



COVERSHEET

Minister	Hon Andrew Bayly	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Customer and Product Data Bill – Approval for Introduction	Date to be published	21 June 2024

List of documents that have been proactively released		
Date	Title	Author
May 2024	<i>Customer and Product Data Bill: Approval for Introduction</i>	<i>Office of the Minister of Commerce and Consumer Affairs</i>
9 May 2024	<i>LEG-24-MIN-0085: Customer and Product Data Bill: Approval for Introduction</i>	<i>Cabinet Office</i>

Information redacted **YES / NO** (please select)

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Some information has been withheld for the reasons of Confidential Advice to Government.

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Legislation Committee

Customer and Product Data Bill: Approval for Introduction

Proposal

1 I propose to introduce the Customer and Product Data Bill (**the Bill**) to the House.

Policy

- 2 The Bill gives effect to a 30 June 2021 Cabinet Economic Development Committee decision to establish a legislative framework for a consumer data right (**CDR**) in New Zealand [DEV-21-MIN-0145] and further decisions made in 2022 [DEV-22-MIN-0151] and 2023 [CAB-23-MIN-0245]. An exposure draft of the Bill was consulted on in June 2023. In response to feedback, additional changes have been made to the Bill.
- 3 The purpose of the Bill is to create opportunities for new entrants to break into established markets, and to introduce more efficient processes and innovative products. This type of activity can lead to increased competition and higher productivity, contributing to the Government's plan to build a stronger economy.
- 4 The Bill achieves this by enabling customers to securely share data that is held about them with trusted third parties, using standardised data formats and interfaces, and to authorise third parties to perform actions on their behalf. To protect the privacy and commercial confidentiality of customers, third party data recipients will need to be accredited and there will be a range of information protection safeguards.
- 5 The approach taken in the Bill follows, and learns from, comparable regimes in other jurisdictions such as in Australia, Europe, and the United Kingdom. The Bill has been widely consulted on, is broadly supported, and seeks to build on the work that industry has made to date:
 - 5.1. In 2020, Xero noted "...the benefits of a [CDR] and the creation of an effective open data ecosystem in New Zealand can be profound for both consumers and our economy".¹ For instance, Sharesies said "New Zealand is well behind the rest of the world in our data and digital financial services capability, we must catch up and at pace, this legislation is an essential step to unlocking that potential".² Business NZ also support the establishing of a CDR framework.³

¹ <https://www.mbie.govt.nz/dmsdocument/13319-xero-submission-on-mbie-discussion-document-options-for-establishing-a-consumer-data-right-in-new-zealand-pdf>.

² <https://www.mbie.govt.nz/dmsdocument/27757-sharesies-limited-submission-customer-and-product-data-bill-pdf>.

³ <https://www.mbie.govt.nz/dmsdocument/13286-submission-by-businessnz-to-the-ministry-of-business-innovation-employment-on-the-options-for-establishing-a-consumer-data-right-in-new-zealand-discussion-document-pdf>.

- 6 The Bill will be rolled out on a sector-by-sector basis; I will be able to recommend regulations designating individual markets, industries, and sectors to which it applies. The designation will specify the type of data and functionality that is covered and be accompanied by rules and standards that govern the transfer of that data.
- 7 The previous Government agreed that banking would be the first sector considered for designation [DEV-22-MIN-0151], and I wish to continue with this to accelerate the uptake of open banking in New Zealand. I intend to seek Cabinet's approval later this year to consult on a discussion document for the banking designation regulations and regulations for banking and future sectors. This consultation will allow us to understand the costs and benefits associated with open banking in more detail.
- 8 To inform long term business planning and investment decisions, it is also helpful for the Government to signal which sector the Government wishes to consider for designation, after banking. The Australian experience has shown that there are benefits to designating the electricity sector. As such, I recommend assessing the electricity sector for designation alongside the banking sector. I intend to report back to Cabinet on the progress of these designations by July 2024.

