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Committee Secretariat
Economic Development, Science and Innovation Committee
Parliament Buildings
Wellington
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Sent by email to: edsi@parliament.govt.nz

SUBMISSION on Customer and Product Data Bill

1. Introduction

Thank you for the opportunity to make a submission on the Customer and Product Data Bill (the Bill). This submission is from Consumer NZ, an independent, non-profit organisation dedicated to championing and empowering consumers in Aotearoa. Consumer has a reputation for being fair, impartial and providing comprehensive consumer information and advice.

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2. General comments

As stated in previous submissions, we support the introduction of a customer and product data right (CDR) in Aotearoa. We therefore support the Bill and consider its introduction will ultimately benefit consumers.

The ability of policy makers to fully consider the risks and benefits of the Bill relies on organisations, such as Consumer NZ and others, participating in this consultation. Unfortunately, Consumer NZ is not resourced to provide a comprehensive clause-by-clause analysis of the Bill. We are a not-for-

profit organisation that does not receive any funding to participate in this, or any other consultation. However, our small policy team prepares many submissions on a wide range of issues. We consider funding should be set aside in the policy creation process to assist consumer advocacy groups, like Consumer NZ, to participate fully in the process and to ensure the consumer voice is not drowned out by the well-funded voices of industry.

3. Comments on the Bill

Consumer NZ has been calling for a consumer data right and open banking for many years, so we are pleased to see the Bill finally progressing through Parliament. In general, we support the Bill but acknowledge a significant amount of detail is yet to be finalised (in the regulations and standards). However, we would like to make the following high-level comments.

3.1 *Product data*

We are pleased the Bill applies to product data, as well as customer data. We agree this will allow consumers to more easily and accurately compare products and services from multiple suppliers and establish where a better deal may be available. This could lead to increased competition, reduced costs, and an increase in innovation.

3.2 *Direct-to-consumer access to data*

We are pleased the Bill allows direct-to-consumer access to data. We think it is important consumers can access data directly themselves, as well as allowing them to access it through an accredited requestor. The fact Australian consumers cannot access their data directly is a frequently criticised aspect of their CDR framework.

3.3 *Action initiation could increase the risk of fraud and scams*

Although we support the Bill including action initiation and think this will enhance the CDR, we are concerned it could increase the risk to consumers of fraud and scams. Consumer advocates in Australia have stated "Introducing action initiation into the CDR raises the risk of fraud or misuse of data which can expose a consumer to harm. While action initiations in the CDR will not necessarily create new scam or fraud types it does introduce new opportunities for

scammers, by increasing what is known as the ‘attack surface’ for scammers and fraudsters to infiltrate and take advantage of.¹

We agree and consider a government led approach to fraud and scam prevention is urgently required. As part of our '[Stamp out Scams](#)' campaign², we are calling for:

- Banks to refund scam victims for authorised and unauthorised push payments, unless the scam victim has been grossly negligent.
- A national anti-scam framework requiring banks, telcos and digital platforms to take action to address scams and outlining their liability if they fail to meet their obligations.
- A centralised anti-scam centre where relevant organisations work together to keep people safe from scams.

3.4 *Joint customers*

As stated in our previous submission, we consider sufficient safeguards should be put in place in the regulations for consent by joint account holders. In our view, both account holders must provide consent. Opt-out consent is counter to all privacy-by-design principles, inconsistent with the opt-in approach and likely to lead to poor consumer outcomes, particularly for those who are the subjects of economic and domestic abuse.

3.5 *Greater privacy protections required*

As stated in our previous submission, we think greater privacy protections are required to ensure consumers have confidence and trust in the system. We consider our current privacy framework needs to be more robust and align more with the EU’s General Data Protection Regulation (GDPR) and other consumer protection legislation in New Zealand.

