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Australia

The Ministry of Business, Innovation and Employment

Consumer Policy Team

Consultation on the Customer and Product Data Bill

Thank you for the opportunity to consult on the draft Customer and Product Data Bill. The ProductCloud submission to this consultation is included below.

ProductCloud is a cloud-based software solution that assists banks (large, Community-Owned, Credit Unions, Non-Bank Lenders and Neobanks) to meet their regulatory requirements about how their products are developed, managed, audited and communicated. We support Product Owners inside banks to have confidence that they are meeting their obligations and that their products are competitive in the market segments that they are targeting.

As a consequence, we have extensive experience in the Australian Consumer Data Right regime both as a consumer of product data and also in supporting data holders to maintain compliance.

In this context, our submission to this consultation is targeted primarily towards the 'Product' components of the proposed Consumer Data Right regime in New Zealand. We have limited our response to the questions that we believe we have specific insights into and have greyed out the other questions to make the submission easier to consume.

We are very supportive of this initiative noting our belief that the systematic exposure of banking products in Australia is already delivering benefits for Australian consumers. If we can assist in clarifying our submission at all we would be very happy to do so.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Evans", written in a cursive style.

Mark Evans

ProductCloud Co-founder and CEO

Submission on discussion document: *Unlocking value from our customer data*

Your name and organisation

Name	Mark Evans
Organisation (if applicable)	ProductCloud (productcloud.com.au)
Contact details	Privacy of natural persons

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Responses to 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?

Consent settings: respecting and protecting customers' authority over their data

- 2 Should there be a maximum duration for customer consent? What conditions should apply?

- 3 What settings for managing ongoing consent best align with data governance tikanga?

- 4 Do you agree with the proposed conditions for authorisation ending? If not, what would you change and why?

- 5 How well do the proposed requirements in the draft law and regulations align with data governance tikanga relating to control, consent and accountability?

- 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?

We have experienced in Australia (and anecdotally other jurisdictions) that there have been unforeseen issues with managing the compliance of product data published by data holders. These issue would be worth considering before the foundation legislation is finalised.

Specifically, consumers of product reference data in Australia have encountered the following issues:

1. Data that is syntactically correct but nonetheless inaccurate or misleading

There are many situations where product data provided by a data holder can be assessed as syntactically conformant with the standards but the data provided is nonetheless misleading or unusable when it is compared with the same information provided via other channels.

For instance, a bank may:

- show a fee in their product disclosure statement that is not included in their product reference data
- update their rates on the website but not update their product reference data for a number of days

- market a residential mortgage product on their website as a single product with a number of variations for purpose, loan length or interest calculation profile but show this single product as many separate products in their product reference data

The difficulty with managing these issues from a compliance perspective is that the regulator responsible for ensuring compliance with the data sharing standards may be different to the regulator responsible for ensuring product information accuracy and transparency. For instance, in Australia, these two responsibilities are split between the Australian Competition and Consumer Commission and the Australian Securities and Investment Commission.

2. Balancing specificity and flexibility in the standards

Product data, by its nature, needs a level of flexibility in the standards to properly reflect the variations in financial products across the whole industry.

This creates a trade off situation. On one hand, a higher degree of specificity makes the data more useful for algorithmic use but results in some products not being able to be accurately represented if they have non-standard conditions. It can also act as a constraint on product innovation. Conversely, flexibility ensures that all products can be represented but makes algorithmic comparison across multiple data holders more difficult.

This is a problem that is very much in the detail so legislative solution does not exist. It is an issue worth noting, however, as it is important to ensure that the establishing legislation allows for the level of operational management and change that will be required to deal with issues like this. For instance, an expectation that standards will only change on an annual basis would make it impossible to operational address issues of this nature as they arise.

3. Managing changes to the standards over time

How the standards will be managed over time will be critical to the usefulness of product data. To ensure that the data can be relied upon to build new business models there must be a process for change. This process must allow for changes to be rolled out in a commercially viable timeframe without creating a prohibitive implementation cost for participants of all types.

We recommend that this issue be considered to ensure that the legislation does not create set of requirements that will prevent such a change process from being established.