Why the Bill is needed

- 9 The Bill will give customers greater control over their data. It will make it easier for them to shop around and switch providers for services such as banking, electricity, and telecommunications. It will facilitate the introduction of new products that are only viable when data is shared. It will allow customers to have greater trust that their data is secure and only shared for their benefit, with their knowledge and authorisation.
- 10 Despite advancements internationally, progress has been slow in New Zealand to open customer data. For banking, industry-led initiatives began in 2017 but still face implementation challenges that will not be easily solved without intervention. Similar problems exist in the electricity sector. This is partly because there is a disincentive for incumbent firms to enable changes which will increase competition and potentially undermine their market share. A designation under the Bill can cut through industry problems for the broader benefit of New Zealand customers and innovators.
- 11 Implementing this Bill is key to satisfying a draft recommendation in the Commerce Commission's draft report for the competition study into personal banking services. The Bill will enable New Zealand businesses to innovate, but also has tangible benefits for customers who can benefit from the new products and services that are created. The United Kingdom's open banking experience supports this; it was reported that business that use open banking save 150 hours every year, have lower payment processing fees and have less issues with late payments.⁴
- 12 Whilst the Privacy Act 2020 (**Privacy Act**) provides a legal right to customer data that is personal information, the Bill will remove barriers that are preventing customers from being able to access and share their data in a streamlined way. These barriers include a lack of incentives for data holders to transfer data to third parties and high costs in negotiating agreements for transferring usable data. Furthermore, some current methods for accessing and sharing customer data are

⁴ <https://www.natwestgroup.com/news-and-insights/news-room/press-releases/enterprise/2024/jan/uk-businesses-save-150-hours-every-year-on-operational-tasks-by-.html>.

insecure (requiring customers to share their online banking credentials) or inefficient (requiring customers to provide paper statements) or are otherwise limited to customers whose service providers have invested in data systems.

Proposed new consumer data right framework

- 13 Once the Bill is implemented, businesses that hold data (**data holders**) will be required to transmit certain data that they hold about customers (**customer data**) to trusted third parties (**accredited requestors**), and carry out actions on behalf of the customer, with the customer's authorisation. For example, a customer might share their banking transaction information with a financial adviser to facilitate a mortgage application process. To help customers compare or manage offerings from different providers, there will also be obligations on data holders to share information relating to the goods and services they offer (**product data**). When paired with customer data, this can provide accurate recommendation about the best products or services available to a customer.

Overview of the Bill

- 14 The Bill provides an overarching framework and rules for how the CDR will function. While the rules in the Bill will apply to sectors once they are designated, some details of the rules may differ as they will be provided for by secondary legislation specific to particular sectors and may change over time as technology changes.
- 15 The Bill takes a lean approach to intervention with relatively minimal procedural, governance, or advisory requirements. It deliberately favours ease and speed of uptake by third parties. It provides strong safeguards but – for personal information - otherwise relies on existing Privacy Act protections, enabling a faster transition from existing data sharing methods.

Core obligations

- 16 The Bill compels data holders to provide customer data and/or perform actions on request of the customer or accredited requestor/s, and that data holders provide product data to any person, with limited exceptions.
- 17 To protect customers, there are certain conditions that must be satisfied before a data holder fulfils a request. This includes, among other things, that data holders verify the identity of the requestor and check that the request is valid. Data holders must refuse requests if they believe that the request was made under threat.

Authorisation framework and customer information protection safeguards

- 18 Strong authorisation and information protections are central to the Bill and will complement existing protections in the Privacy Act. These protections provide customers with control over their data and confidence in the system. These protections also mitigate the inherent risks of increased flows of data associated with the handling of information, such as misuse, breach of privacy or unauthorised release of commercially sensitive information.
- 19 In addition to verifying the identity of the requestor, the Bill provides that data or actions can only be shared or performed when authorisation is confirmed. This is intended to ensure that customers are knowingly sharing their data for the goods and services they have requested.

