptually, the liability framework should establish a level playing field using a fault-based system that incentivises all participants to responsibly secure and protect CDR Data. The regime must balance not creating unnecessary barriers to entry for small data users, while also not creating 'de facto' liability for Data Holders. For example, the liability framework should be structured so that participants are liable for their own breaches of the regime, but not those of other participants.

Key to achieving this goal will be a robust, "closed" accreditation regime, as discussed in more detail above. That regime should directly regulate both Data Holders and Data Recipients, together with any other categories of accredited participants. The "closed" nature of the accreditation regime helps to create end-to-end traceability, assisting with liability enforcement but is not intended to restrict innovation or participation. Similar schemes exist in Australia and the UK. To the extent that accredited parties use third party suppliers (for data storage, for example), they should be liable for the conduct of those third parties.

At a high level, this fault-based liability regime should provide that:

- Data Holders should have an obligation to report all CDR Data truthfully, but they should not be held liable for unintentional mistakes or inaccuracies in transferred CDR Data. This will ensure that Data Holders do not bear a disproportionate level of liability as a result of this sort of data being shared and relied upon by downstream third parties.
- Data Holders should not be liable to a Consumer for data loss if that loss was solely due to:
  - an accredited Data Recipient's improper management of CDR data;
  - the incorrect release of data in circumstances where the Data Holder was properly performing the instructions of a Consumer properly verified by an approved mechanism; or
  - sharing data with an incorrectly or negligently accredited Data Recipient.
- penalties for non-compliance by accredited participants (including Data Holders and Data Recipients) exist within the specified regulations, rules and standards, even if no loss is suffered;



- the Government body overseeing the framework (see Q24 and Q25 responses below) should have an oversight function to ensure compliance. This role should be proactive rather than just responsive (i.e. auditing compliance rather than just investigating potential breaches once identified); and
- where unintentional breaches occur (such as a cyberattack), consistent with overseas jurisdictions, liability should be assigned based on fault (i.e. the party most responsible for the breach).

We do not disagree with MBIE's suggestion that bespoke bilateral contracts should not be part of our long-term vision for NZ's CDR framework. However, it will be vital for a robust liability framework to be in place from day one, so that businesses have visibility regarding their liability risk profile and can prepare accordingly. Any unduly increased, or merely uncertain, risk profile is likely to inhibit the success of the CDR's implementation among ecosystem participants (by, for example, encouraging them to take a compliance-based approach in response to implementation).

Further rounds of consultation should also directly consider:

- whether, and if so, what quantum of, penalties should be specified in legislation (in the same way that the Commerce Act and Fair Trading Act specify maximum penalties for breaches of the legislation, in addition to providing mechanisms for third party damages claims). Any penalties and/or damages should be linked to the loss suffered and the culpability of the defendant;
- to what extent third party businesses conducting accreditation are liable for misappropriation of data by a Data Recipient that was incorrectly or negligently accredited;
- what limitations should be placed on a Data Holder's obligation to share data with an accredited Data Recipient once the Consumer has consented. While we do not disagree with this principle forming part of the CDR Framework, it should be subject to exclusions specified as part of the sectoral designation process. There could be exceptions, for example, for the sharing of payments data with Data Recipients where this increased risk in the system; and
- what, if any protection, should the Government provide against the risk that industry participants have no ability to pay for failures to comply. For example, the Government could consider financially underwriting some portion of the cost of potential data breaches, requiring some insurance cover for potential data breaches as part of the initial accreditation process, or considering credit-worthiness of organisations prior to accreditation. Minimum insurance coverage is an accreditation requirement in several overseas jurisdictions, including the UK and Australia.

## DISPUTE RESOLUTION FRAMEWORK

Given that various sectors already have dispute resolution schemes in place in NZ, dispute resolution mechanisms should be determined as part of the sector-specific designation process. This is likely to reduce the cost of implementation and compliance as existing schemes, processes and procedures can be leveraged.

For example, NZ Data Holders and Data Recipients in the banking sector may be able to draw on the dispute resolution scheme already required by the Financial Service Providers Register regime. This requires external dispute resolution schemes, in a similar way to CDR registered entities in other jurisdictions, and there are already four approved schemes.