4. Differences in interpretation

Product data, by its nature, needs a level of flexibility in the standards to properly reflect the variations in financial products. This flexibility inevitably leads to differences in interpretation of the standards for how product data is represented. It is very important to consider as early as possible in the establishment of the regime how definitive interpretations of the standards will be provided when required.

This is a general concern for the standards as a whole but is particularly applicable to product data as it is intended to be publicly accessible and will therefore be consumed by many more clients than the authenticated data that will require accreditation to access.

Based on our experience in the Australian context, ProductCloud would recommend that the accountability for interpretation lies as close as possible to the accountability to set the standards.

Care during exchange: standards

7 *Do you think the procedural requirements for making standards are appropriate? What else should be considered?*

The process for the setting of standards seems appropriate based on our experience in other jurisdictions. In particular, the acknowledgement that these standards act as a form of secondary legislation and this must be considered before normative standards are relied upon is a very good accommodation.

In addition, we would suggest that accountability for setting and interpreting standards is structurally separated from the enforcement of compliance and regulation development. We have observed in other jurisdictions that the tensions involved in developing data sharing standards can be significant and this makes the standards development process subject to lobbying that is unrelated to the technical issues at hand. Considering this, a degree of independence will likely result in better standards in the long run.

8 *Do you think the draft law is clear enough about how its storage and security requirements interact with the Privacy Act?*

9 *From the perspective of other data holding sectors: which elements of the Payments NZ API Centre Standards¹ are suitable for use in other sectors, and which could require significant modification?*

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?*

Trust: accreditation of requestors

11 *Should there be a class of accreditation for intermediaries? If so, what conditions should apply?*

12 *Should accredited requestors have to hold insurance? If so, what kind of insurance should an accredited requestor have to hold?*

13 *What accreditation criteria are most important to support the participation of Māori in the regime?*

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.

14 Do you have any other feedback on accreditation or other requirements on accredited requestors?

Unlocking value for all

Please provide feedback on:

- 15
- the potential relationships between the Bill safeguards and tikanga, and Te Tiriti/the Treaty
 - 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.

16 What are specific use cases which should be designed for, or encouraged for, business (including small businesses)?

In relation to product data, the key use cases that should be considered are:

- Product comparison for the purpose of selecting a new product or service
- Comparison of market offerings with a current product or service with the intent of switching if a better offering can be found
- Monitoring the market for the purpose of competitive analysis
- Monitoring the market for other reasons to understand trends (for instance for academic or journalistic intent)
- The bundling of products across multiple industries (for instance energy and telco or financial products with wealth management products)

17 What settings in the draft law or regulations should be included to support accessibility and inclusion?

18 In what ways could regulated entities and other data-driven product and service providers be supported to be accessible and inclusive?

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?

20

Are there other ways that ethical use of data and action initiation could be guided or required?

Preliminary provisions

21

What is your feedback on the purpose statement?

22

Do you agree with the territorial application? If not, what would you change and why?

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?

We believe that this is not only appropriate but also necessary. We note, however, that valid exceptions should be made for data holders to decline a valid request to protect the interests of a customer (such as in the case of suspected fraud) or to prevent system failure (such as in the case of a denial of service attack).

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?

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?

26

What are your views on the potential data policy requirements? Is there anything you would add or remove?

Regulatory and enforcement matters

27

Are there any additional information gathering powers that MBIE will require to investigate and prosecute a breach?

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?

29	<i>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?</i>
30	<i>What should the closed register for data holders and accredited requestors contain to be of most use to participants?</i>
31	<i>Which additional information in the closed register should be machine-readable?</i>
32	<i>Is a yearly reporting date of 31 October for the period ending 30 June suitable? What alternative annual reporting period could be more practical?</i>
33	<i>Should there be a requirement for data holders to provide real-time reporting on the performance of their CDR APIs? Why or why not?</i>
	This is an essential requirement for some very specific types of reporting. For instance, data holders should be required to provide real time APIs indicating current system status and future planned outages to allow clients to troubleshoot operational issues. algorithmic
34	<i>What is your feedback on the proposal to cap customer redress which could be made available under the regulations, in case of breach?</i>
Complaints and disputes	
35	<i>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?</i>

Other comments