



## COVERSHEET

<b>Minister</b>	Hon Andrew Bayly	<b>Portfolio</b>	Commerce and Consumer Affairs
<b>Title of Cabinet paper</b>	Consumer Data Right: Release of Banking and Electricity Discussion documents	<b>Date to be published</b>	7 October 2024

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
August 2024	Consumer Data Right: Release of Banking and Electricity Discussion documents	Office of Minister of Commerce and Consumer Affairs
21 August 2024	Consumer Data Right: Release of Banking and Electricity Discussion documents ECO-24-MIN-0171 Minute	Cabinet Office

### Information redacted

**YES / NO** (please select)

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.

Some information has been withheld for the reason for confidential advice to Government.

**In Confidence**

Office of the Minister of Commerce and Consumer Affairs

Office of the Minister for Energy

Cabinet Economic Policy Committee (ECO)

**CONSUMER DATA RIGHT: RELEASE OF BANKING AND ELECTRICITY DISCUSSION DOCUMENTS**

**Proposal**

- 1 This paper seeks agreement to release discussion documents on how the Customer and Product Data Bill (**the Bill**) should be applied to the banking and electricity sectors.

**Relation to government priorities**

- 2 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 should lead to increased competition and higher productivity, contributing to the Government's plan to build a stronger economy. Our coalition agreements and the speech from the throne set out the Government's focus on lifting productivity and economic growth to increase opportunities and prosperity for all New Zealanders.

**Executive summary**

- 3 On 30 June 2021, DEV agreed to establish a consumer data right (**CDR**) by establishing legislative framework [DEV-21-MIN-0145]. The Bill will require businesses that hold data (**data holders**) to provide designated customer information they hold (**customer data**) to customers upon request, and with trusted third parties (**accredited requestors**) with the customers' authorisation. The CDR will be rolled out on a sector-by-sector basis, with banking and electricity the first to be considered to drive greater competition in those areas.
- 4 Applying CDR to banking and electricity will allow customers to make secure payments and access innovative data-driven products and services. The Bill sets out a regime that balances encouraging new entrants with appropriate protections for customers' data, allowing new financial technology companies (fintechs) to establish themselves more quickly in the New Zealand market to deliver beneficial products and services to New Zealanders.
- 5 The Minister of Commerce and Consumer Affairs introduced the Bill to Parliament in May. The next step for the CDR is to release discussion documents for public consultation on proposed banking and electricity designations. The public has been consulted on the Bill exposure draft. The discussion documents will be an important opportunity to receive feedback from the public and stakeholders who are interested in the application of the Bill to banking and electricity. If agreed to, public consultation on the discussion documents will occur between 26 August –7 October

2024. Public submissions are also being currently called for the Bill, with a closing date of 5 September 2024. The discussion documents can be found at Appendix 1 and Appendix 2 of this document.

## Background

- 6 On 16 May 2024, the Minister of Commerce and Consumer Affairs introduced the Bill to Parliament. The Bill establishes a legislative framework for a CDR, an economy-wide framework to enable greater access to, and sharing of, customer and product data between businesses. The intention is to give customers (including both individuals and entities), greater control over how their customer data is accessed and used, promote innovation and competition, and facilitate secure, standardised and efficient data services.
- 7 The Bill will be applied to individual sectors by regulations made on recommendation of the Minister of Commerce and Consumer Affairs. The Bill enables consumers to have data about them shared with trusted third parties. For example, sharing bank transaction data with a lender as part of a loan application.
- 8 On 9 May 2024, the Cabinet Legislation Committee (**LEG**) agreed that banking and electricity would be the first sectors assessed for designation under the criteria set out in the Bill [LEG-24-MIN-0085]. We now propose to consult on options for designating the banking and electricity sectors. This is important to meet consultation requirements in the Bill and ensure that any resulting designation and associated regulations and standards are fit-for-purpose to drive competition in these areas and ensure fast uptake by fintechs to start operating in New Zealand.
- 9 While banking and electricity are the first sectors to be considered, in the future, it could be applied to insurance, telecommunications, and other areas to drive competition in these sectors, and to drive innovation and produce new and efficient services.
- 10 This report is structured so it first sets out the issues in the banking discussion document and then the electricity discussion document.

