

19 October 2020

Consumer Data Right Project Team
Commerce, Consumers and Communications
Ministry of Business, Innovation and Employment
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By email: consumerdataright@mbie.govt.nz

**SUBMISSION on
“Options for establishing a consumer data right in New Zealand”
discussion document**

1. Introduction

Thank you for the opportunity to make a submission on the options for establishing a consumer data right in New Zealand. This submission is from Consumer NZ, New Zealand’s leading consumer organisation. It has an acknowledged and respected reputation for independence and fairness as a provider of impartial and comprehensive consumer information and advice.

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2. Comments on the discussion document

We support the establishment of a consumer data right (CDR) in New Zealand. Our answers to selected questions in the discussion document are set out below.

Question 2: Do you agree with the potential benefits, costs or risks associated with a consumer data right as outlined in the discussion document? Why/why not?

Yes, we agree with the benefits, costs and risks outlined in the discussion document. We agree a CDR could increase innovation and competition, increase productivity, and strengthen privacy and data protections, *provided* it’s implemented in a transparent way and robust monitoring processes are in place.

For consumers, a CDR has the potential to make it easier to compare providers, negotiate better deals and switch companies. In key service industries, this can be difficult because of the time and effort involved, and the complexity of comparing product offerings in the market.

The insurance and telco sectors are examples of service industries where complex products are marketed in confusing ways, making it challenging for consumers to navigate product information and compare offerings.

These barriers to switching mean consumers may end up paying more than they need to for goods and services. They also mean competitive pressures on businesses are reduced, increasing the risk of poor service and poor value products.

In our 2019 insurance satisfaction survey, more than one third of respondents thought it was difficult to compare car, house and contents insurance offerings (Table 1).¹

Table 1: Ease of comparing insurance companies and products

	Car insurance	House insurance	Contents insurance	Health insurance	Life insurance	Travel insurance
Difficult	37%	37%	36%	31%	24%	28%
Neutral	14%	13%	14%	11%	8%	12%
Somewhat easy	15%	15%	16%	11%	7%	16%
Very easy	17%	16%	16%	11%	7%	20%
Don't know	17%	19%	18%	37%	54%	23%

In our 2020 telecommunications satisfaction survey, only 24% of consumers thought it was “very easy” to compare internet providers and just 30% thought it was “very easy” to switch providers. One in four considered it difficult.²

Our electricity satisfaction survey found 45% of consumers thought it very easy to switch while 18% felt it was difficult.³ In part, the higher percentage of people who felt it was easy to switch is likely to reflect the fact intervention has been required in the electricity market to make companies to provide price information, including to our independent price comparison site (powerswitch.org.nz).

A CDR has the potential to increase switching in key service sectors by allowing competing companies to make personalised offers to consumers. However, it will only increase the proportion of people who find it easy to compare and switch providers if companies are required to provide transparent price information to all consumers.

Ideally, regulations would also stipulate how data should be provided to make use of this information simpler.

Question 5: Do you have any comments on the types of data that we propose be included or excluded from a consumer data right?

It is critical that a CDR incorporates information about the products or services offered to consumers by a business, as it does in Australia. Without the inclusion of this information, consumers will not be able to compare and switch providers as easily, either themselves or through third-party comparison services.

We also agree a CDR should provide for both read and write access.

Question 9: Do you have any comments on the discussion of Option one: Status quo?

We don't support the status quo. As stated, we support the introduction of a CDR.

We note the slow progress made by the banking sector in producing an industry-led solution (referred to as open banking). The government has given the sector

¹ Our survey took place online in August and September 2019; 5266 Consumer NZ members and supporters participated.

² Our survey took place in December 2019 and January 2020; 2093 New Zealanders took part.

³ Our survey took place in March and April 2020; 1507 New Zealanders took part.

considerable leeway in forging its own path but the results have been disappointing and failed to result in substantive changes.

