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Consumer Policy Team
Building Resources and Markets
Ministry of Business, Innovation & Employment
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SUBMISSION ON THE DISCUSSION DOCUMENT: UNLOCKING VALUE FROM OUR CUSTOMER DATA

The Electricity Retailers' Association of New Zealand ('ERANZ') welcomes the opportunity to provide feedback on the Ministry of Business, Innovation & Employment's discussion document 'Unlocking value from our customer data' from June 2023.

ERANZ is the industry association representing companies that sell electricity to Kiwi households and businesses. Our members supply almost 90 per cent of New Zealand's electricity. We work for a competitive, fair, and sustainable electricity market that benefits consumers.

ERANZ and its members support the government's commitment to increasing the ability of consumers to share their data with organisations delivering products and services to them.

Electricity has taken steps to provide for customer data sharing in order to provide consumers with additional value. A customer's historic consumption data, for example, is available on request. In addition, electricity retail plans are available for comparison on third-party websites such as Consumer NZ's operated PowerSwitch website.

In addition, it is important to recognise the expanding scope of participants in any one industry. For example, a large number of the electricity retailers now provide broadband services to customers as well. As such, policy-makers need to clarify how they will address this in data management standards and consult on alignments across industries much might involve the same organisations.

The progress on designing a consumer data rights regime for New Zealand has suffered recently through interruptions due to Covid and competing priorities. The development of the current proposal and exposure draft are heavily influenced by the banking and financial services sector. This is understandable, however, as electricity retailers there is a strong need for detailed and sector-specific consultation before electricity is designated into the regime.

Executive Summary

ERANZ fully supports the aims of the draft legislation and emphasises the importance of balancing consumer rights, data security, and innovation.

As the industry association representing companies that supply electricity to New Zealand households and businesses, ERANZ supports the government's commitment to empowering consumers to share their data with organisations delivering products and services.

ERANZ believes a thoughtful, sector-specific consultation is essential before implementing the regime in the electricity sector. The immediate focus should be on a successful launch and gradual evolution in financial services to address potential gaps in the regime. Continuous feedback and a statutory review will help refine and optimise the consumer data rights regime for the benefit of all.

Electricity retailers see value in a sector-specific cost-benefit analysis before bringing any sector into the regime to ensure customer needs are met in the most efficient way. This could be implemented by changing s60(1)(b) in the exposure draft, so that rather than just having regard to costs and benefits, it could require the Minister to:

- “Consider the costs and benefits of different design options,
- Choose the design option that maximises the cost/benefit trade-off for data holders, and
- Only recommend designation if Minister is satisfied that benefits exceed the costs.

Submission Points

ERANZ agrees with the Ministry’s aims for the draft legislation to make direct, secure and standardised transfer of consumer and product data easier.

Privacy

Basing the consumer data right legislation on the existing Privacy Act makes sense. The Privacy Act is already well understood by service providers and consumers and comes with well-established norms for protecting information.

Consent settings

Note that a customer’s ability to “easily withdraw” their consent settings come with some limitations which should be clearly explained to the public, preferably by the government. These situations will include existing legal and regulatory obligations for service providers to transfer customer data to government agencies and their external providers. Electricity retailers must supply a range of customer data, including consumption data, to the Electricity Authority. In addition, other organisations like MBIE make data requests of retailers for policy making purposes.

In these situations, it is impossible for providers to stop all data transfers because they are legally mandated under other laws.

Maximum authorisation periods are worthy of consideration but must balance delivering on consumer expectations with any harms coming from forgetfulness. The United Kingdom’s 90-day consent periods are unworkably short and will lead to consumer frustration at the constant need for reauthorisation. The Australian 12-month consent period seems far more practical.

While the discussion document notes sensible events (paragraph 65) which would trigger an automatic withdrawal of consent, there is value in considering “positive” or “active” events which could trigger automatic roll-over of consent. These events could include a consumer continuing to purchase the services of the third-party provider, or active engagement with the services provided as demonstrated by logging into to their website or app.

Care during exchange: standards

Standards to help ensure data protection is welcome. However, the scope of such standards specified in paragraph 75 go into unnecessary detail. Government regulations requiring a specific design of customer consent dashboards and the structure of a customer’s consent process is too detailed. Providers will be able to meet the minimum requirements to enable customers control of their data

without regulations stating exactly how this webpage must look. Unnecessarily, detailed regulations like this will stifle innovation and uptake, particularly if we want to encourage a fast-growing sector.

Electricity retailers support setting very robust security standards for data exchanges. Retailers already take great lengths to protect customer data in an increasingly challenging threat environment. Many of the services offered under the consumer data right legislation will be financially related. So, while they may not have the direct financial consequences of banking data, any breaches or security issues could lead to financial consequences for the consumer. Therefore, the same security standards required for banking will be appropriate for other sectors such as electricity.

