



5 October 2020

Consumer Data Right Project Team
Commerce, Consumers and Communications
Ministry of Business, Innovation & Employment
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Submission on MBIE's Options for Establishing a Consumer Data Right in New Zealand

1. This is Vector Limited's (Vector) submission on the Ministry of Business, Innovation & Employment's (MBIE) discussion document, *Options for establishing a consumer data right in New Zealand*, dated August 2020.
2. As a leading technology solutions company with a vision of *creating a new energy future*, Vector supports the introduction of a consumer data right (CDR) in New Zealand. We support a CDR which makes it easier for consumers to share their data with businesses and third parties that they trust, so that new and innovative services that benefit them can be developed. A CDR creates new options for consumers and increases their awareness of available offerings, incentivising them to more actively engage in markets. It provides consumers with greater choice and control over how they use their data and with whom they share it with.
3. A CDR enables service providers and third parties to unlock the value of data, deliver better solutions and services to consumers, and promote market competition and innovation. It enables them to harness the power of data so they can put consumers at the heart of their decision making and make more efficient decisions.
4. We agree with MBIE's preferred 'sectoral designation' approach for introducing a CDR in New Zealand, akin to the approach adopted in Australia's banking sector this year, and subsequently in Australia's energy and telecommunications sectors. The widespread deployment of smart electricity meters in New Zealand makes the energy sector well placed to be at the forefront of introducing a CDR in the country and delivering its benefits to consumers in a timely manner. In our view, industry-led approaches would be appropriate for the New Zealand energy sector, rather than the 'gateway model' adopted for Australia's energy CDR. A new centralised system operated by a regulator or market operator would be very costly to build and maintain and would therefore not be in consumers' interest.
5. We set out below our responses to the consultation questions using the submission template provided by MBIE for this consultation.
6. No part of this submission is confidential, and we are happy for MBIE to publish it in its entirety.
7. We are happy to discuss any aspects of our submission with MBIE officials. Please contact Luz Rose (Senior Regulatory Partner) at Luz.Rose@vector.co.nz in the first instance.

Yours sincerely
For and on behalf of Vector Limited

A handwritten signature in black ink, appearing to read 'Neil Williams', with a horizontal line underneath it.

Neil Williams
GM Market Regulation

Submission on discussion document: *Options for establishing a consumer data right in New Zealand*

Your name and organisation

Name	Neil Williams (GM Market Regulation)
Organisation	Vector

Responses to discussion document questions

Does New Zealand need a consumer data right?

1

Are there any additional problems that are preventing greater data portability in New Zealand that have not been identified in this discussion document?

In Vector's view, the following factors contribute to preventing greater data portability in New Zealand, in addition to those already identified in the discussion document:

- *Manual intervention in the data request process* – Any human intervention after a request is made slows the delivery of data. Manual processing such as receiving and dispatching requests, and verification of the identity of the requester and third parties are time consuming and at risk of errors. This creates a barrier to a seamless consumer experience and more real-time delivery of services.
- *Data security concerns* (perceived or real) – Some consumers may be cautious about sharing their signature or e-signature with their service provider or authorising their service provider to share their data with third parties or agents. This could be driven by a lack of confidence in the robustness of the data request process, or the fear that their e-signature would be used for purposes other than the intended one.
- *Unfamiliarity with third-party service providers* – Consumers who are not familiar with new or third-party service providers (e.g. aggregators) may be reluctant to authorise the sharing of their data with those parties. An accreditation process for third parties under a CDR would bridge that 'information gap' and provide a signal to consumers of the trustworthiness of third parties.
- *Initial set-up costs for smaller service providers* – The development cost of integrating the information system of smaller service providers into a CDR system may create a barrier for these parties in the early stages of introducing a CDR.

Vector developed an OAuth2.0-type model for verification/authorisation purposes which we suggested in our submission to the Electricity Authority on enabling greater consumer choice and the uptake of electricity services. The model incorporates a portal utilising common internet security protocols to allow smaller energy retailers to participate in the process of verifying customers and third parties without having to fully automate their system.¹

The above model is based on a distributed data approach. A centralised data system is likely to be costly and inflexible (and could limit innovation), and data access seekers and consumers could end up paying for features they do not need or desire.

¹ <https://blob-static.vector.co.nz/blob/vector/media/vector-regulatory-disclosures/vector-submission-quick-wins-for-increasing-access-to-electricity-services.pdf>, sections 17-19

2

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

We generally agree with the potential benefits, costs and risks associated with a CDR outlined in the discussion document.