## Summary of issues covered in the banking discussion document

### *The nature of the problem*

- 11 Open banking is a financial services model that allows third parties, such as financial technology companies to access financial data on behalf of a customer. It is currently being progressed voluntarily through Payments NZ's Minimum Open Banking Implementation Plan, which sets minimum requirements for ANZ, ASB, BNZ, Westpac, and Kiwibank.
- 12 However, despite recent progress, the overall pace of open banking in New Zealand has been slow compared to other jurisdictions with regulatory intervention (e.g. the UK, Australia and Brazil). In Brazil, for example, implementation began in 2021 and now applies to banks and financial institutions over certain asset thresholds. Open finance in Brazil allows customers to share data and make payments, recently reaching 45 million active consents for data sharing.

- 13 New Zealand's reliance on industry participants setting the pace of changes has not delivered for customers. This is largely due to a lack of incentives on incumbent banks to make the required investments. The market power of banks may continue to undermine the effectiveness of open banking and limit its application and further development:
- 13.1 At present, prospective third parties need to negotiate terms of access with each bank separately. This is costly, and a failure to agree on terms with any one bank could undermine the third party's business.
  - 13.2 Prospective requestors have expressed concerns about the conditions being placed on them by banks, such as security and insurance requirements that are perceived as onerous, which make access expensive or impossible.
  - 13.3 Banks may set excessive fees for data and action initiation requests, above efficient long-run costs.
- 14 An open banking designation under the Bill would seek to overcome these barriers and is recommended in the Commerce Commission's draft report for the competition study into personal banking services.

*Benefits of an open banking designation*

- 15 Key benefits of designation include:
- 15.1 customers would benefit from new services, and more convenient, innovative and secure services, provided by accredited requestors. These could include applications that assist decision-making, such as budgeting tools and streamlined loan approvals. A wide range of new products have been seen in other markets where open banking has been introduced, such as the UK where alternatives to legacy banking institutions have been created.
  - 15.2 open banking provides a safe and secure alternative for payments which does not require customers to disclose their online banking login credentials, as is required for the common practice of 'screen scraping' to access data from personal accounts. Use of open banking over risky alternatives will better protect New Zealanders and help them avoid potential scams.
  - 15.3 a robust and accessible open banking regime will attract financial technology companies to develop and offer their services in New Zealand, providing a testing ground before they expand to other markets. This will not only facilitate overseas investment, but it will also have tangible benefits for customers who can benefit from the new products and services that are created.
  - 15.4 accelerating open banking will facilitate digital innovation and competition, satisfying recommendations in the Commerce Commission's draft report for the competition study into personal banking services. It will also satisfy a recommendation in the latest OECD Economic Survey of New Zealand.

## 15.5 Confidential advice to Government

### *The scope of an open banking designation*

- 16 The discussion document proposes a scope and timeframe in line with banks' existing commitments under the Minimum Open Banking Implementation Plan. Other banks will be able to opt in to open banking.
- 17 This proposed designation would accelerate uptake of open banking compared to the status quo by:
- 17.1 ensuring that banks meet their commitments and performance standards; and
  - 17.2 opening up access to banks' systems to all accredited persons, rather than access being set by terms agreed with banks.
- 18 This is the lowest cost option that covers the 92 percent of main banking relationships. The discussion document consults on the option of a more ambitious roll-out – for example, involving a wider range of banks and deposit-takers, or requiring Kiwibank to implement open banking more quickly. Feedback will be sought on broadening the designation scope to include other smaller banking institutions over time, such as Rabobank and TSB.

### *Specific criteria for businesses to become accredited requestors*

- 19 An important element of the Bill is promoting confidence in accredited requestors – the third parties who make requests for data and actions on behalf of customers.
- 20 The discussion document seeks feedback on criteria for accreditation, such as the directors and senior managers of the applicant being fit and proper persons for their positions, and the applicant having adequate information security arrangements and insurance.

### *What are the appropriate fees, if any, banks should be allowed to charge*

- 21 A key issue for open banking is what fees are permitted to be charged by banks for requesting data and actions. Fees create incentives for banks to invest in systems whose performance exceeds regulatory minimums. On the other hand, they create disincentives for customers and accredited requestors to use open banking.
- 22 In Australia (for customer data), the UK, EU, and Brazil basic open banking Application Programming Interface (**API**) requests are free. Fees can be charged for access to voluntary 'premium' APIs which are beyond the minimum compliance requirements and offer a unique value proposition. For example, Swedish company StockRepublic uses the premium APIs of Enfuce to offer an open banking-based investment application.