The lack of offence provisions and penalties under the Privacy Act undermines the regulator and forces individuals to navigate a civil regime that is not capable of delivering outcomes in a timely way. Notwithstanding the compliance and enforcement powers

¹ Financial Rights Legal Centre Submission on the Treasury Laws Amendment (Consumer Data Right) Bill 2022, dated 6 March 2023 and available here: <https://financialrights.org.au/submissions/>

² <https://campaigns.consumer.org.nz/campaigns-advocacy>

proposed in the Bill, with the increase in data sharing, these shortcomings in New Zealand's flagship data protection legislation must be urgently addressed to modernise our privacy regime, encourage responsible data handling practices and, most importantly, adequately protect consumers.

3.6 ***Charges in connection with regulated data services***

As stated in our previous submission, we do not think data holders should be able to charge customers for providing data held about them. However, if fees are established under the regulations, they should be consistent with the relevant provisions of the Privacy Act for requests under principle 6.

3.7 ***Consent/Authorisation***

As stated in our previous submission, we support a maximum duration of 12-months for consent being introduced in the regulations. If consent is revoked after a shorter period, such as 90-days or 180 days this may cause confusion, frustration, and fatigue for consumers who must keep providing consent to an accredited requester or data holder.

We agree consumers should be able to specify a shorter period and revoke their consent at any time.

We are pleased to see the Bill stipulates that a business cannot require a customer to provide an authorisation as a condition to providing other goods or services.

3.8 ***Compliance and enforcement powers***

We are pleased to see the Bill provides for a full range of compliance and enforcement powers, from powers aimed at supporting willing compliance to powers aimed at detecting and penalising non-compliance.

We consider these penalties will help incentivise data holders and others to ensure they are complying with the regime, as well as helping to promote trust in the regime. However, as noted above, we believe the lack of offence provisions and enforcement powers in the Privacy Act undermine data protection in New Zealand and should be strengthened to complement the CDR framework.

3.9 *Consumer education*

As part of implementing a CDR framework, it is important there is timely consumer education to ensure that a lack of awareness will not create a barrier to consumers' uptake in the regime.

A criticism of the Australian approach to implementation was the lack of focus on large-scale consumer education campaigns, which was regarded as one of the reasons for low public knowledge of Australia's open banking regime and the CDR system.³

There is a risk that without a well-executed education campaign, through recognised and trusted channels – independent of commercial considerations, consumers will be slow to understand and participate the regime for several reasons:

- The framework is technical in nature, which will be off-putting for many people.
- There are limited successful use cases to point to which demonstrate the convenience and security of open data due to the frustrating lack of progress in open banking to date in New Zealand.
- The potential conflict between messages consumers have been exposed to from banks and other agencies when it comes to maintaining the security of their data and the behaviour the CDR regime will require consumers to be comfortable with if it is to succeed.

3.10 *Funding for consumer groups*

Another failing of the Australian approach in implementing the CDR has been the lack of support and funding for financial counsellors, community legal centres, and consumer advocacy groups.⁴

Consumer advocacy groups in Australia have noted feeling the burden to amplify the consumer voice at personal cost when these advocacy groups are already under-resourced.⁵

³ Buckley, Ross P, Natalia Jevglevskaja, Scott Farrell, "Australia's Data-Sharing Regime: Six Lessons for the World", *University of New South Wales Law Research Series*, 2021, pages 40-41.

⁴ The Australian Government the Treasury, "Statutory Review of the Consumer Data Right", 29 September 2022, page 68.

⁵ The Australian Government the Treasury, "Statutory Review of the Consumer Data Right", 29 September 2022, page 68.

As part of implementing an effective CDR framework in Aotearoa, it is vital there is funding allocated to support consumer advocacy groups, such as Consumer NZ, to ensure the consumer perspective is heard.

3.11 *Ban on screen scraping*

We consider a ban on screen scraping (i.e. third parties using a customer's access credentials to access information about a consumer to support the provision of products and services) should be introduced to eliminate security risks. Screen scraping poses security risks because there are no limits on the data collected. Also, consumers may be unaware they are potentially breaching their provider's terms and conditions by disclosing their credentials and passwords to third parties. The 'scraped' data is also more vulnerable to a security breach as the third parties obtaining the information may not have the same security infrastructure as a bank, for example.