We expect the cost of verifying who the customer is (e.g. 'Is this a real person?') to be one of the most significant costs data holders may have to incur under a CDR. Under MBIE's preferred sectoral designation approach, once customers are legitimately identified for a designated sector (e.g. a mobile number in telecommunications), each sector can then proceed to develop CDR guidelines or rules according to the needs of their sector and at their own pace.

3

Are there additional benefits, costs or risks that have not been explored in the above discussion on a consumer data right?

In addition to the benefits identified in the discussion document, a CDR would or is expected to:

- enable innovative business models that deliver new or improved services that benefit consumers;
- level the playing field for smaller service providers or market entrants by making it easier for them to access data required to provide more attractive services, raising the level of competition in markets;
- enable service providers to more accurately assess the needs of particular customers using their historical data, allowing the customisation of products and services that better meet the needs of those customers;
- increase consumer awareness of the range of product and service offerings in the market, e.g. helping consumers use their real data to decide whether to switch to another energy retailer for a better market offer;
- provide more secure authorisation from consumers for the sharing of their data to third parties, e.g. using token-based authorisation which removes the need for manual authorisation, engendering trust in the CDR regime;
- provide instant access to services, meeting consumer expectations of modern real-time transactions, e.g. app-driven services;
- allow consumers to easily revoke their authority for the sharing of their data to a specific third party when they change their mind;
- incentivise the improvement of data quality and security even by data holders who are not inclined to share their customers' data, strengthening protection for consumers over time;
- be sufficiently flexible for the integration of more advanced services in the future, such as new metering and data services; and
- facilitate the uptake of services that contribute to long-term emissions reduction, e.g. using consumption data to inform consumers' decision on investing in solar PV, batteries and electric vehicles.

In the energy sector, the impending introduction of smart gas meters, in addition to smart electricity meters, is expected to increase the capability of third-party service providers to innovate further, e.g. provision of dual-fuel services or bundling of energy services with more diverse/non-energy services.

4

What would the costs and benefits be of applying the consumer data right to businesses and other entities, in addition to individuals?

Applying the CDR to businesses and other entities, particularly the smaller ones that do

not have the scale or capacity to negotiate commercial agreements, would level the playing field for these entities to provide alternative or better offerings to consumers.

In the case of New Zealand's energy sector, where a huge amount of consumption data is already being generated by smart electricity meters, a CDR would unlock the value of data, improve the efficiency of the use of this data by third parties, and facilitate the delivery of new and better offerings to the market.

5 *Do you have any comments on the types of data that we propose be included or excluded from a consumer data right (i.e. 'consumer data' and 'product data')?*

While Vector believes that the New Zealand energy sector is well placed to implement a CDR as soon as a CDR legislation is passed, we support a 'phased' implementation.

We suggest that the first phase cover 'consumer data' and 'product data'. These are 'low hanging fruits' that can almost immediately be delivered to a wide range of third-party providers at lower cost than other forms of data. Data associated with more complex transactions, e.g. joint accounts, can be considered at later stages in the evolution of the CDR regime.

6 *What would the costs and benefits be of including both read access and write access in a consumer data right?*

The value of a CDR to consumers can be optimised where both read and write access is enabled. A write access allows third parties to perform more sophisticated and higher-value transactions for consumers, e.g. enabling a third-party energy service provider to compare retail price offerings for a customer as well as perform the switching process for that customer.

The choice of whether access should be 'read only' or 'read and write' could be driven by the features that would enable the third party to deliver the intended service, i.e. how complex the transaction is. As such, this could be a decision that may be best left to service providers/third parties, with the option of being able to add a read access should it be needed in the future for the delivery of the service.

What form could a consumer data right take in New Zealand?

7 *Do you have any comments on the outcomes that we are seeking to achieve? Are there any additional outcomes that we should seek to achieve?*

Vector generally agrees with the outcomes being sought from the introduction of a CDR, as set out in the discussion document. In addition, we suggest that the following be explicitly added as desired outcomes:

- greater innovation that benefits businesses and consumers;
- greater choice for consumers and greater control by consumers over their data; and
- increased confidence in the CDR regime and the designated sectors.