Accreditation

- 20 The Bill provides an accreditation regime, in which applicants would need to demonstrate that they adhere to information protection and security standards and comply with their obligations. Once accredited, an accredited requestor can compel data holders to provide customer data or perform actions on the customers behalf, if the customer authorises it.
- 21 An accreditation regime is intended to promote confidence by ensuring only certified parties with trusted systems can make requests for data or actions, and that these parties can be trusted to hold the data safely and securely.
- 22 The ability to revoke, suspend or modify and place conditions on accreditation also provides a lever for the Ministry of Business, Innovation and Employment (MBIE) to respond to misbehaviour.

Designation and associated secondary legislation

- 23 The Bill may be applied gradually across the economy, and it provides for the process that will be followed in 'designating' a certain sector, industry, or market. I will be required to consult with affected parties and other relevant persons (e.g. the Privacy Commissioner), and seek Cabinet approval to enable regulations to be drafted.

Common standards

- 24 The Bill requires data holders and requestors to use common standards that set the technical details for data sharing. The Bill also provides a process for developing and updating these standards, requiring consultation with relevant parties. It is my expectation that MBIE would look to incorporate existing standards and requirements whenever possible to build upon the work already underway and to leverage the knowledge and expertise of the industry.

Enforcement and redress

- 25 It is important to have a strong and effective enforcement regime to foster trust and participation among customers. The Bill provides that MBIE enforces the Bill, alongside the Privacy Commissioner who will continue to have investigation, guidance, enforcement, and redress powers over any obligations in the Privacy Act. MBIE is empowered to share information with law enforcement agencies and other regulators.
- 26 The Bill provides for a full range of compliance and enforcement powers, from powers aimed at supporting willing compliance (for example, education, advocacy and outreach powers) to powers aimed at deterring and adequately penalising non-compliance (for example, investigatory powers and powers to commence penalty actions and seek proportionate remedies, including through criminal offences, pecuniary penalties, infringement offences and compensation orders).
- 27 The Bill creates a criminal offence for knowingly making unauthorised requests for regulated data services. On conviction, an offender who is an individual may be imprisoned for up to five years and/or receive a fine of up to \$1 million, and in any in other case (such as a body corporate), receive a fine of up to \$5 million. This intends to punish and deter fraudulent conduct, such as impersonating customers or

deceiving people into believing a customer has authorised a request when they have not.

- 28 To promote accessibility to low-cost redress for customers, the Bill allows for the use of existing industry dispute resolution schemes where appropriate, or else the Disputes Tribunal as a backstop mechanism.

Relationship to other legislation

Digital Identity Services Trust Framework Act 2023

- 29 The Digital Identity Services Trust Framework Act 2023 (**DISTF**) established a legislative framework to enable New Zealanders to safely prove who they are, and share verified personal and organisational information digitally. It is administered by the Department of Internal Affairs.
- 30 The DISTF will accredit digital identity service providers and the services they offer to enable users to securely share their identity information. This will make it easier and safer for them to access their data under the Bill. I will look for opportunities to align the DISTF and the CDR to fully realise the benefits of both initiatives and minimise compliance costs on system participants. For example, technical compatibility to allow identity confirmation in the CDR using digital identity services.

Privacy Act 2020

- 31 The Privacy Act provides rights and obligations around 'personal information', which is information about an identifiable individual. The Bill covers all customer data, which includes data that relates to non-individuals (e.g. trusts, companies) who could be identified but are not currently covered by the Privacy Act.
- 32 The Privacy Act will continue to apply to data holders and accredited requestors, allowing all personal information to remain subject to the requirements of the Privacy Act, except where the Bill says otherwise.
- 33 To enable the Privacy Commissioner to perform or exercise their functions, powers, and duties under the Privacy Act in connection with contraventions of the Bill, the Bill provides that levy regulations may cover a portion of the costs of the Privacy Commissioner.
- 34 The Privacy Commissioner is supportive of a CDR in New Zealand, as it enhances existing rights to access information set out in the Privacy Act. As a co-regulator for the CDR the Commissioner is aware of the complexities of the regime and the careful consideration that will be required to implement it.
- 35 The Commissioner considers that the success of the CDR regime relies on adequate and meaningful privacy protections for consumers, and that the Bill provides a good starting point for these protections.