- 23 The discussion document seeks feedback on what fees should be permitted to be charged in respect of requests under the Bill. Requests could be free (as in the UK and EU), regulated under the Bill, or (in the case of payments) left to regulation by the Commerce Commission under the Retail Payment System Act 2022.

*The detailed rules and standards for open banking*

- 24 While many of the basic obligations on banks and accredited requestors are set out in the Bill, the Bill allows more detailed matters to be prescribed in regulations and standards. The discussion document sets out proposals on a number of issues, including:
- 24.1 *How expressed and informed consent is to be obtained:* Accredited requestors seeking authorisation to request customer data would be required to state, among other things, the specific data that will be requested, the goods and services that the data will be used to provide to the customer, and any intended use of the data that is not necessary to provide the service.
- 24.2 *Expiry of consent:* Importantly, to ensure consumers are in control, authorisation can be removed at any time. Authorisations would not automatically expire, but accredited requestors will be required to remind customers at least every 12 months of the authorisations they hold.
- 24.3 *Additional requirements for intermediaries:* Accredited requestors who provide data to unaccredited persons would need to disclose the specific persons to whom customer data will be disclosed, and the purpose for which each of those persons will hold and use customer data or derived data.
- 25 The discussion document also contains proposals for a number of technical requirements, such as contents of the register of accredited requestors, and the API standards that banks will be required to implement.

**Summary of issues covered in the electricity discussion document**

*The problems a CDR could potentially address*

- 26 A right for consumers to access data in the electricity sector is not new. Under the Electricity Industry Participation Code 2010 (**the Code**)<sup>1</sup>, consumers can request access to their electricity consumption data for free, up to four times a year. Retailers must provide this information within five working days. In addition, any person can ask a retailer to provide information about the retailer’s “generally available retail tariff plans”. This data must also be provided within five working days.
- 27 However, we do not think the status quo is as efficient or as beneficial to consumers as it could be. We consider that there is room for improvement and several access barriers remain for consumers and third-party service providers including:

---

<sup>1</sup> The Code is a set of rules that governs nearly every aspect of the New Zealand electricity industry. It is made, administered and enforced by the Electricity Authority, the independent sector regulator.

- 27.1 *The current length of time to respond is too long:* for individual consumers, we consider there is a need for the provision of data on demand.
- 27.2 *The lack of uniformity of data access arrangements:* we have heard concerns from third parties that retailers can have complex and differing access arrangements, including for authorising third parties to manage privacy obligations. This could potentially be inefficient as third parties would need to navigate these processes across many different retailers.
- 27.3 *The lack of uniformity regarding data formats and data provision:* this can make it difficult to make accurate comparisons across different products.
- 28 These access barriers impose costs on third parties wanting to provide value added services to consumers and likely reduce the scope for third parties to provide timely services to consumers. For instance, options that are on offer for consumers to compare products are reaching a ceiling for potential innovation without material improvements in access to data.
- 29 Non-regulatory options, such as voluntary arrangements, guidelines, and incentives, do not have the capability to produce the wide beneficial outcomes for consumers that a CDR in the electricity sector could deliver. Existing incentives for data holders to open up access to customer and product data are too weak as it could expose them to stronger competition from other retailers or innovators and/or incur costs on them even when it could be in the consumers' best interests. Non-regulatory options would take much longer to address electricity consumer access data issues, and affordability challenges cannot wait for the electricity sector to slowly improve access to consumption data.
- 30 The discussion paper seeks feedback on whether the correct problems have been identified, the extent to which they exist and any evidence to support this.

*Potential benefits and costs of an electricity sector designation*

- 31 Under the Bill, before recommending that designation regulations be made, the Minister must have regard to (amongst other things) any likely costs and benefits for the person or class of persons that are proposed to become data holders.
- 32 As outlined in the discussion paper, designating the electricity sector under the proposed CDR regime would give electricity consumers greater access to, and control of, their own data, as well as greater access to product data. Potential applications and resulting benefits from this include:
- 32.1 Making it easier for consumers to compare pricing plans from different retailers and shop around for a better deal.
- 32.2 Facilitating providers development of bespoke proposals for products and services such as rooftop solar PV and other distributed energy resources.
- 32.3 Assisting consumers' engagement with financial advisors and budgeting agencies to help manage the affordability of their power bill.

