



*Response —
Options for establishing a
consumer data right
in New Zealand*

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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

Are there any additional problems that are preventing greater data portability in New Zealand that have not been identified in this discussion document?

Ping Identity (Ping) has long-term experience in the Consumer Data Right in Australia, and Open Banking in the United Kingdom, Europe and New Zealand, through our enterprise customers in those regions. Mark Perry, the author of this response, was a member of the Australian CDR Data Standards Body for two years, from 2018–2020.

We have seen better outcomes for consumers where a consumer data right is mandated by government and makes use of broadly-supported industry standards.

Greater data portability is prevented by a number of issues, some of which are mentioned in the discussion document, including:

- Consumer mistrust of data sharing with third parties, in the wake of negative press and experiences with identity theft and other cybersecurity threats
- The lack of a government-mandated scheme for data sharing, including the confidence government communications to support this scheme would encourage
- Lack of a consistent user experience for data sharing, leading to high drop-off rates and consumer apathy
- Reliance on screen-scraping by third parties, and increasing consumer understanding that this is poor security practice and should be avoided

These can be summarised in one phrase: lack of trust. What a CDR will enhance is trust, for consumers and for participants.

2

Do you agree with the potential benefits, costs or risks associated with a consumer data right as outlined in this discussion document? Why/why not?

Ping agrees with the benefits and costs outlined in the discussion document.

3

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

Ping would like to add that the initiation of a CDR comes with an impost on

government, and the success or failure of a CDR is highly dependent on these areas:

- The form of governance over the creation and maintenance of the CDR
- The level of engagement with industry and other stakeholders, and the transparency of decision making during this process
- The highly-specialised skills required to design and implement a CDR scheme and its associated industry testing and certification processes

4

What would the costs and benefits be of applying the consumer data right to businesses and other entities, in addition to individuals?

As the discussion document covers, the benefits are the enablement of new products and services that enrich a consumer's daily life, while allowing them to retain control over their data, and be assured that an appropriate level of security, privacy and consent is maintained by government mandate.

Costs include:

- The likely technology uplift for participants, which experience in Australia and the UK has shown is significant for some organisations
- The need for ongoing maintenance of a standard, and the associated implementations of that standard, by participants
- The need for consumer education and communication to explain the data sharing scheme, and its benefits and risks
- The need to test and certify participants and solution vendors, to ensure confidence in the interoperability of the scheme

5

Do you have any comments on the types of data that we propose be included or excluded from a consumer data right (i.e. 'consumer data' and 'product data')?

The Australian experience has shown that there are some edge cases to be managed around derived data and its ability to be shared with other organisations. For example, the banks have data about supermarket purchases and enrich this information by mapping store codes to geographic locations, which are then listed on bank statements for their customers. The code mapping database is provided by third parties, who do not allow sharing of the derived location data with others.

Fintechs and others want access to this geographic location data, to enable a range of consumer insights into spending patterns.

6

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

The benefits are as mentioned in the discussion document: increased innovation and an open data regime where the consumer has control over their information.

The costs are in certifying participants, managing a central directory of participants including the cryptographic material needed to secure the scheme, and the ongoing maintenance of the standards and rules.

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?

The outcomes described in the discussion document match what Ping has seen in other jurisdictions. We like to describe the CDR as the “rails” for a modern, data-driven society and as such, it can be difficult to narrow down the outcomes to a further level of detail.

8

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

Ping has no further comments on this point.

9

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

Ping’s experience is that option one does not produce good outcomes for consumers, industry or the application development community. Industry co-operation on its own can lead to the fragmentation of APIs, meaning higher costs for application developers, and vesting control to the larger industry players. While efforts like the Financial Data eXchange (FDX) in the USA are showing promise, the lack of a government mandated process has left that jurisdiction behind the UK, for example.

10

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

Ping’s experience with the Australian CDR, like that of option two, is mostly positive. Some issues have been experienced due to the lack of a single government authority in charge of the ACDR, compared to the UK where the CMA9 created and manage the Open Banking Implementation Entity. We believe that financial services is the best industry to start with a CDR, as they have strong security and privacy controls in place. Option two requires an ongoing mandate to continue rolling out the CDR across other industries, with the need to understand and adapt the regime to industry-specific requirements and situations.