Retail Payment System Act 2022

- 36 The Commerce Commission is considering whether to recommend to me that I designate the interbank payment network under the Retail Payment System Act 2022. This would enable the Commission to specify certain standards that payment

providers need to meet, and may be a useful step on the road to open banking before the Bill is implemented.

Impact analysis

Regulatory Impact Statement

37 A regulatory impact statement (RIS) was submitted at the time Cabinet approval was sought to establish a CDR [DEV-21-MIN-0145]. A supplemental RIS was submitted in relation to Cabinet's policy decisions in July 2022 [DEV-22-MIN-0151].

Financial implications

38 There are no financial implications from passing the Bill. Confidential advice to Government

39 Cabinet was previously informed that costs could be up to Confidential advice to Government a year on average, assuming that new sectors are continuously added at the rate of one a year. However, the total costs will vary significantly depending on the desired approach to implementation, including the breadth and speed of future designations.

Confidential advice to Government

41 I will come back to Cabinet with actual costs of designation at the time of seeking decisions to designate a sector.

42 The Bill provides for cost recovery through fees and levies. The extent and design of cost recovery will be considered as part of the regulation and designation consultation processes, after the Bill has passed. Confidential advice to Government

Compliance

43 I consider the Bill complies with:

43.1. the principles of the Treaty of Waitangi;

43.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;

43.3. the disclosure statement requirements (a disclosure statement for the Bill has been prepared and is attached to this paper in Appendix Three);

43.4. the principles and guidelines set out in the Privacy Act; and

43.5. the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee. Officials met with the Legislation Design and Advisory Committee on 2 June 2021 to provide an overview of the proposed policy and legislative design of the CDR, and to seek feedback on key regulatory design proposals.

44 The Privacy Commissioner was consulted on the privacy issues raised in the policy proposals, and the Bill's interactions with the Privacy Act are contained in paragraph 32 – 36 above, including a comment from the Office of the Privacy Commissioner.

Consultation

45 The following agencies were consulted on this Cabinet paper: Department of Internal Affairs, Inland Revenue Department, Ministry for Environment, Ministry of Justice, Ministry for Primary Industries, Ministry of Foreign Affairs and Trade, Serious Fraud Office, Statistics New Zealand, Office for Māori Crown Relations – Te Arawhiti, Te Puni Kōkiri, and The Treasury. The following Crown entities were consulted: Office of the Privacy Commissioner, Commerce Commission, and Financial Markets Authority. The Department for the Prime Minister and Cabinet was informed.

46 A discussion document was published in August 2020 and an exposure draft of the Bill was publicly consulted on in June 2023.

Binding on the Crown

47 I seek Cabinet agreement that the Bill binds the Crown. Legislation should apply to the Crown unless there are good reasons for it not to do so. There is no good reason for the Bill to not bind the Crown.

Amendments

48 The Bill will amend:

48.1. the Summary Proceedings Act 1957 to allow for infringement notices to be issued;

48.2. the Disputes Tribunal Act 1988 to allow the use of the Disputes Tribunal as a backstop mechanism for customer disputes; and

48.3. sections 75 and 208 of the Privacy Act 2020 to allow the Privacy Commissioner to refer a complaint to, and to consult with, the chief executive of MBIE.

Allocation of decision-making powers

49 The Bill allocates decision-making powers between the executive and judiciary (Appendix One). Criteria relating to the qualifications and responsibilities of decision-makers and the procedures that they follow, have been applied in determining the allocation of decision-making powers above.

Associated regulations

- 50 The Bill provides for designation regulations and general regulations, both of which are needed to bring the Customer and Product Data Bill into operation.
- 51 The Bill will be rolled out on a sector-by-sector basis. The Bill, therefore, provides the regime be ‘turned on’ through designation regulations. These regulations designate who the data holders are, what customer data and product data must be shared, the actions which may be requested, and who are considered secondary users.
- 52 The Bill also allows regulations to prescribe different requirements for different sectors, customer data, product data, or actions. General regulations, however, may prescribe requirements for all sectors. The various matters that may be prescribed by regulations are in Appendix Two.
- 53 Given that the legislative design of this Bill tilts heavily towards regulations, officials have advised me that the designation regulations and regulations will not be drafted until 2025.