### **ADDITIONAL ELEMENTS OF THE CDR**

The Government could consider adding several other elements to its CDR implementation program (either on an economy wide, or sector-by-sector, basis). In particular:

- **Emphasis on Consumer experiences and education:** The vast majority of Consumers are not familiar with data portability systems as a concept. It will be important for Consumers to be educated regarding the potential benefits of data portability, and so we envisage the Government openly speaking about the benefits of data portability. However, the Collective's view is that it is outstanding Consumer experiences Consumers (which invoke a reaction of "wow, I didn't know I could do that!") that will ultimately drive Consumer uptake. To help assist that effort, the Government could consider:
  - sponsoring some "flagship" Consumer innovations (i.e. a new Consumer feature empowered by the CDR that is widely advertised among Consumers, similar to a games console being launched with 3-4 accompanying games which demonstrate the value of the console);
  - working with industry to define usability standards from the outset. These have only been introduced recently in the UK, despite the regime having been in place since 2014. In the financial services sector, the API Centre has also recently published Customer Experience Guidelines; or
  - if any central or local government data, or process could be part of the initial CDR implementation then people may be more likely to experiment with data portability.
- **A developed regime to monitor how overseas businesses use the CDR:** It will be necessary for the Government to have a clear picture on how the CDR will apply to overseas businesses, and how any regulatory body will exercise its enforcement discretion in the event of data privacy breaches outside of the jurisdiction. It should develop that clear picture, in further consultation with industry participants, prior to the implementation of the CDR.
- **Consistency with other legislation:** It will be important to ensure that CDR rules are harmonised with existing Privacy Act, Unsolicited Electronic Messages Act and other digital identity work streams to prevent inefficiencies arising in businesses aiming to participate in the CDR.

We're here to enable a fair and sustainable data economy where all Kiwis are empowered to make a difference to their lives\_

## Q19

# HOW COULD A CONSUMER DATA RIGHT BE DESIGNED TO PROTECT THE INTERESTS OF VULNERABLE CONSUMERS?

We agree that the protection of vulnerable Consumers must be a core priority in designing and implementing the CDR.

We believe that the definition of vulnerability will need to recognise that vulnerability is a fluid state, which changes as Consumers' circumstances change. Because of this, Consumers may require different degrees of protection at different times. This is particularly relevant given the high degrees of financial and data illiteracy in the population, which increases the risk a Consumer does not appreciate the possibility of their data being used to their disadvantage.

CDRs hold the potential for enabling greater inclusion and access for Consumers. For example, CDRs in the financial services sector have the potential to increase access to financial services for those who are underbanked, less financially literate or marginalised, and to support better financial health for traditionally underserved markets through the creation of accessible, low-cost and innovative products. For example, a CDR could allow for:

- **Inclusion of youth and individuals with limited or non-traditional credit histories:** while there is a risk that the CDR implementation creates exclusionary effects for "data poor" Consumers, it is also possible that the CDR could enable, for example, products that support lending decisions based on a Consumer's spending patterns, rather than traditional credit registries;
- **Inclusion of seniors:** providing for 'account assistants' to help manage accounts and applications remotely, whilst still giving the account owner control over final decisions. In the UK, 'account assistants' are trusted third parties (e.g. carers or attorneys) who use CDR-enabled services to help manage the finances and essential services of vulnerable people;<sup>9</sup> and
- **Inclusion for those with variable incomes (including the financially marginalised):** access to low cost, automated financial advice and applications that proactively support sound financial management (e.g. automatic notifications to transfer money to avoid overdraft fees).

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<sup>9</sup> HM Government, "Smart Data: Putting consumers in control of data and enabling innovation" (June 2019), available [here](#).

However, CDRs equally have the potential to exacerbate the existing rural-urban divide if connectivity issues prevent rural communities from taking full advantage of CDR-enabled products. The internet penetration rate in NZ is relatively high, with around 89 percent of the population in NZ being active internet users in 2018.<sup>10</sup> This means that most, but not all, Kiwis would have access to a CDR delivered via digital means. However, the group of New Zealanders without access are likely to include some of our most vulnerable citizens, such as the elderly and low-income earners.

There are some basic steps that MBIE should take in the initial design of the CDR that will assist in ameliorating these concerns. For example:

- MBIE should carefully design the consent requirements to ensure that vulnerable Consumers' needs are met and that all participating Consumers are aware of their rights and what they are consenting to. Consumer comprehension testing of the consent regime, particularly targeted at the elderly, people with accessibility needs, and culturally and linguistically diverse groups, could assist with this process; and
- MBIE should aim to create a continuous feedback loop between the regulatory body enforcing the consent mechanisms and those responsible for its design (to ensure that "gaps" identified via "on the ground" enforcement of the consent requirements are quickly closed via amendment to the requirements themselves).