11

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

Ping believes that an economy-wide CDR is a laudable goal. As mentioned in the discussion document, the impact on small to medium businesses may be significant and require a relatively long implementation time to allow those entities to comply. We also note that the GDPR is a regime to allow the end user to control access to their data, while data sharing is a mechanism to allow innovation to flourish within

12

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

Ping’s view is that the benefits of data sharing across sector boundaries requires a single framework, to reduce the complexity and costs of compliance. In Australia, several fintechs have indicated interest in accessing data from the banking and energy sectors, the first two to come under the ACDR. Apart from the difference in APIs and data payloads, a fragmented regulatory regime would force many smaller application developers to abandon this approach, limiting innovation to larger entities.

13	<i>This discussion document outlines four possible options to establish a consumer data right in New Zealand. Are there any other viable options?</i>
	Ping has no input on this point.
14	<i>Do you have any comments on our initial analysis of the four options against our assessment criteria?</i>
	Ping has nothing to add for this point.
15	<i>Do you agree or disagree with our assessment that Option two is most likely to achieve the best outcome using the assessment criteria?</i>
	Yes, Ping believes option two is the most likely to achieve the best outcome, and is also the most practical option.

How could a consumer data right be designed?

16	<i>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?</i>
	Ping agrees with the key elements as outlined in this section.
17	<i>Do you have any feedback on our discussion of any of these key elements?</i>
	As a vendor of information security solutions that track compliance with the Australian CDR and Open Banking in other jurisdictions, we urge the New Zealand government to include solution vendors in industry testing, to enable organisations to validate vendor claims of compliance before a technology purchasing decision has been made. This is currently not the case in the ACDR, but is in the UK by the OBIE.
18	<i>Are there any areas where you think that more detail should be included in primary legislation?</i>
	Ping believes that the mandatory use of technology open standards is the best and only way to ensure a level playing field in a CDR. Modifications to open standards should be a last resort. We point again to the ACDR, where significant extensions to and divergence from open standards has increased the cost of compliance and impacted all participants in other negative ways.
19	<i>How could a consumer data right be designed to protect the interests of vulnerable consumers?</i>
	Ping has no input on this point.
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>
	Ping has no input on this point.
21	<i>How could a consumer data right be designed to ensure that the needs of disabled</i>

	<i>people or those with accessibility issues are met?</i>
	Ping has no input on this point.
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>
	Ping believes that compatibility and/or interoperability with overseas jurisdictions should be considered carefully, particularly compatibility with the Australian CDR.
23	<i>Do you have any comments on where a consumer data right would best sit in legislation?</i>
	Ping has no input on this point.
24	<i>Do you have any comments on the arrangements for establishing any new bodies to oversee parts of a consumer data right?</i>
	Ping believes that a separate body be created to oversee the CDR as a whole, to simplify the interactions between industry, government and consumers. Australia now appears to be considering this approach, for example. This is also the approach used in the UK Open Banking regime.
25	<i>What are the pros or cons of having multiple regulators, or a single regulator, involved in a consumer data right?</i>
	Having multiple regulators involved in the CDR increases the number of handoffs between entities, especially while reviewing, updating and clarifying standards and rules. Having a single regulator should streamline this process and reduce the number of issues related to where one regulator's province starts and another's ends.
26	<i>If government decides to establish a consumer data right, do you have any suggestions of how its effectiveness could be measured?</i>
	Experience in other jurisdictions has shown that the CDR and Open Banking have had slow take-ups. In some cases, that was due to a managed rollout to a handful of participants. In other cases, it was due to the process required to certify and on-board participants.
	Ping believes that the CDR is a foundational framework that makes innovation possible. It is not a product to be purchased and so cannot be measured in the same way as other services. Its value is in the network effect it creates, as new services make use of its APIs to deliver benefits to consumers and businesses alike. Consumer take-up is driven by the market and the applications using the CDR, rather than a direct interest in using the CDR itself.
	The number of participants is a clear indicator of the health of the regime, as is the time to on-board new participants.

Other comments

Ping Identity wishes to thank the New Zealand government for this opportunity to respond. We have had and continue to have productive and successful relationships with CDR and

Open Banking regulators around the world and would welcome the chance to have further input into the creation of New Zealand's CDR and its standards.