Other instruments

- 54 The Bill provides that standards may be set or incorporated by MBIE’s chief executive after consulting with those substantially affected by the issue of the proposed standard, and other relevant parties such as the Privacy Commissioner.
- 55 Standards create uniform rules for electronic systems, and interactions between them. Standardising data formats and the way this data is exchanged is crucial. It enables oversight of the system and for issues to be quickly and effectively resolved, maintaining the integrity of the system and safety of customers.

Definition of Minister, Ministry, and chief executive

- 56 The Customer and Product Data Bill will be administered by MBIE. The Bill defines “Ministry” as the department that, with the authority of the Prime Minister, is responsible for the administration of the legislation.
- 57 The Bill defines “Minister” as the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act. This definition has been included because of the specific functions given to the Minister, such as recommending regulations.
- 58 The Bill defines “chief executive” as the chief executive of the Ministry. This definition has been included in the Bill because of the various functions bestowed upon the chief executive of MBIE as the regulator of the regime under the Bill.

Commencement of legislation

- 59 The Bill will come into force the day after Royal assent. However, the CDR regime does not take effect until designation regulations apply it to a particular sector of the economy.

Parliamentary stages

- 60 I intend to introduce the Customer and Product Data Bill by 16 May 2024.
- 61 I propose the Bill be referred to the Economic Development, Science and Innovation committee.
- 62 I intend to seek Cabinet agreement in ^{Confidential:} [redacted] to publicly consult on the regulations to apply the Bill to the banking sector shortly after Select Committee consultation on the Bill begins. This will provide submitters with sufficient time to consider the detail of the Bill and the regulations. I also intend to report back to Cabinet at the same time on the potential designation of the electricity sector.

63 Confidential advice to Government

Proactive release

- 64 This paper will be published on MBIE's web site, subject to withholdings as appropriate under the Official Information Act 1982.

Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

Binding on the Crown

- 1 **note** that it is appropriate for the Customer and Product Data Bill to be binding on the Crown because there is no reason for it not to;
- 2 **agree** that the Customer and Product Data Bill should include a provision stating that the Act will bind the Crown;
- 3 **note** that the implications for government departments of the Act binding the Crown will be financial liability for breaches of duties if a Crown organisation is a data holder or accredited requestor;

Introduction of the Customer and Product Data Bill

4 Confidential advice to Government

- 5 **note** that the Customer and Product Data Bill is a mechanism for allowing customers to require data held about them to be shared safely and securely with trusted third parties;
- 6 **approve** the Customer and Product Data Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 7 **agree** that the Customer and Product Data Bill be introduced by 16 May 2024.
- 8 **agree** that the government propose that the Bill be:

- 8.1. referred to the Economic Development, Science and Innovation Committee for consideration;
- 8.2. Confidential advice to Government

Assessing sectors for designation under the Customer and Product Data Bill

- 9 **note** that Cabinet previously agreed that banking would be the first sector assessed for designation under the criteria set out in the Customer and Product Data Bill [DEV-22-MIN-0151];
- 10 **agree** that the electricity sector be assessed for designation under the criteria set out in the Customer and Product Data Bill alongside the assessment of the banking sector;

Confidential advice to Government

Authorised for lodgement

Hon Andrew Bayly

Minister of Commerce and Consumer Affairs

Appendix One: Allocation of decision-making powers between executive and judiciary