We consider that larger-scale changes or additions to the CDR in order to make it more accessible for vulnerable citizens would be better managed by phasing implementation. This would allow innovations identified in this process to be adopted for the benefit of all New Zealanders.

Further changes could include a framework for identifying and reviewing vulnerable Consumers' accounts, developing tailored messaging, requiring offline data to be made available digitally, the establishment of in-person onboarding facilities, or the creation of a "best fit" audit for vulnerable Consumers, to ensure their data needs are best served.

These matters, and ideas to address them, should be considered in more detail once the CDR for online Consumers has gone live. This phased approach will ensure that:

- the actual level of demand within the excluded community, distinguishing between those that are voluntarily and involuntarily excluded, is better understood; and
- the cost and complexity of the suggested solutions are able to be weighed against their potential benefits.

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<sup>10</sup> Statista Active internet users as percentage of the total population in New Zealand from 2015 to 2018, available [here](#).

## Q20

# DO YOU HAVE ANY SUGGESTIONS FOR CONSIDERING HOW TE TIRITI O WAITANGI SHOULD SHAPE THE INTRODUCTION OF A CONSUMER DATA RIGHT IN NZ?

The Collective agrees that Te Tiriti o Waitangi should have a foundational role in shaping the CDR framework in NZ.

The Collective notes the existing expertise that exists on this topic, including Te Mana Raraunga (the Māori Data Sovereignty Network).

The Collective recognises that Māori data is a living tāonga and is of strategic value to Māori, and is subject to the rights articulated in Article 2 of the Te Tiriti o Waitangi. The Collective's view is therefore that:

- there should be strong Māori representation in the governance of the CDR, including the industry-led groups charged with creating industry rules and standards;
- the CDR's aspiration should be to strengthen the quality and integrity of Māori data and its collection, by decreasing the manual handling of data and the use of sub-optimal data collection methods such as "screen scraping", in favour of a more robust mechanism for data portability;
- the importance of data security and protection discussed in response to Q16 takes on increased importance in the context of Māori tino rangatiratanga over their data, to ensure that it is safeguarded from fraud and improper use;
- similarly, the consent requirements will play an important role in protecting Māori tino rangatiratanga over their data, so that Māori are able to maintain visibility and control over how it is used and shared. The Collective would support Māori representatives being actively involved in the design and testing of consent processes to ensure their suitability and accessibility for Māori. In cases where there are large requests for access to Māori data, these may require review by Māori representation; and
- appropriate funding should be allocated to ensure there is adequate specialist capability to provide perspective on Te Tiriti o Waitangi and Māori Data Sovereignty.<sup>11</sup>

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<sup>11</sup> Further information on Māori Data Sovereignty is available through Te Mana Raraunga's website <https://www.temanararaunga.maori.nz/>

## Q21

# HOW COULD A CONSUMER DATA RIGHT BE DESIGNED TO ENSURE THAT THE NEEDS OF DISABLED PEOPLE OR THOSE WITH ACCESSIBILITY ISSUES ARE MET?

The Collective recognises that the Government and industry participants have an obligation to ensure that the CDR framework can be accessed by everyone, including those with accessibility needs.

Therefore, we support designing the CDR framework and Consumer interfaces in a manner consistent with expert guidance regarding ensuring accessibility by people:

- with low vision;
- with reading, learning or intellectual disabilities;
- with limited English and/or Māori capabilities; or
- who use mobile and touch-based devices, voice assistant and speech recognition software.

Actions to achieve this should include:

- ensuring that information about the CDR, particularly consent requirements, is expressed in plain language so content is clear and easy to understand;
- including alt text with any images, and captions and transcripts for any videos, that form part of the CDR information and interfaces;
- ensuring that CDR information is marked up with the correct HTML elements (headings, lists and tables, for example);
- ensuring that there is sufficient colour contrast between text and background in all CDR Consumer interfaces; and
- making sure webpages containing CDR information can be used with only a keyboard, and that the keyboard focus is easily visible.

The Collective believes that this should be designed with the 'POUR principles' in mind, namely that the information is:

- **Perceivable** – Users can identify content and interface elements using their senses.
- **Operable** – Users can successfully use necessary interactive elements and controls.
- **Understandable** – Users can comprehend the content and learn how to use the interface.
- **Robust** – Users can choose the technology they use to interact with the product or experience.