- 32.4 Creating opportunities for new entrants to break into established markets, and to introduce more efficient processes and innovative products such as individualised power plans.
- 32.5 Allowing customers to securely share data, with their authorisation, to support better access to tailored options in the supply of electricity and associated services.
- 33 In particular, with respect to comparing pricing plans, Consumer NZ wrote in its July 2023 submission to MBIE on the Bill's exposure draft:
- “Electricity consumers in Aotearoa can save, on average, around \$400 per year simply by changing provider [The median saving of 42,000 Powerswitch results pages over winter 2022 was \$385]. Despite there being a cost-of-living crisis, only around 6% of households changed providers in the last 12 months (excluding move-in switches). According to Electricity Market Information residential switching data, switching rates are currently at the lowest they've been since 2009 and 42% of households have been with their current provider for more than 5-years. Around one quarter have been with their provider for more than 10 years.”*
- 34 Overall, these potential benefits all support enhanced retail competition, innovation and affordability in the electricity sector.
- 35 However, we are cognisant that implementing a CDR for electricity may impose costs for some designated data holders in the sector. This is likely due to the costs associated with developing, maintaining and operating the relevant IT infrastructure and other associated services. The nature and scale of these costs is uncertain and therefore it is timely to consult with stakeholders. It is likely the costs will differ for different participants, based on their respective maturity of data provision systems.
- 36 The discussion paper seeks feedback on this preliminary analysis. In particular, we will seek input from potential designated data holders on estimations of costs to implement IT system upgrades to facilitate a CDR. This information is important in order to inform cost-benefit analysis and assess regulatory impacts.

*What could an electricity sector designation look like?*

- 37 The discussion paper seeks feedback on what a CDR could look like for electricity. In particular it seeks feedback on key questions including:
- 37.1 What types of customer data should be in scope and why? e.g., customer-related data such as their current plan and half hourly consumption data;
- 37.2 What types of product data should be in scope and why? e.g., retail tariff plans. How would things such as discounts, and bundled offers be treated?
- 37.3 Which data holders should be designated where more than one entity holds the relevant data, and why? e.g., retailers or meter equipment providers?

*Other key issues with the design of the regime*



- 38 The discussion document also seeks feedback on other important considerations for an electricity designation including:
- 38.1 What would be appropriate criteria for parties seeking accreditation
  - 38.2 Whether fees should be able to be charged for CDR accessing services
  - 38.3 How expressed and informed consent should be obtained to ensure the consumer is at the heart of decision-making and choice
  - 38.4 How potential intersections between an electricity CDR and the Code can be managed, noting that the Electricity Authority has a data improvement work programme.
- 39 Technical standards which govern the transfer of designated CDR data will need to be developed and implemented. The discussion document also seeks feedback on what approach to standards development makes the most sense for electricity, ranging from government-led to industry-led.

**Next steps**

- 40 Submissions on the discussion document issues will inform policy development, including regulatory impact analysis. On banking, the Minister of Commerce and Consumer Affairs would recommend the making of regulations under the Bill to designate and give effect to open banking. On electricity, MBIE officials will provide the Minister of Commerce and Consumer Affairs and the Minister for Energy with advice on whether a CDR for electricity at this point makes sense, what a designation could look like and potential next steps. If this work proceeds, it is anticipated an options paper would be developed for further consultation with the sector, which would outline detailed proposals and rules for an electricity CDR.

*Designation of the interbank payment network under the Retail Payment System Act 2022*

- 41 Alongside a banking designation under the Bill, the Commerce Commission has recommended that the interbank payment network be designated under the Retail Payment System Act 2022. This designation would empower the Commerce Commission to set network standards and direct changes to network rules, in order to influence development and implementation of open banking payments.
- 42 I consider a Retail Payment System Act designation could help to accelerate open banking. I will carefully consider gaps and potential overlaps with the banking designation under the Bill. **Confidential advice to Government**

*Electricity Authority work*

- 43 The Electricity Authority has advised that it continues to progress its data work programme. This could mean the Authority is undertaking consultation on proposed improvements in parallel with MBIE consulting on a possible electricity sector designation. Depending on decisions made by the Authority Board on progressing its

work, this could mean the Authority undertaking consultation on proposed improvements in parallel with MBIE consulting on a possible electricity sector designation. Officials are in regular discussion with the Authority about possible points of intersection between the respective work programmes.

