

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

Your name and organisation

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Responses to discussion document questions

Does New Zealand need a consumer data right?	
1	<p><i>Are there any additional problems that are preventing greater data portability in New Zealand that have not been identified in this discussion document?</i></p>
2	<p><i>Do you agree with the potential benefits, costs or risks associated with a consumer data right as outlined in this discussion document? Why/why not?</i></p>
3	<p><i>Are there additional benefits, costs or risks that have not been explored in the above discussion on a consumer data right?</i></p> <p>Consideration should be given to the risks associated with housing comprehensive customer profiles in centralised locations and opportunities for threat actors to access such information for fraud. Accredited 3rd parties would need to have suitably high security standards to meet the likelihood of being targeted.</p>
4	<p><i>What would the costs and benefits be of applying the consumer data right to businesses and other entities, in addition to individuals?</i></p>
5	<p><i>Do you have any comments on the types of data that we propose be included or excluded from a consumer data right (i.e. 'consumer data' and 'product data')?</i></p> <p>We agree that derived data should be excluded from the scope.</p> <p>Personal information provided by a consumer when applying for the relevant product or service should be included.</p> <p>Determination around which product data and how such data is presented may involve challenges for certain product types such as insurance. Systems developed should enhance consumer knowledge in a manner consistent with encouraging that personalised service and advice be sought where needed.</p> <p>As rules per sector develop, care should be taken in the standardisation of product data. If data is formatted primarily to suit 3rd parties, it may have a negative effect on innovation for</p>

product suppliers seeking to develop product features or benefits that sit outside of the standard information presented to consumers.

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What would the costs and benefits be of including both read access and write access in a consumer data right?

Liability for accredited 3rd parties would need to be taken into consideration; the greater the potential for intervention, the higher the security standards would need to be.

What form could a consumer data right take in New Zealand?

7

Do you have any comments on the outcomes that we are seeking to achieve? Are there any additional outcomes that we should seek to achieve?

8

Do you have any comments on our proposed criteria for assessing options? Are there any additional factors that should be considered?

Clarity. How well will the option be understood by consumers and businesses to encourage uptake and enable compliance at a reasonable level?

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Do you have any comments on the discussion of Option one: Status quo?

It would be useful to understand whether the industry participants in banking and electricity sectors had identified mechanisms other than regulatory intervention that might accelerate work already underway.

10

Do you have any comments on the discussion of Option two: A sectoral-designation process?

In a sectoral approach we would seek a clear definition of who within a “sector” would be in-scope. For example, in the insurance sector, we would expect the product manufacturer would be, but intermediaries and brokers would not.

As financial services are undergoing significant regulatory changes at present involving costs of compliance, we would also seek that an appropriate transition period of five years be allowed for.

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Do you have any comments on the discussion of Option three: An economy-wide consumer data right?

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Do you have any comments on the discussion of Option four: Sector-specific approach?

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This discussion document outlines four possible options to establish a consumer data right in New Zealand. Are there any other viable options?

A version of Option 3 where the relationship focus is between the consumer and the agency could be considered.

It is unclear what the potential costs and time involved would be with requiring the provision

of consumer information to multiple accredited 3rd parties. If instead the regulation concerned secure and efficient methods of enabling consumers to access their data, with standardisation expectations being varied by sector (banking / utilities already being likely to have machine readable formats; small businesses would not), consumers would be empowered to make their own decisions around whether to transfer that information to accredited 3rd parties or direct to other providers irrespective of accreditation status.

This could align more closely with, and be an expansion to, the currently drafted s56(2) of the Privacy Act 2020, requiring an agency to make the information available in the way preferred by the requestor unless to do so would impair the efficient administration of the agency.

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Do you have any comments on our initial analysis of the four options against our assessment criteria?

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Do you agree or disagree with our assessment that Option two is most likely to achieve the best outcome using the assessment criteria?

How could a consumer data right be designed?

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Do you agree with the key elements of a data portability regime as outlined in this section? Are there any elements that should be changed, added or removed?

17

Do you have any feedback on our discussion of any of these key elements?

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Are there any areas where you think that more detail should be included in primary legislation?

19

How could a consumer data right be designed to protect the interests of vulnerable consumers?

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Do you have any suggestions for considering how Te Tiriti o Waitangi should shape the introduction of a consumer data right in New Zealand?

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How could a consumer data right be designed to ensure that the needs of disabled people or those with accessibility issues are met?

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To what extent should we be considering compatibility with overseas jurisdictions at this stage in the development of a consumer data right in New Zealand?

	This should be taken into account at the outset with analysis done on the extent to which consumers in New Zealand source products and services from offshore providers.
23	<i>Do you have any comments on where a consumer data right would best sit in legislation?</i>
24	<i>Do you have any comments on the arrangements for establishing any new bodies to oversee parts of a consumer data right?</i>
25	<i>What are the pros or cons of having multiple regulators, or a single regulator, involved in a consumer data right?</i>
	Engaging multiple regulators could be beneficial provided that there is clarity over the role that each played. Any form of regulation should be designed to avoid duplication or inconsistency with current regimes.
26	<i>If government decides to establish a consumer data right, do you have any suggestions of how its effectiveness could be measured?</i>

Other comments

- We support data portability to enhance a consumer's right to choose.
- Design should be consumer-focused and supporting education will remain important. Consideration should be given to the research of the Office of the Privacy Commissioner indicating that only 56% of individuals surveyed believed that data portability should be a right in New Zealand¹.
- When establishing the process for accreditation, consideration may be given to similar processes applicable to sectors in scope to streamline approval.
- Products in scope (utilities, bank accounts, insurance policies) are likely to involve jointly held accounts. Care should be taken around management of personal information in scenarios where there may be separation.
- Consideration might be given to Government agencies as an early enabler of the CDR to ensure consistency in how data is treated in sectors that involve both public and private providers, and ensure requirements on agencies are designed to be administratively efficient.

¹ <https://www.privacy.org.nz/blog/what-do-new-zealanders-think-of-data-portability/>