To achieve this, the Collective believes a CDR needs to be developed in line with a number of principles, including:

- all digital-only products and services should have accessible features and follow accepted standards such as the current NZ Government Web Accessibility Standard;
- digital content should adhere to a specific set of readability standards, such as Content Design London's Readability Guidelines (<https://readabilityguidelines.co.uk/>);
- there should be a system of delegation of authority for a defined set of activities on a temporary or longer-term basis;
- to respect POUR's 'robust' principle, through providing a choice of channels for interacting with CDR products and services, the implementation of each channel should follow the accepted best practices relating to the other POUR principles;
- consider introducing supporting legislation, such as something like the Accessibility for New Zealanders Act proposal ([https://www.accessalliance.org.nz/the\\_accessibility\\_act](https://www.accessalliance.org.nz/the_accessibility_act)).
- ensure that disabled people or those with accessibility issues are included in research panels, testing cohorts, focus groups and review rounds. While no one person's experience of an impairment can be considered representative of that community, certain impairments are closely related to certain aspects of a product and can therefore be used to test just that aspect in a prototype stage. For example, poorly written content or complex instructions will cause difficulties for a person with dyslexia, and a complex or poorly designed interface can cause difficulties for people who are partially sighted or who have colour vision deficiency.

Ultimately, incorporating accessibility principles into a business's product design and support processes will ultimately help improve the user experience for all its customers.



## Q22

# TO WHAT EXTENT SHOULD WE BE CONSIDERING COMPATIBILITY WITH OVERSEAS JURISDICTIONS AT THIS STAGE IN THE DEVELOPMENT OF A CONSUMER DATA RIGHT IN NZ?

The priority in the development of a CDR regime for Aotearoa should be to ensure that we build the regime that is right for NZ. This is one that is compatible with participants' existing legal and regulatory obligations, is appropriate in the context of local market conditions in NZ and which most effectively achieves the Government's unique CDR objectives. For this reason, the Collective does not see interoperability as a priority for the design of the regime, but where interoperability can be achieved without material additional cost or risk to participants there would be value in adopting an interoperable standard to support export, increase efficiency and learn from others.

In this regard, we note that there is no internationally accepted "best practice" framework for implementing a CDR. In fact, none of the jurisdictions that have a CDR or Open Banking regime in place have implemented identical, or even similar, standards in any core area of their frameworks. This is driven both by the variation in the scope of the different regimes themselves and also by local market characteristics and Government objectives. It is, therefore, unlikely to be practicable for the NZ framework to be interoperable with multiple overseas regimes given the diversity of approaches internationally. We do note, however, that the multi-sector Australian approach is starting to be considered in more jurisdictions globally, including in the UK and Canada.

## **DESIRABILITY OF ALIGNMENT WITH AUSTRALIAN REGIME (WHERE POSSIBLE)**

In terms of the Australian approach, there are potential advantages in trying to achieve alignment given the proximity of Australia to NZ, the reliance of our economy on trans-Tasman businesses and existing expectations of alignment between Australian and NZ business law.<sup>12</sup> These include:

- potential benefits in terms of the ability for Australian businesses to enter NZ (increasing competition in our domestic markets) and for NZ businesses to expand into Australia; and
- being able to implement CDR innovations and Consumer insights originally developed in Australia. The size of the NZ market will inherently limit the amount of NZ-specific innovation, so designing our CDR such that Australian innovations can easily be implemented here has some intuitive appeal.

However, as set out above, the NZ CDR could itself also be unique and different to the Australian CDR (such as wanting the best outcomes for New Zealanders and incorporating the lessons from the Australian experience and other aspects of the regime bespoke to NZ).

It is therefore unlikely that the Australian CDR will provide a complete blueprint for us in key areas of interoperability (e.g. accreditation and technical standards).

Further, while the Australian regime may be a useful base for NZ's framework, a broadly aligned CDR will not make entry into NZ frictionless by any means with, for example, significant differences in other elements of the Australian and NZ regulatory landscapes (BS11 and APRA, etc).

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<sup>12</sup> <https://www.beehive.govt.nz/sites/default/files/MOU%20Business%20Law.pdf>

Q23

## DO YOU HAVE ANY COMMENTS ON WHERE A CONSUMER DATA RIGHT WOULD BEST SIT IN LEGISLATION?

While there is a clear interface between the CDR and NZ's competition, consumer and privacy laws, given that the CDR framework sits across all three of those areas, and extends significantly beyond them, it should be contained in a separate piece of legislation.