In high-margin, low-competition sectors, such as retail banking, we don't consider market participants have enough incentive to bring about meaningful change for the benefit of consumers. In fact, the potential positive impacts on competition are a disincentive to industries facilitating the kind of change envisaged by a CDR.

Question 10: Do you have any comments on the discussion of Option two: A sectoral-designation process?

We'd like to see an economy-wide CDR. However, we acknowledge the difficulties with this approach and therefore support a sectoral-designation approach, similar to that adopted in Australia.

If this approach is adopted, we consider the banking, telco, energy and insurance sectors would be obvious sectors to target. However, we note that prioritising banking over telco and electricity could be problematic for two reasons:

1. as noted, the banking sector is slow to adapt and has demonstrated its reluctance to make the changes necessary to implement open banking. Other sectors may be less reluctant to change
2. banking data is inherently sensitive and open to abuse. Other sectors, such as telco and electricity, may be a more logical starting point to achieve consumer buy-in, given the data is largely transactional.

As with banking data, insurance data is inherently sensitive. Given the low levels of consumer trust in insurers, coupled with the sensitivity of personal information required to compare insurance products (health or life insurance, for example), it may be preferable to start with sectors where consumer data is less sensitive.

Question 15: Do you agree or disagree with our assessment that Option two is most likely to achieve the best outcome using the assessment criteria?

We agree option two is likely to achieve the best outcome.

Question 17: Do you have any feedback on our discussion of any of these key elements?

Yes, we consider it crucial that any access rights conferred by a CDR not conflict with the critical right conferred by principle 6 of the Privacy Act. Access to your personal information, for whatever reason, is essential in a free and democratic society.

Businesses should not be allowed to monetise this right. For example, data holders should not be allowed to charge for access to data that's necessary for a consumer to dispute a bill or raise a complaint with their service provider.

Companies may argue fees are justified if they're providing an additional service, such as using data to make a recommendation on a financial product. However, we consider such fees could have a dampening effect on competition and should be capped, if allowed.

Question 19: How could a consumer data right be designed to protect the interests of vulnerable consumers?

We agree vulnerable consumers need to be protected and believe consideration should be given to the situations in which a CDR could enable harm to vulnerable consumers.

Any CDR should have robust privacy and security requirements, including through standards where necessary. As the open banking experiment has demonstrated, government intervention is likely to be required, rather than allowing sectors to avoid progress through protracted discussions on the application of standards.

We also consider it risky to rely solely on a consent model to regulate the collection and use of consumer data. The problems with the consent model, particularly in the digital economy, are well known and it is clear the model is not a reliable gauge of whether a consumer has read and understood what they are consenting to.

Given the limited enforcement powers in the Privacy Act and the focus in that act on the fairness of collection rather than the overall fairness of the agreement, it is of little value in addressing the imbalance of power between consumers and the suppliers seeking to collect and use their data under a CDR.

This means consumers are vulnerable to terms and conditions, and privacy policies that unfairly favour service providers (notwithstanding their nominal consent to those terms). Bad behaviour is often beyond the ability of consumers to detect. This is a status quo that will likely be amplified by the introduction of a CDR.

We suggest careful consideration be given to enhancing the enforceability of the unfair terms provisions in the Fair Trading Act to recognise this vulnerability, to allow criminal sanctions for breaches of those provisions and to provide the Commerce Commission with the ability to investigate and prosecute offending as a deterrent.

It is also important that a CDR is designed in such a way that does not result in vulnerable consumers missing out on better deals because they lack the time or capacity to engage with providers and make use of their data. Ensuring data access remains free will assist vulnerable consumers.

Robust market monitoring and enforcement provisions must also be in place to ensure the CDR is working as intended and is not creating consumer detriment.

Thank you for the opportunity to make a submission on the discussion document. If you require any further information, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Jon Duffy', with a stylized, cursive script.

Jon Duffy
Chief executive