Banning screen scraping will also help ensure people use their consumer data rights through an approved framework.

This is currently being considered in Australia and is already prohibited for payments in the EU and the UK where other methods of safe access and payments are regulated.

3.12 *Open energy*

We are pleased Minister Bayly has announced the electricity sector will be the second sector to be designated under the Bill and that MBIE is currently consulting on the designation of both the banking and electricity sectors.

As mentioned in our previous submission, electricity consumers in Aotearoa can save on average, around \$450 per year simply by changing provider⁶. Despite there being a cost-of-living crisis, only a small percentage of households (around 6%, excluding move-in switches) switched providers last year. Our surveys show that 42% of households have been with their current provider for more than 5-years and around one quarter for more than 10 years.

⁶ The average saving on the Powerswitch results pages over the last 12 months was \$451.83.

For every 1% of households that switches providers (that's only around 20,000 households) this represents an aggregate saving to consumers of around \$7 million⁷.

The 2019 Electricity Price Review recognised the potential for smart data to be used to help consumers find cheaper power deals.⁸

Smart meters have also enabled more innovative and complex retail power plans. Without data is it increasingly difficult for comparison sites, like Powerswitch, to show households the true levels of savings available to them.

If comparison sites, like Powerswitch, could access data directly from metering providers on behalf of a consumer (with their express consent), this will increase the ease of undertaking comparisons and the accuracy of results. This will increase switching rates, which not only results in savings for that household, but also increases competitive pressure – encouraging innovation reducing prices overall.

Smart meter data is already being collected and used for the purpose of charging consumers, but comparison sites that help consumers *save* money on their bills are prevented from practically accessing the same data. To realise the benefits of retail competition this needs to change.

3.13 Measuring consumer benefit

We've also previously stated there needs to be some way to measure the success of the CDR regime, focused on consumer benefit. The metrics should be standardised and aimed at tracking and assessing the actual benefit the CDR provides to consumers.

Without a way of measuring consumer benefit, the introduction of the CDR in Aotearoa risks becoming a system for businesses to take advantage of, or misuse consumer data for their commercial benefit. The regime in New Zealand must demonstrate benefits

⁷ 1% x 1.9M (approx. number of households) x \$385 (median savings) = \$7,315,000.

⁸ New Zealand Government, "Electricity Price Review Hikohiko Te Uira", 21 May 2019, page 52, <https://www.mbie.govt.nz/assets/electricity-price-review-final-report.pdf>

beyond simply those accruing to businesses to build consumer trust.

As the Australian Review Report states: "Without public visibility of success measures, uncertainty could erode the trust between CDR Agencies and participants in the CDR ecosystem."⁹

3.14 **Consumer experience testing**

As mentioned in our earlier submission, we also consider there needs to be some form of comprehensive consumer experience (CX) testing to ensure the framework is robust and fit-for-purpose.

We encourage MBIE to conduct CX research with a wide-range of consumers experiencing a range of vulnerabilities.

Carrying out CX testing will help provide valuable insight into how the CDR regime can cater to a wide range of consumers' needs and facilitate greater accessibility and inclusion.

We agree with the following comments of the Australian Consumer Policy Research Centre and Data Standards Chair: "It is important that CDR does not inadvertently encourage amplifications of existing market inequality, whereby vulnerable or digitally excluded consumers would face higher prices or lower quality services."¹⁰

CDR has the potential to "provide broader social and economic benefits while improving consumer outcomes"¹¹ and good CX testing is integral to this.

Thank you for the opportunity to make a submission on this Bill.

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⁹ The Australian Government the Treasury, "Statutory Review of the Consumer Data Right", 29 September 2022, page 28.

¹⁰ Australian Financial Rights Legal Centre and Consumer Action Law Centre, "Consumer Data Right: Consultation on how best to facilitate participation of third party service providers", December 2019, page 14.

¹¹ Australian Financial Rights Legal Centre and Consumer Action Law Centre, "Consumer Data Right: Consultation on how best to facilitate participation of third party service providers", December 2019, page 14.