## Q24-25

# DO YOU HAVE ANY COMMENTS ON THE ARRANGEMENTS FOR ESTABLISHING ANY NEW BODIES TO OVERSEE PARTS OF A CONSUMER DATA RIGHT, AND WHAT ARE THE PROS OR CONS OF HAVING MULTIPLE REGULATORS, OR A SINGLE REGULATOR, INVOLVED IN A CONSUMER DATA RIGHT?

The Collective does not have a settled view on what form oversight should take in terms of the relevant regulating body. However, the Collective agrees that there are a number of relevant principles (including those learned from international experiences with establishing a CDR regime), and potential structures which should be in frame for consideration.

Central to the Collective's view is the need to ensure simplicity in the system wherever possible. We are concerned that a failure to do so would result in a cumbersome or uncoordinated framework with too many actors.

Indeed, the Collective does not necessarily agree that the choice is between a single regulator or multiple regulators. It is unlikely that one single regulator could effectively perform all necessary functions within a CDR regime (and this may be undesirable because there are benefits to having some functions performed with a degree of independence and/or drawing on specific skills and experiences from different agencies in the design and administration of a CDR regime). However, this does not mean that currently disaggregated regulatory functions could not be significantly harmonised in the context of a CDR regime.

NZ's ambition should be to work to establish effective oversight which can drive greater coordination and leadership around data-sharing initiatives. It is important that the oversight provided can effectively perform each of the following functions:

- setting a clear vision for the CDR;
- having a central reference point for CDR capability;
- having a central depository for subject-matter leadership in relation to CDR;
- coordinating with all government stakeholders as relevant;
- leading public communication and education;
- working with industry participants and government to establish appropriate industry rules; and
- managing accreditation and monitoring services.

The detail inherently involved in establishing and administering a CDR regime (for instance, the establishment and modification of data sharing standards) means that no existing Government body is likely to have all of the relevant expertise. However, it is of course appropriate for the Government to take an active partnership role in designing and implementing a CDR to ensure that its objectives are met. For instance, the Privacy Commissioner should have a role in designing the privacy aspects of relevant industry rules.

Another key consideration is that the oversight framework settled upon must be sufficiently resourced to perform its role. Confidence and trust in the system by all participants, particularly Consumers, is going to be vital to its ability to deliver on Government's desired objectives. A well-resourced system enforcing the framework, that is able to respond nimbly to industry and Consumer concerns as they arise, will be vital to building that confidence and trust.

The Collective sees the following four options as potential approaches to governance and oversight:

1. **Creation of a new specialist entity:** This would be the establishment of a new entity, built on best practice principles, derived from both local and international experiences and key thought leadership. This would likely be a not-for-profit entity. The United Kingdom's Open Banking Limited (the UK's Open Banking Implementation Entity) offers a useful reference point for such a model and there is international evidence that this type of non-government organisation is capable of being established and developed as a trusted data institution.

To achieve the best outcomes possible, it would be necessary that this entity is not perceived as representing special interests, as this would ultimately erode trust in it as an institution. Additionally, the new entity would need to follow a best practice governance model, and establish technical and other working groups as needed, in conjunction with industry where possible, for instance to work on the development of standards. In line with the 'think big, start small' principle, there is also a case for any new entity to focus on a specific sector first (e.g. banking or energy or health). However, the appropriateness of this approach will in practice depend on whether a sectoral designation approach is adopted within a CDR regime.

This entity could perform the functions bullet-pointed above, but the dispute resolution and regulatory enforcement functions relevant to a CDR could be separately performed by existing entities such as sector dispute resolution schemes and the Commerce Commission. This would ensure that these roles are performed by independent and experienced agencies.

