

Submission template

Options for establishing a consumer data right in New Zealand

This is the submission template for the discussion document, *Options for establishing a consumer data right in New Zealand*.

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in the discussion document by 10am on **Monday 5 October 2020**. Please make your submission as follows:

1. Fill out your name and organisation in the table, “Your name and organisation”.
2. Fill out your responses to the consultation document questions in the table, “Responses to discussion document questions”. Your submission may respond to any or all of the questions in the discussion document. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.
3. We also encourage your input on any other relevant issues in the “Other comments” section below the table.
4. When sending your submission:
 - a. Delete these first two pages of instructions.
 - b. Include your e-mail address and telephone number in the e-mail or cover letter accompanying your submission – we may contact submitters directly if we require clarification of any matters in submissions.
 - c. If your submission contains any confidential information:
 - i. Please state this in the cover letter or e-mail accompanying your submission, and set out clearly which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.
 - ii. Indicate this on the front of your submission (e.g. the first page header may state “In Confidence”). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).
 - iii. Please provide a separate version of your submission excluding the relevant information for publication on our website (unless you wish your submission to remain unpublished). If you do not wish your submission to be published, please clearly indicate this in the cover letter or e-mail accompanying your submission.

Note that submissions are subject to the Official Information Act 1982.

5. Send your submission:

- as a Microsoft Word document to consumerdataright@mbie.govt.nz (preferred), or
- by mailing your submission to:

Consumer Data Right Project Team
Commerce, Consumers and Communications
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

Please direct any questions that you have in relation to the submissions process to consumerdataright@mbie.govt.nz.

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

Your name and organisation

Name	
Organisation	Wych Limited

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> <p>Data holders have lost sight of the fact that they are only custodians of consumer data. They only desire to allow access to the data when it provides a benefit to them. The cost of access to the data can be prohibitive to individuals and businesses.</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> <p>We do not think a CDR will provide a significant barrier to entry. CDR will not impact how a business stores data, only how it provides access to it.</p> <p>CDR will not delay innovation. It can only foster innovation by allowing more parties to develop solutions more rapidly than incumbent custodians</p> <p>To avoid the CDR standard imposing barriers to entry, a tiered and timed system similar to the Australian neo-banking licencing approach whereby new entrants can enter the market with limited, restricted or reduced access for a period to enable validation before requiring full regulation.</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>NZ financial regulator forbids the use of robo-advisors which could conflict with the potential use cases for CDR data reducing the effectiveness of the standard.</p> <p>Data holders already provide some of this information to the customer through their own apps, websites or portals at no extra cost, the CDR should not cost more than the existing methods of access.</p> <p>Additional privacy risk by allowing third parties to infer information from consumer data that is not obvious.</p>

4

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

Required for innovation across the data space. Business and trusts are just as relevant as individuals when it comes to data.

Businesses often pay more for the same services as consumers. Many businesses are small and operate on tight budgets similar to households. Adding efficiency to these businesses would have a significant impact.

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')?

Agree that consumer data should only include observed data rather than inferred data.

6

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

CDR should include non-repudiation mechanisms for both read and write access. Any access should be auditable and traceable back to the party that read or write the data CONSIDER Automation

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?

Wide range of participants and open to as many consumers, affordable & inclusive

8

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

9

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

Status Quo is not working as the sector **perceives** open data as a risk to their business and are only paying lip service to open data. They see the data as theirs to own and use as a barrier to innovation and competition.

PaymentNZ's standard both mandatory or optional, have only been implemented by a single Bank and the others have repeatedly found reasons not to implement.

100

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

Sectoral-designation approach would provide the shortest path to benefits whilst providing consistency of approach as additional sectors are brought into the framework. How do you prioritise the sectors?

Multiple sectors can be targeted in parallel.

11

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

While this would be the ultimate goal, introducing economy-wide CDR would cause a lot of short-term disruption and would not deliver benefit as quickly as the sectoral approach

GDPR is more than an economy-wide standard and applies to European citizen data regardless of where it is held.

NZ citizens and businesses could benefit from the complementary rights offered by a GDPR like standard and the specifics of sectoral specific implementation.

12

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

Sector-specific approach will lead to long term problems and make it difficult to integrate data from different sectors. Deep vs wide and would likely focus on existing highly regulated industries. Lower value to customer. Multi-sector business (banks with insurance).

The existing standards suffer from several issues: the Financial Markets Authority restricts robo-advisors; industry specific restrictions. Existing ad hoc or outdated rules managed in an industry specific manner would result in the same thing we have now. It would offer little to no end-user value because there is no means of providing a valuable service without overcoming industry specific hurdles.

13

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

A combination of option two and three whereby option 3 provides the framework details the rights of the individual, business or trust both within New Zealand and outside and option two detailing how New Zealand industries must make the data available. This is how GDPR and the UK Open Banking regime sit together.

14

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

15

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

Agree

How could a consumer data right be designed?

16

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

17

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

18

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?

Considering the existing banking platform (PaymentNZ) the price of data access is variable (both from bank to bank and between customers of a bank) which impacts the affordability of services offered and can be used to restrict access.

Where available, data holders that contain products available in multiple languages must provide the same details via the api standard. This ensures consumers receive consistent product information across all manners of access.

20

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

Data commons. Consider shared ownership principles

21

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

Include Ancillary data e.g. line-items, transactions and cost breakdowns. Include the calculation. Include metadata standards that aid accessibility (i.e. exchange rates)

WCAG 2.1 Understandable — make content readable and understandable.

Robust — content must be robust enough to be interpreted by a wide variety of users and assistive technologies.

22

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

Useful to be compatible with Australia (enable competition), learn from other jurisdictions and identify opportunities for NZ

23

Do you have any comments on where a consumer data right would best sit in legislation?

Sit above a Competition, Consumer & Privacy bring in Regulators

	<p>It could sit within Consumer (as it is a consumer right) but the responsible body must have the teeth and ability to enforce the act and rectify violations.</p>
24	<p><i>Do you have any comments on the arrangements for establishing any new bodies to oversee parts of a consumer data right?</i></p>
	<p>Lead agency</p>
25	<p><i>What are the pros or cons of having multiple regulators, or a single regulator, involved in a consumer data right?</i></p>
	<p>Conflict, gaps and complexity for Data Holders. No single point of responsibility. This could lead to things falling between the gaps between areas of responsibility</p>
26	<p><i>If government decides to establish a consumer data right, do you have any suggestions of how its effectiveness could be measured?</i></p>
	<p>Number of industry participants, customer uptake, and data request volume, API activity across sectors.</p> <p>Mandatory reporting on usage, consumer interaction, and lifetime value from data holders and data recipients. In addition mandatory data breach notification should be introduced to help provide assurance around privacy protections.</p>

Other comments