



COVERSHEET

Minister	Hon Dr David Clark	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Further decisions on the consumer data right	Date to be published	19 December 2022

List of documents that have been proactively released

Date	Title	Author
27 July 2022	Further decisions on the consumer data right	Office of the Minister of Commerce and Consumer Affairs
27 July 2022	DEV-22-MIN-0151 - Consumer Data Right: Further Decisions	Cabinet Office
15 March 2022	2122-2226 - Updated Consumer Data Right	MBIE
July 2022	Supplementary Regulatory Impact Statement: Further decisions on establishing a consumer data right	MBIE

Information redacted

YES

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.



Cabinet Economic Development Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Consumer Data Right: Further Decisions

Portfolio Commerce and Consumer Affairs

On 27 July 2022, the Cabinet Economic Development Committee (DEV):

Background

- 1 **noted** that on 30 June 2021, DEV:
 - 1.1 agreed to establish a consumer data right (CDR) legislative framework;
 - 1.2 invited the Minister of Commerce and Consumer Affairs to report back on institutional responsibilities, cost recovery, compliance, enforcement, and consumer redress for the CDR framework;
- [DEV-21-MIN-0145]
- 2 **noted** that the CDR will give consumers the ability to share data held about them by businesses (data holders) with trusted third parties (licensed data recipients) using common standards and interfaces;

Designation under the Bill

- 3 **noted** that DEV has previously agreed that the CDR be implemented gradually, whereby sectors of the economy can be 'designated' through Order in Council on the recommendation of the Minister of Commerce and Consumer Affairs [DEV-21-MIN-0145];
- 4 **agreed** that banking be the first sector assessed for designation under criteria to be set out in the CDR Bill;

Institutional responsibilities

- 5 **agreed** that the department responsible for the administration of the CDR Bill be responsible for:
 - 5.1 developing and advising on secondary legislation;
 - 5.2 licensing of data recipients;
 - 5.3 provision of registry services;
 - 5.4 education and promotion of the CDR to consumers and prospective data recipients;

- 6 **agreed** that the Commerce Commission be responsible for the CDR enforcement function;
- 7 **agreed** that the data standards be made by a statutory officer within the administering department;

Consumer redress

- 8 **agreed** that the Privacy Commissioner and the Human Rights Review Tribunal be empowered to investigate and provide redress for complaints relating to breaches of CDR privacy and information security safeguards involving personal information, in line with Privacy Act 2020 processes;
- 9 **noted** that consumer dispute resolution and redress will be provided by existing industry mechanisms;

Compliance and enforcement

- 10 **agreed** that the CDR Bill provide for a range of compliance and enforcement regulatory powers for the CDR enforcement agency, including the power to educate, advocate, issue warnings, investigate potential breaches, monitor participants, compel compliance, and enable information sharing or collaboration with other regulators;
- 11 **agreed** that the CDR Bill provide for a liability and penalties regime for breaches of CDR requirements, and include a combination of criminal offences, pecuniary penalties and infringement offences;
- 12 **agreed** that, subject to drafting, there be four main tiers of penalties, as outlined in Appendix 3 to the paper under DEV-22-SUB-0151;
- 13 **agreed** that the enforcement agency will have the power to issue an infringement notice for offences in the first tier of penalties;

Cost recovery

- 14 **agreed** that fees (to be set in regulations) may be charged to persons who apply for an accreditation or for an amendment to an accreditation;
- 15 **agreed** that the CDR Bill include a levy-making power (to be set in regulations) that will permit recovery of the cost, or part of the cost, of regulatory functions under the CDR Bill, from data holders and/or accredited data recipients;

Confidential advice to Government

Legislative implications

- 18 **invited** the Minister of Commerce and Consumer Affairs to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;
- 19 **authorised** the Minister of Commerce and Consumer Affairs to make decisions on minor or technical matters, consistent with the policy outlined in the paper under DEV-22-SUB-0151, on any issues that arise during drafting and passage of the CDR Bill through the House;

20 **noted** that the release of an exposure draft of the CDR Bill will be considered following Cabinet's consideration of the report referred to in paragraph 17 above.

Janine Harvey
Committee Secretary

Present:

Hon Grant Robertson (Chair)
Hon Dr Megan Woods
Hon David Parker
Hon Willie Jackson
Hon Michael Wood
Hon Kiri Allan
Hon Dr David Clark
Hon Dr Ayesha Verrall
Hon Priyanca Radhakrishnan
Hon Meka Whaitiri
Hon Phil Twyford
Hon Kieran McAnulty
Rino Tirikatene, MP

Officials present from:

Office of the Prime Minister
Officials Committee for DEV