2. **A new sector-neutral approach:** This option involves establishing a new non-government entity as described in option 1 above, but with a sector-neutral approach from the outset. This may create efficiencies in introducing CDR rules to industries beyond any initial sector captured by a CDR, and would support greater coordination and collaboration across sectors in relation to data-sharing principles. There is, however, concern that this approach could be overly complex and difficult to manage in the early phases, limiting momentum and delivery. Consequently, the Collective prefers a more iterative approach, starting with an entity focused on a specific sector, purpose, or area of opportunity, particularly if a designation approach is adopted within a CDR regime (but provided that any approach should be 'adaptable by design').
3. **Use of existing entities:** Essentially, this option involves continued decentralised roles and responsibilities undertaken by existing ecosystem participants (including government departments, regulators, industry bodies, etc). CDR leadership functions described above may potentially be allocated to agencies such as the Commerce Commission and the Office of the Privacy Commissioner (mirroring the Australian approach of placing lead responsibility for the CDR scheme with existing regulatory entities) and/or any other relevant sector-specific agency. This could avoid any unnecessary cost or duplication involved in the establishment of a new special purpose entity. However, in our view there is likely to be too much dispersal of responsibility in this option (resulting in outcomes that are not consistent or coordinated). The relevant agencies may be challenged to handle new roles (on top of their existing mandates) with effective levels of technical capability and resourcing, as opposed to a dedicated new entity focused on the implementation of a CDR regime. This option may also miss the opportunity to establish a CDR leadership entity with a governance model that is close to the principles of a best-practice data institution.
4. **A central statutory data institution for NZ:** Potentially, at the right time, some form of statutory entity model for a central dedicated data institution in charge of CDR developments in NZ may be considered. However, this would be a major process that may in time prove to be unnecessary, impractical to resource with the necessary expertise, or inconsistent with other local or international developments. In our view, some form of greater coordination around data-sharing is required before this approach could be achieved.

The Collective would be happy to share more in depth thinking about this approach and structure, as well as the underlying research and reasoning.

## Q26

# IF THE GOVERNMENT DECIDES TO ESTABLISH A CONSUMER DATA RIGHT, DO YOU HAVE ANY SUGGESTIONS OF HOW ITS EFFECTIVENESS COULD BE MEASURED?

The question of measuring effectiveness depends on clearly defining the outcomes and objectives for a CDR regime. The Collective's view is that the Government should take a quantitative, focused approach to assessing the effectiveness of the CDR on an economy-wide basis and in particular sectors and areas of opportunity. Assuming that the outcome of a CDR regime will have societal interests at their heart, this process should involve:

- identifying the primary (top 3 or 4) key challenges that Consumers face in a particular sector, policy area or opportunity space (e.g. predatory lending, energy hardship, or financial inclusion, etc);
- identifying metrics that Government and industry agree will track whether the CDR has improved Consumer outcomes;
- setting social policy target goals for the CDR to achieve these changes;
- tracking how these metrics change over time after and as a result of the implementation of a CDR; and
- creating a constructive forum for industry feedback about commercial and operational blockers to delivery of the outcomes.

This process should be conducted publicly and in consultation with industry participants, to promote transparency and inform future data economy, policy and sectoral designations. Finally, the Collective emphasises that the introduction of a CDR in a particular sector is not an end in and of itself. Those opportunity spaces where tangible benefits will accrue to the Consumer as a result of a CDR, as identified by reference to overseas experiences, should be prioritised. Or the opposite, where:

- the introduction of the CDR will have little discernible benefit, as the sector is not well suited to data portability or because existing innovations are sufficient to improve Consumer welfare; or
- there are other more pressing challenges that cannot be solved by increased data portability, such that the focus of industry participants could be better allocated elsewhere, should not be designated as sectors until circumstances change.

# A2

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## APPENDIX 2: GLOSSARY



# GLOSSARY OF TERMS

<b>API</b>	Application Programming Interface.
<b>CDR</b>	Consumer Data Right, the concept of providing consumers rights over their own data, including the right to request that entities that hold their data share it.
<b>CDR Data</b>	Data required to be shared under a CDR.
<b>Consumer</b>	An individual or entity who purchases, or intends to purchase, goods or services from another party.
<b>Collective</b>	The Data Economy Collective described on page one of this document.
<b>Data Holder</b>	An entity that holds data and is required under a CDR to share it with a consumer's consent.
<b>Data Recipient</b>	An entity that receives data under a CDR with the consumer's consent.
<b>MBIE</b>	Ministry of Business, Innovation and Employment.
<b>MBIE Discussion Document</b>	Ministry of Business, Innovation and Employment's Discussion Document entitled "Options for establishing a consumer data right in New Zealand" dated August 2020.
<b>Open Banking</b>	A standardised and secure framework for sharing bank customer data with trusted financial service providers, including the facilitation of both information and payment services provided by Data Recipients.

October 2020

Thank you for taking  
the time to review  
our submission.

Data  
Economy  
Collective\_