



## COVERSHEET

<b>Minister</b>	Hon Dr David Clark	<b>Portfolio</b>	Commerce and Consumer Affairs
<b>Title of Cabinet paper</b>	<b>Establishing a Consumer Data Right</b>	<b>Date to be published</b>	9 July 2021

<b>List of documents that have been proactively released</b>		
<b>Date</b>	<b>Title</b>	<b>Author</b>
June 2021	<i>Establishing a Consumer Data Right</i>	<i>Office of the Minister of Commerce and Consumer Affairs</i>
30 June 2021	<i>DEV-21-MIN-0145</i> <i>Establishing a Consumer Data Right</i>	<i>Cabinet Office</i>
June 2021	<i>Regulatory Impact Statement</i>	<i>MBIE</i>

### **Information redacted**

**YES**

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Some information has been withheld for the reason of constitutional conventions.



# Cabinet Economic Development Committee

## Minute of Decision

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### Establishing a Consumer Data Right

**Portfolio** Commerce and Consumer Affairs

On 30 June 2021, the Cabinet Economic Development Committee (DEV):

#### Background

- 1 **noted** that a consumer data right is a mechanism for allowing consumers to require data held about them to be shared safely and securely with trusted third parties;
- 2 **noted** that on 29 July 2020, DEV agreed to release a discussion document seeking feedback on options for establishing a consumer data right in New Zealand [DEV-20-MIN-0155];

#### Consumer data right

- 3 **agreed** to establish a consumer data right legislative framework;
- 4 **agreed** that the purpose of a consumer data right legislation framework be to:
  - 4.1 improve the ability for consumers to access and share their data;
  - 4.2 give consumers greater control over how their data is used and disclosed;
  - 4.3 promote innovation and facilitate competition;
- 5 **agreed** that the consumer data right will require businesses that hold data (data holders) to share prescribed data that they hold about consumers (CDR data) with trusted third parties (accredited persons), on the consent of the consumer;
- 6 **agreed** that consumers can include individuals and entities;
- 7 **agreed** that data holders may also be required to share data about the goods and services that they offer (product data);
- 8 **agreed** that consumers will be able to consent to read access (i.e. the ability for an accredited person to receive consumer data) and action initiation (i.e. the ability for an accredited person to carry out an action on the consent of a consumer);

#### Designation

- 9 **noted** that the consumer data right is proposed to be applied gradually across the economy;

- 10 **agreed** that an Order in Council, made on the recommendation of the Minister of Commerce and Consumer Affairs, may designate the consumer data right as applying in a certain sector, industry or market, and to certain data sets;
- 11 **agreed** that the Order in Council may specify the scope of the designation, such as:
- 11.1 the types of consumer data that are CDR data and subject to the designation (e.g. specific data sets about individuals or entities);
  - 11.2 the types of consumer data that are excluded from the designation (e.g. materially enhanced derived data);
  - 11.3 the products that are subject to the designation (e.g. product data, or data relating to certain types of products);
  - 11.4 the businesses or classes of businesses that are subject to the designation;
  - 11.5 the functionality that may be enabled (e.g. read access or the actions that can be initiated);
- 12 **agreed** that, before recommending the consumer data right apply in a certain sector and recommending other associated secondary legislation, the Minister of Commerce and Consumer Affairs must have regard to the impacts, and consult with affected parties and other relevant persons (e.g. the Privacy Commissioner);

### **Obligations on participants in designated sectors**

- 13 **agreed** that where a sector is designated:
- 13.1 data holders may be required to provide a service that:
    - 13.1.1 provides CDR data to consumers and accredited persons;
    - 13.1.2 allows accredited persons to initiate actions on behalf of consumers;
  - 13.2 if a consumer requests some or all of their CDR data, data holders be required to disclose that data;
  - 13.3 if an accredited person requests CDR data, and has a valid consent from the consumer, data holders be required to disclose that data in machine-readable format without any restrictions on its use;
  - 13.4 if an accredited person requests that the data holder take relevant actions on behalf of a consumer, and has a valid consent from the consumer, data holders be required to take those actions;
  - 13.5 data holders be required to provide a service that provides product data in a machine-readable format, and disclose that data to any person who makes a request;

### **Information and consumer protection safeguards for CDR data**

- 14 **noted** that a consumer data right increases the risks associated with the handling of information, such as misuse of information or breach of privacy, as it will increase the flow of data across the economy and open up access by third parties;