Executive	<i>Minister of Commerce and Consumer Affairs</i>	<ul style="list-style-type: none"> • Confidential advice to Government • Can recommend designation regulations. This can include the designation of persons, data, actions, and classes of accreditation. • Can recommend regulations to exempt (on terms and conditions, if any) classes of persons from any requirement under the Bill. • Can recommend general regulations: <ul style="list-style-type: none"> ○ authorising the chief executive to determine or prescribe by notice any of the matters that require a thing to be done in a manner prescribed by regulations; ○ specifying requirements about how the standards may be made (for example consultation requirements); ○ prescribing matters for the purposes of remedial actions; ○ prescribing procedures, requirements, and other matters for the register; and ○ providing for anything the Bill says may or must be provided for by regulations. • Must decide which people to consult with on proposed designation and regulations. The Minister may also decide whether consultation is necessary for amendment regulations.
	<i>Chief Executive of MBIE</i>	<ul style="list-style-type: none"> • Deciding whether to approve applicants to be accredited requestors, to suspend or cancel accreditation, or modify accreditation. • May require persons to supply evidence or produce documents. • May issue infringement notices if they believe on reasonable grounds the person is committing, or has committed, an infringement offence and may revoke infringement notice before payment. • Can apply to the high court for a pecuniary penalty order. • Deciding whether to issue warnings, reports, or guidelines, or make comments about any matter related to regulated data services or persons relating to those services. • Deciding to investigate conduct that constitutes or may constitute a contravention, an attempted contravention, or involvement in a contravention. • Can decide whether to make standards and which people must be consulted with when making standards. The chief executive may also decide whether consultation is necessary for a standard that amends another standard. • Deciding to share information with law enforcement or regulatory agencies if they consider it may assist them with the performance of their functions powers, or duties.
	<i>Privacy Commissioner</i>	<ul style="list-style-type: none"> • Continues to exercise powers in respect of investigations relating to personal information.

Judiciary	<i>Disputes Tribunal</i>	<ul style="list-style-type: none"> Resolving disputes between customers and accredited requestors and data holders where there is no industry dispute resolution scheme available. The Disputes Tribunal may hear claims and issue orders regarding those claims.
	<i>District Court</i>	<ul style="list-style-type: none"> May hear and decide applications for orders and may make compensatory orders. May grant injunctions restraining a person from engaging or continuing to engage in conduct or requiring a person to do an act or thing.
	<i>High Court</i>	<ul style="list-style-type: none"> Hear appeals against the various decisions of the chief executive relating to accreditation. Hear appeals arising from any proceeding in the District Court relating to civil liability provisions. Can issue interim orders to prevent the chief executive from requiring a person to supply information or documents during a proceeding. Can impose a pecuniary penalty against a person who has contravened a civil liability provision, attempted a contravention, or been involved in a contravention. Can make a declaration of contravention during a pecuniary penalty proceeding.

Appendix Two: Summary of different kinds of regulations which can be made under the Bill

<p>General regulations may prescribe:</p> <ul style="list-style-type: none"> • anything the Bill says may or must be provided for by regulations and the manner in which the thing must be done; • authorisation to the chief executive to determine or prescribe by notice the manner in which a thing is to be done (as above); • requirements about how the standards may be made (for example, consultation requirements); • remedial action a data holder or accredited requestor must take; • procedures, requirements, and other matters for the register (for example, the information to be contained in the register); • limits or restrictions on providing for things in standards where the Bill says that thing may or must be provided for by regulations or standards; and • for anything incidental that is necessary for carrying out, or giving full effect to, the Bill. 	<p>Designation regulations may designate:</p> <ul style="list-style-type: none"> • persons as data holders; • data as designated customer data or designated product data in respect of which requests may be made; • actions in respect of which requests may be made; • classes of accreditation; and • classes of secondary users. 	<p>The matters that may be prescribed differently for different designated sectors, customer data, product data or actions include:</p> <ul style="list-style-type: none"> • circumstances in which a request for customer data, product data, or actions does not need to be complied with; • requirements for how data holders and accredited requestors must deal with joint customers and secondary users; • requirements relating to whether a request is valid; • technical or performance requirements for the electronic system that a data holder must operate; • requirements for data holders and accredited requestors to make information available to, for example, customers, the chief executive, or the public generally; • requirements for how an authorisation may be given and how a data holder must check that service is within the scope of authorisation; • duties an accredited requestor must comply with when obtaining an authorisation (for example, ensuring the customer is reasonably informed); • requirements for how regulated data services must be provided; • requirements relating to records; and • duties for a data holder or a data holder or an accredited requestor to take steps to avoid, mitigate, or remedy loss or damage caused by their contravention.
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