*Indicative timeline*

44 An indicative timeline is included below.

Stage	Banking	Electricity
Consultation on discussion document	26 August 2024 – 7 October 2024	
Cabinet agreement on further development of designation	N/A	TBD

**Confidential advice to Government**

**Cost-of-living implications**

45 There are no direct cost-of-living implications associated with the release of the discussion documents.

**Financial implications**

46 No financial implications for the Crown would arise from releasing the attached discussion documents. Confidential advice to Government

47 Cabinet was previously informed that costs could be up to Confidential advice to Government a year on average. However, the total costs will vary significantly depending on the desired approach to implementation, including the breadth and speed of future designations.

48 Confidential advice to Government  
We will come back to Cabinet with actual costs of designation at the time of seeking decisions to designate a sector.

49 The Bill provides for cost recovery through fees and levies. The extent and design of cost recovery will be considered through a separate consultation process later this year. Confidential advice to Government

**Regulatory impact statement**

50 MBIE’s Quality Assurance Panel has reviewed the banking discussion document and considers that it partially meets the quality assurance criteria. The panel confirms the discussion document contains sufficient impact analysis to support Cabinet’s decision to release it.

51 The Ministry for Regulation has advised that the electricity discussion document does not require a regulatory impact statement. Regulatory impact analysis will be part of the policy development process for future work.

### **Climate implications of policy assessment**

52 The Climate Implications of Policy Assessment (**CIPA**) team has been consulted and confirms that CIPA requirements do not apply to this proposal as it is not expected to result in any significant, direct emissions impacts.

### **Population implications**

53 The release of this paper or the discussion document will not have any impacts on particular population groups.

### **Human rights**

54 There are no human rights implications arising from this paper or associated with the release of the discussion document.

### **Use of external resources**

55 No external resources were used in development of policy advice contained in this paper nor the attached discussion documents.

### **Consultation**

56 The Department of Internal Affairs, Ministry of Justice, Office of the Privacy Commissioner, Financial Markets Authority, Commerce Commission, Electricity Authority, Energy Efficiency & Conservation Authority, Inland Revenue Department, Statistics NZ, Ministry of Social Development, Treasury, Ministry of Foreign Affairs and Trade, Department of Prime Minister and Cabinet, Ministry for Primary Industries, Te Arawhiti and Te Puni Kōkiri have been consulted on this paper.

57 MBIE has also consulted with Payments NZ on a draft of the banking discussion document.

### **Communications**

58 MBIE will release the discussion documents for public consultation on its website for six weeks and will contact stakeholders during this time. We are also considering opportunities to announce the publication of the discussion documents, should an appropriate event align with the timing of their release.

59 During the consultation period, select committee will be receiving submissions on the Bill. This will enable submitters to consider both the Bill and proposals under the Bill.

### **Proactive release**

60 The contents of this paper will be proactively released within proactive release guidelines with appropriate redactions if needed.

## Recommendations

The Minister for Energy and Minister for Commerce and Consumer Affairs recommend that the Committee:

- 1 **note** that on 9 May 2024, the Cabinet Legislation Committee:
  - 1.1 agreed 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;
  - 1.2 invited the Minister of Commerce and Consumer Affairs to report back by July 2024 regarding the potential designations being explored under the criteria set out in the Customer and Product Data Bill

[LEG-24-MIN-0085]

- 2 **note** that the attached discussion documents propose consultation on potential designations of the banking and electricity sectors under the Customer and Product Data Bill, including the problem definitions, potential scope of the designations, and their costs and benefits;
- 3 **authorise** the Minister of Commerce and Consumer Affairs to approve minor changes and corrections to the banking discussion document at Appendix 1 prior to publication;
- 4 **authorise** the Minister for Energy and Minister of Commerce and Consumer Affairs to approve minor changes and corrections to the electricity discussion document at Appendix 2 prior to publication;
- 5 **approve** the release of the discussion documents at Appendix 1 and Appendix 2 for up to a six-week public consultation beginning in August 2024;

Authorised for lodgement

Hon Andrew Bayly

Minister of Commerce and Consumer Affairs

Hon Simeon Brown

Minister for Energy

**Appendices**

Appendix One: Draft banking discussion document

Appendix Two: Draft electricity discussion document