- 15 **noted** that the creation of additional information and consumer protection safeguards for consumer data, beyond the existing protections in the Privacy Act 2020 in respect of personal information, will support consumer trust and confidence in the regime;
- 16 **agreed** that data recipients must obtain consent from consumers for collecting, using or transferring CDR data in accordance with principles such as:
- 16.1 consent must be express (i.e. through a clear opt-in);
  - 16.2 consent must be informed, including taking reasonable steps to assist the consumer to understand of the scope and purpose of the consent;
  - 16.3 consent must be time-limited;
  - 16.4 consent should not be sought as a condition of providing goods or services, unless the transfer is necessary for that purpose, and any additional consents given should be specific and optional;
  - 16.5 consumers must be given the ability to review and amend or withdraw consent at any time;
- 17 **agreed** to require information and consumer protection safeguards, such as:
- 17.1 the consumer's identity must be authenticated, and the consumer must authorise the data holder to comply with an accredited person's request to receive data;
  - 17.2 the data holder must verify the identity of the accredited person;
  - 17.3 consumers will be notified once the transfer of data to a third party has been completed;
  - 17.4 data holders must maintain consumer data records noting the transfers the data holder has initiated of a consumer's CDR data, including the types of data consented to and collected, and identifying the accredited recipients;
  - 17.5 limits on the permissible uses of consumer data;
  - 17.6 data recipients must disclose clear information about how consumers revoke or amend their consent, or make a complaint;
  - 17.7 data recipients must produce and implement a consumer data right policy that sets out how it will implement its obligations under CDRs, and which identifies risks and processes to limit inappropriate or unauthorised access to CDR data;

## Accreditation

- 18 **noted** that the success of the consumer data right depends on there being trust by all participants in the system;
- 19 **agreed** that data holders will only be able to share CDR data with accredited persons or initiate relevant actions received from accredited persons;
- 20 **agreed** that the accreditation regime is to be flexible to ensure that the requirements for accreditation are proportionate to the nature of the entity seeking accreditation, the level of risk associated with the degree of access/control over data being sought and the data set itself, and to avoid imposing undue compliance costs;

- 21 **agreed** that the accreditation will include an assessment of the applicant's integrity, systems and process to protect consumer data and the ability to meet the obligations of the CDR;
- 22 **agreed** that the accreditation may be suspended, revoked, downgraded, or subject to conditions;

### More detailed rules in secondary legislation

- 23 **agreed** that rules to be implemented by secondary legislation will include:
- 23.1 how consumers may give consent to the collection, use and disclosure of consumer data, and how that consent may be amended or revoked;
  - 23.2 the purposes for which consumer data can be used or disclosed, and conditions that need to be met for use and disclosure;
  - 23.3 what may be charged for, guidelines that must be followed in setting fees, and restrictions on fees;
  - 23.4 what secondary users (other than the main account holder) may request consumer data and initiate actions (e.g. a secondary card holder on a bank account), how secondary users are given access privileges, and restrictions on those privileges;
  - 23.5 accreditation criteria;
  - 23.6 exceptions to and exemptions from obligations;

### Common data standards

- 24 **agreed** to require accredited persons and data-holders subject to a designation of the consumer data right to comply with shared data standards that cover all aspects of provision, including the design of services and application programming interfaces, data formats, information protection safeguards, and the consumer experience of the consumer data right;

### Legislative implications

- 25 Constitutional conventions
- 26 **authorised** the Minister of Commerce and Consumer Affairs to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;
- 27 **authorised** the Minister of Commerce and Consumer Affairs to make additional policy decisions and minor or technical changes to the policy decisions referred to above, consistent with the general policy intent, on issues that arise in drafting;

### Further decisions

- 28 **invited** the Minister of Commerce and Consumer Affairs to report back to DEV by 30 November 2021 on institutional responsibilities, cost recovery, compliance, enforcement, and consumer redress for the consumer data right framework;

29 **noted** that funding implications will be further considered as part of the report referred to above.

Janine Harvey  
Committee Secretary

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**Present:**

Hon Grant Robertson (Chair)  
Hon Dr Megan Woods  
Hon Chris Hipkins  
Hon David Parker  
Hon Damien O'Connor (via zoom)  
Hon Stuart Nash  
Hon Dr David Clark  
Hon Dr Ayesha Verrall  
Hon Meka Whaitiri  
Rino Tirikatene MP  
Dr Deborah Russell MP

**Officials present from:**

Office of the Prime Minister  
Officials Committee for DEV