24 July 2023

Consumer Data Right Project Team
Commerce, Consumers and Communications
Ministry of Business, Innovation & Employment

By email: consumerdataright@mbie.govt.nz

Unlocking value from our customer data

Meridian appreciates the opportunity to comment on the discussion document *Unlocking value from our customer data* and the draft Customer and Product Data Bill. Nothing in this submission is confidential and it may be published in full.

Meridian is broadly supportive of the introduction of a consumer data right in Aotearoa. We see this as an opportunity to take a more consistent approach to consumer data across different sectors and as an enabler of innovation and improvements to customer experiences. This submission briefly comments on the application of a consumer data right to the electricity sector. Responses to the questions in the discussion document are appended. Meridian's comments at this stage are limited to the high-level framework proposed in the Bill. We would expect to engage in further detail if designation regulations and standards are ever developed to extend the coverage of the consumer data rights regime to the electricity sector and in any such process it would be critical that the Government considers the costs and benefits of a range of options at a sectoral level.

In the electricity sector, the Electricity Industry Participation Code developed by the Electricity Authority already contains detailed requirements that are akin to what might be required under the draft Bill should regulations and standards be developed in respect of the electricity sector. For example, clauses 11.32E to 11.32EG of the Electricity Industry Participation Code cover consumer authorisation of an agent to request information from electricity retailers on behalf of the consumer as well as the actions and processes that retailers must follow upon receipt of requests and to confirm authorisations.

At this stage it is not clear to Meridian how the Electricity Industry Participation Code and proposed Bill would interact. Businesses would benefit from clarity sooner rather than later to understand the legal framework that will apply and how it will be administered. We expect that MBIE, the Privacy Commissioner, and the Electricity Authority would work closely to ensure a coherent system without duplication or contradiction and a smooth, well-signalled transition if regulations and standards are developed for the electricity sector.

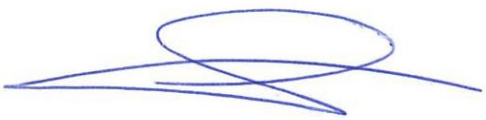
If the electricity sector did move to the consumer data rights framework, there may be an opportunity to improve weaknesses in the existing arrangements. For example, under the Code there is currently no maximum duration of an authorisation, no clear process for consumers to revoke authorisation, and no triggers for default revocation. Meridian supports the proposed Bill, which would include:

- clear and easy processes to gain and withdraw consent;
- a maximum consent duration; and
- conditions for authorisation ending by default e.g. if a customer closes an account or a requestors accreditation ends.

If regulations and standards are developed for the electricity sector, decisions about which businesses are designated as data holders would need to be made after careful consideration of the potential impacts on competition. In Meridian's opinion all competitors should be on a level playing field, i.e. all electricity retailers (or all metering equipment providers) could be designated data holders. Arbitrary distinctions based on scale would create an artificial incentive to stay below thresholds or change business structures to avoid the costs of being a data holder. This would not result in long-term benefits to consumers and would increase complexity for consumers. Consumers should have the same data rights and options regardless of their retailer and all retailers should be subject to common regulatory obligations and costs to maintain effective competition.

Please contact me if you have any queries regarding this submission.

Nāku noa, nā



Sam Fleming
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Appendix: Responses discussion document questions

How will the draft law interact with protections under the Privacy Act?	
1	*Does the proposed approach for the interaction between the draft law and the Privacy Act achieve our objective of relying on Privacy Act protections where possible? Have we disapplied the right parts of the Privacy Act?*
	The proposed approach appears broadly reasonable.
Consent settings: respecting and protecting customers' authority over their data	
2	*Should there be a maximum duration for customer consent? What conditions should apply?*
	Yes. As per the Australian regime, 12 months would be a good starting point. Anything less by may cause consumer frustration because of the frequency of activity.
3	*What settings for managing ongoing consent best align with data governance tikanga?*
	No comment.
4	*Do you agree with the proposed conditions for authorisation ending? If not, what would you change and why?*
	Yes.
5	*How well do the proposed requirements in the draft law and regulations align with data governance tikanga relating to control, consent and accountability?*
	No comment.
6	*What are your views on the proposed obligations on data holders and accredited requestors in relation to consent, control, and accountability? Should any of them be changed? Is there anything missing?*
	The obligations outlined in paragraph 69 of the discussion document are broadly sensible.
Care during exchange: standards	
7	*Do you think the procedural requirements for making standards are appropriate? What else should be considered?*
	In Meridian's opinion there should be a procedural requirement to develop standards in close consultation with the businesses in the relevant sector to which the standard will apply. The standards need to be workable for the businesses implementing them if they are to be successful.
8	*Do you think the draft law is clear enough about how its storage and security requirements interact with the Privacy Act?*
	Yes.

