

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>It is important to ensure that any changes are consistent with existing consumer data requirements in legislation with general application such as the Privacy Act. Consideration should also be given to industry specific requirements to hold data, such as insurance specific disclosure requirements. There may be good grounds to consider a broader scope of reform to ensure a consistent and modern approach to consumer data management.</p> <p>A potential benefit would be cross-sector portability of consumer data, allowing for 'aggregated views' of personal information for more complex uses cases than simple 'search and switch' transactions.</p> <p>For example, if a CDR framework is applied across the whole financial services industry, it could empower financial advice businesses to utilise accurate data from multiple sources to build a single 'source of truth' from which to base financial advice process and logic. This could increase the availability and accuracy of a financial advice for consumers, by reducing the barrier to entry and reducing the burden of knowledge on consumers.</p> <p>A potential problem is data collection of legacy information. Older businesses may hold consumer information in a non-digital or machine-readable format. There would be significant costs involved in introducing a regime that would require access to such legacy information.</p> <p>We assume that the legislation would not have retrospective effect but note that this would reduce the immediate usefulness to existing consumers.</p>
4	<p><i>What would the costs and benefits be of applying the consumer data right to businesses and</i></p>

other entities, in addition to individuals?

The costs would be significant, but difficult to quantify until the scope of the regime is clearly articulated.

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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')?

A binary exclusion of derived data may not necessarily be correct. Not all derived data is necessarily proprietary, particularly in the financial services industry. If the data is derived from a wholly or substantially unique process of derivation, then it should be excluded.

It may be beneficial to include derived data. That is data which is material to the provision or switching of a product or service which would be derived from a materially similar process across the same sector (for example, the information used to 'underwrite' an application for insurance).

Conversely, product data may prove misleading in many cases where products or services are not directly comparable. This is a common occurrence in financial services, where product comprehensiveness and pricing competitiveness are not binary levers which could be easily compared without the context of what each is designed to achieve for a consumer.

Using a life insurance example, the products and services offered by 'direct to consumer' propositions are usually less comprehensive than those available through an advised channel. This, in many cases, is an intentional commercial decision to deliver product in a different 'category' – and as such comparing a package of insurance sold through an adviser, to that available through a direct to consumer online proposition without the context of what need those products are intended to address may lead to a significant risk of misinformation in complex product sectors.

That is not to say that product data should not be included, but perhaps the scope of what product data is intended to achieve in the context of a CDR should be limited to informing current state rather than comparing a replacement transaction.

Market data is unlikely to be useful for consumers in isolation, but it would be very useful for businesses within a sector.

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

It is unclear which situations write access could be invoked without a switch in providers or alteration to currently held product or services happening. If either of those events happen, the data held by the first party would need to be amended regardless, which makes it difficult to conceptualise what value adding third party write access would provide.

If the intention is to enable third parties and intermediaries to manage and change products and services on a consumer's behalf, a write-access CDR would not supersede the contractual requirements (where applicable) for a consumer to authorise such a change, while read access permissions would allow those third parties or intermediaries to assess current state and compare products and services on the consumer's behalf without write access.

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

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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?

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

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

This doesn't seem viable in the long term, with an increasing consumer awareness of data sovereignty, an increased expectation in digitally-enabled convenience and a global move towards stronger consumer privacy policy.

10

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

A high-level legislative framework detailing universal standards and responsibilities would enable cross-sector data portability, and keep a 'level playing field', while still enabling secondary legislation in respect to the sensitivities and unique challenges of each industry.

11

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

The advantage of this approach is a universal 'start point', however this would be very difficult to implement correctly as the legislative framework would have to be very vague and high-level in order to apply cross industry.

12

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

This option would seem to be strictly worse than Option two, as there is a very high likelihood of the individual legislation applying to each sector diverging. If the framework for data portability and format is not defined universally, the consumer data right is much more limited in its practical value.

13

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

Data rights and portability could be rolled into a wider rework of data protection and privacy law. This would be a significantly larger project of work, however future-proofing data and privacy law in the digital age is something which should be a priority.

14

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?

Yes, so long as there is a clear pathway and timeline for implementation across industries. The end-goal must surely be universal implementation across the whole economy, rolled out by sector. It would be a poor outcome for consumers if a CDR rollout ignores or exempts individual industries.

How could a consumer data right be designed?

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

Data format being prescribed may not be enough, as a unified format in and of itself is not enough to guarantee portability. Consideration should be given to a central *method* of data transfer, and also to the method of data receipt by the third party. Relying on individual businesses to generate information packages from divergent types of architecture or systems would rely heavily on sectoral co-operation to build compatible transfer pathways (such as APIs) which may not necessarily be a reliable approach.

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

Point 46 looks to refer specifically to fire & general insurance, which is a separate industry to life insurance. There are material differences between these industries, including the duration of the contracts: life contracts have a very long duration, but standard fire and general insurance contracts are for a maximum of 12 months.

Product information included in a CDR for fire and general insurance may enable search and switch transactions due to the relative parity in market offerings. Product information for life insurance in a CDR would be unlikely to enable search and switch transactions, as the products are significantly more complex and divergent between provider offerings.

There can be disadvantages to consumers in switching life insurance providers. These disadvantages were highlighted by the Financial Markets Authority in their 2018 paper “QFE insurance providers’ replacement business practices” which states:

“These risks include:

- consumers have claims denied that might have been accepted under original policies*
- consumers lose benefits they might have otherwise received under original policies*
- replacing policies purchased at a younger age may result in more expensive premium or limited benefits*
- increased likelihood of exclusions or limitations associated with changes in health, lifestyle or occupation that have occurred since the original policy has been taken out*
- inadvertent non-disclosure which reduces or annuls cover*
- potential to reset any waiting periods for benefits*
- policy benefits could attract a loading on a new policy that weren’t subject to a loading on an existing policy, raising the long-term cost of the new policy*
- consumers could be over-insured, or under-insured, because of poor advice.”*

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

Consideration should be applied to format and to the method of transfer and detailing obligations and requirements for the receiving party.

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

20	<i>Do you have any suggestions for considering how Te Tiriti o Waitangi should shape the introduction of a consumer data right in New Zealand?</i>
21	<i>How could a consumer data right be designed to ensure that the needs of disabled people or those with accessibility issues are met?</i>
22	<i>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?</i>
	The consideration is important, however it may be more immediately beneficial to look at considering overall data rights and protection law with overseas jurisdictions, and appending CDR provisions into a complete rebuild of privacy and data framework.
23	<i>Do you have any comments on where a consumer data right would best sit in legislation?</i>
	As above, a GDPR-like overhaul of privacy and data law could ultimately provide for CDR provisions, but would likely provide a greater immediate impact than the CDR alone for protecting consumers.
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>
	A multiple regulator approach is far more likely to introduce uncertainty, conflicting information and increased compliance costs. A single regulator would provide clarity in a 'single source of truth'.
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