Trust: accreditation of requestors

The two different classes of accreditation for data requestors provides a proportionate level of oversight and access to consumer data. The lack of specified intermediaries will work okay as long as service providers can contract organisations to undertake services on their behalf, for example, through out-sourcing.

Criteria for becoming an accredited entity across a fit-and-proper person test, demonstrated security measures, carrying appropriate insurance, and supporting Māori are sound. The provision for appropriate insurance ensures New Zealanders can have redress in situations where an entity either maliciously or through negligence, harms its customers. In addition, consideration should be given to what New Zealand-based presence an entity must have, otherwise it will be hard for customers or the government to seek redress against an entity that essentially has no personnel or operations here.

Unlocking value for all

Bringing small business customers inside the consumer data right regime makes sense given their lack of scale or resource to deal with service providers in a detailed way. However, large businesses have the ability to negotiate their own arrangements and so do not require the support of legislation aimed at households and small businesses.

The nature of 'secondary users' means allowances will have to be made so new staff members can alter, and most importantly, revoke data access granted by staff who may no longer work at the small business.

The sector for data services is reasonably young. The first priority should be to successfully launch the consumer data right regime and see what useful and commercially successful services emerge. Once the sector is operating, it will then become clear where inclusion and accessibility gaps might arise. Trying to predict these gaps accurately now will be difficult and may divert efforts from more productive endeavours.

A voluntary 'creative commons' of resources which work well to increase accessibility is the right place to start. It allows solutions to circulate within the interested community and lift overall performance without constraining innovation and new ideas developing. Regulations or compulsory guidance should only be used as a last resort and in response to a clear problem definition.

Ethical use of data and action initiation

Ethical considerations are important, but it is unclear what is proposed in this section that is in excess of requirements under existing acts and regulations. The two options put forward for consideration appear cumbersome and have a high probability of deterring interest and innovation in the data sector.

Option one and introducing the terms "ethically, responsibly and appropriately" appears too ill-defined to provide meaningful protection to consumers. Option two places limitations on data holders which could undermine the very growth and innovation this legislation is designed to support. Without an

ability to undertake safe and controlled research and development, companies will find it difficult to gain insights into their own customers' wants and how to meet them.

Preliminary provisions

A data holder's ability to refuse access to customer data should continue in the scenarios outlined in paragraph 167, including in cases where the access is made under duress, would cause harm to the customer, or there is a risk of fraud. Whichever way the obligations are framed, we just seek that they apply to everyone rather than carving out any particular subsectors for different obligations.

Regulated data services

There is a risk that Clause 26 of the draft legislation, which requires an electronic system, is bit too prescriptive and may not meet cost-benefit analysis in all circumstances. Designing a system to provide data will be where most of the cost lies for data holders, so would be better left to the designation process to develop a system that is fit-for-purpose for the use cases in each sector. For example, in some cases an email request responded to within a certain amount of time could be a low cost way to implement if the benefits are slim.

Protections

Record keeping obligations are essential to ensure trust and verification in data sharing systems, especially in the situation where something has gone wrong.

System settings

The regime as designed gives many roles to the Ministry including policy-setting, monitoring, compliance and enforcement. This provides for few checks and balances on the system administration. Thought should be given to providing alternative organisations with one or some of these responsibilities, such as enforcement through the Privacy Commissioner. Splitting responsibilities would mirror the situation in Australia where their Treasury recommended a separate compliance and policy agency in their most recent review.

Regardless of whether the system administration roles are separated out or not, ERANZ strongly advocates for a statutory review of the consumer data rights regime within a set period of time. This will allow all interested parties to provide feedback on how the regime is working including on items requiring fixing, adding or removing.

Retailers support all participants in the sector becoming members of the industry's dispute resolution scheme. Electricity retailers use Utilities Disputes Limited and this system works well. If entities are going to provide services to electricity customers, then the rights customers have to complain through UDL should be available as well.

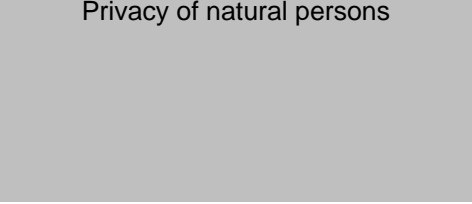
Conclusion

ERANZ would like to thank the Ministry for its ongoing efforts to improve outcomes for consumers. We are happy to provide any further information on this submission as required.

ERANZ looks forward to engaging with officials further as the government progresses with its consumer data rights legislation.

Yours sincerely

Privacy of natural persons

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Kenny Clark
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