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9	*From the perspective of other data holding sectors: which elements of the Payments NZ API Centre Standards[1] are suitable for use in other sectors, and which could require significant modification?*
	Before considering standards for other sectors the Government should first evaluate the success or otherwise of the regime for the banking sector to determine whether any extension of the regime is justified or if refinements could be made before the scope is extended. We recognise that interoperability of standards between sectors may enable further innovation and consumer benefits. However, any consideration of standards for other sectors will also need to weigh the sensitivity of data in that sector relative to banking data and the extent to which additional cost would be incurred, perhaps unnecessarily, by businesses and ultimately consumers if gold-plated banking standards were applied to other sectors.
10	*What risks or issues should the government be aware of, when starting with banking for standard setting? For example, could the high security standards of banking API's create barriers to entry?*
	No comment.
Trust: accreditation of requestors	
11	*Should there be a class of accreditation for intermediaries? If so, what conditions should apply?*
	The proposal allows accredited requestors to share data with another entity if the customer consents. Therefore, the creation of separate class of intermediaries seems unnecessary.
12	*Should accredited requestors have to hold insurance? If so, what kind of insurance should an accredited requestor have to hold?*
	No comment.
13	*What accreditation criteria are most important to support the participation of Māori in the regime?*
	No comment.
14	*Do you have any other feedback on accreditation or other requirements on accredited requestors?*
	In Meridian's opinion the accreditation process should also require evidence of systems and capability to seek and maintain accurate customer consent records.
Unlocking value for all	
15	*Please provide feedback on:* • *the potential relationships between the Bill safeguards and tikanga, and Te Tiriti/the Treaty*

[1] New Zealand API standards to initiate payments and access bank account information. They are based on the UK's Open Banking Implementation Entity standards but tailored for the New Zealand market. Market demand has driven development and led to the creation of bespoke functionality for New Zealand.

	• *the types of use-cases for customer data or action initiation which are of particular interest to iwi/Māori* • *any specific aspirations for use and handling of customer and product data within iwi/hapū/Māori organisations, Te Whata etc, which could benefit from the draft law.*
	No comment.
16	*What are specific use cases which should be designed for, or encouraged for, business (including small businesses)?*
	No comment.
17	*What settings in the draft law or regulations should be included to support accessibility and inclusion?*
	No comment.
18	*In what ways could regulated entities and other data-driven product and service providers be supported to be accessible and inclusive?*
	No comment.
Ethical use of data and action initiation	
19	*What are your views on the proposed options for ethical requirements for accreditation? Do you agree about requirements to get express consent for de-identification of designated customer data?*
	Of the options proposed, express consent for identification would be preferrable. In Meridian's opinion, the alternative of vague or subjective ethical requirements for accreditation would be difficult to apply in a clear and consistent way.
20	*Are there other ways that ethical use of data and action initiation could be guided or required?*
	No comment.
Preliminary provisions	
21	*What is your feedback on the purpose statement?*
	The purpose seems broadly reasonable. We have no further feedback at this time.
22	*Do you agree with the territorial application? If not, what would you change and why?*
	Yes.
Regulated data services	
23	*Do you think it is appropriate that the draft law does not allow a data holder to decline a valid request?*
	Yes.
24	*How do automated data services currently address considerations for refusing access to data, such as on grounds in sections 49 and 57(b) of the Privacy Act?*
	No comment.

Protections	
25	*Are the proposed record keeping requirements in the draft law well targeted to enabling monitoring and enforcement? Are there more efficient or effective record keeping requirements to this end?*
	The record keeping requirements appear broadly reasonable.
26	*What are your views on the potential data policy requirements? Is there anything you would add or remove?*
	No comment.
Regulatory and enforcement matters	
27	*Are there any additional information gathering powers that MBIE will require to investigate and prosecute a breach?*
	No comment.
Administrative matters	
28	*Are the matters listed in clause 60 of the draft law the right balance of matters for the Minister to consider before recommending designation?*
	The Minister should also consider any likely impacts on competition before recommending that designation regulations be made.
29	*What is your feedback on the proposed approach to meeting Te Tiriti o Waitangi/Treaty of Waitangi obligations in relation to decision-making by Ministers and officials?*
	No comment.
30	*What should the closed register for data holders and accredited requestors contain to be of most use to participants?*
	It is not clear at this stage whether the closed register would hold any different information to the public register. A single register would be simpler to administer.
31	*Which additional information in the closed register should be machine-readable?*
	No comment.
32	*Is a yearly reporting date of 31 October for the period ending 30 June suitable? What alternative annual reporting period could be more practical?*
	Annual reporting will impose additional compliance costs on data holders and accredited requestors. The purpose of annual reporting and any benefits should be assessed before imposing this cost and the obligation should only be imposed if the benefits are likely to outweigh the costs. The scope and burden of reporting obligations for a range of purposes is increasing and the cost to business and consumers in aggregate should be considered.
33	*Should there be a requirement for data holders to provide real-time reporting on the performance of their CDR APIs? Why or why not?*
	No comment.

34	*What is your feedback on the proposal to cap customer redress which could be made available under the regulations, in case of breach?*
	No comment.
Complaints and disputes	
35	*In cases where a data holder or requestor is not already required to be member of a dispute resolution scheme, do you agree that disputes between customers and data holders and/or accredited requestors should be dealt with through existing industry dispute resolution schemes, with the Disputes Tribunal as a backstop? Why or why not?*
	This would be more efficient than establishing a dedicated new dispute resolution scheme for regulated data services. We agree that data holders and accredited requestors should be required to be a member of the relevant industry dispute resolution scheme, for example the Utilities Disputes Energy Complaints Scheme in the case of the electricity sector.