8 *Do you have any comments on our proposed criteria for assessing options? Are there any additional factors that should be considered?*

We generally agree with the proposed criteria for assessing design options for the introduction of a CDR in New Zealand. We suggest the explicit addition of cost effectiveness to the criteria.

Any options must ensure that the appropriate privacy and security settings are in place, and existing contractual rights and obligations are upheld.

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

We generally agree with the limitations of Option one (status quo), as identified and described in the discussion document. Maintaining the status quo would not unlock the value of the large amounts of data already being generated in various sectors of the economy, e.g. smart metering data in the electricity sector. This option would delay New Zealand's transition into the digital age and decarbonisation.

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

We generally agree that a 'sectoral designation' approach is preferable to the other three approaches. Having recently been introduced in the Australian banking sector, this approach could provide practical insights that can be usefully and easily applied to New Zealand, noting that many New Zealand banks are owned by, or are affiliated with, Australian banks.

While this approach is being implemented sequentially (one sector after another) in Australia, this does not have to be the case in New Zealand. For example, the widespread deployment of smart meters in the electricity sector (which is not the case in Australia except in the state of Victoria) makes the New Zealand energy sector well placed to implement a CDR at the same time as the banking sector.

One advantage of the sectoral designation approach is that a broad CDR framework can be adopted by the designated sector(s) without stifling sector customisation and innovation, i.e. each sector can progress the development of CDR guidelines or rules at its own pace. This would incentivise industry participants to focus on delivering improved services rather than on regulatory compliance. Importantly, this would avoid 'gold-plated' arrangements and consumers paying for features they do not need or desire.

For example, the 'gateway model' that is being adopted for the energy CDR in Australia may not be suitable for the New Zealand energy sector where a centralised data platform does not exist (unlike in Australia where the market operator has been running a centralised B2B platform for the industry). It is reasonable to assume that as demand for data increases, the gateway model could evolve into arrangements closer to the more distributed open banking model. Consumers who will become more familiar with various data holders may opt to access data directly from data holders without needing a gateway.

In our view, it would be costly to replicate and maintain a centralised platform operated by a regulator or market operator.

A distributed model for an energy CDR, developed by industry participants for consumers, would support the increasing decentralisation in the energy sector enabled by new technologies, e.g. distributed energy resources (DER), peer-to-peer trading, embedded networks, and standalone networks.

11 *Do you have any comments on the discussion of Option three: An economy-wide consumer data right?*

We generally agree with the limitations of Option three (economy-wide CDR), as identified and described in the discussion document.

12 *Do you have any comments on the discussion of Option four: Sector-specific approach?*

We generally agree with the limitations of Option four (sector-specific approach), as identified and described in the discussion document.

13 *This discussion document outlines four possible options to establish a consumer data right in New Zealand. Are there any other viable options?*

We believe all possible options to establish a CDR in New Zealand are broadly identified in the discussion document. These options need not necessarily be mutually exclusive, e.g. aggregators could use the same data across various sectors, subject to the consent of the relevant consumers. As has been said, “the digital world does not respect any boundaries”.

14 *Do you have any comments on our initial analysis of the four options against our assessment criteria?*

We broadly agree with MBIE’s initial analysis of the four options against the assessment criteria set out in the discussion document.

As indicated in our response to Q13, the approaches need not necessarily be mutually exclusive. As digital data does not respect boundaries, it is not unreasonable to expect ‘sectoral coupling’ or sectoral convergence to occur over time.

Any proposed option should not prevent data access seekers from procuring data outside of the CDR regime if that can be done more efficiently/effectively through commercial arrangements. This would enable disruptive innovation at the ‘fringes of the sector’ to occur, and new and innovative ways of data provision to evolve organically. This could minimise the need for more complex rules that can potentially be contentious and costly to implement. We agree with HoustonKemp in its report to the (now defunct) Coalition of Australian Governments Council - Energy Council that:

Nothing in this process should prevent commercial arrangements being put in place whereby accredited third parties fund bespoke changes to standard data formats to facilitate the provision of services to consumers.²

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 that Option two (sectoral designation) is most likely to achieve the best outcome using the assessment criteria set out in the discussion document.

As indicated in our response to Q10, while this approach is being implemented sequentially (one sector after another) in Australia, this does not have to be the case in New Zealand. In the New Zealand energy sector, the availability of real-time consumption data generated by smart electricity meters makes the sector well placed to implement a CDR together with other sectors in a similar situation.

Under this option, a CDR could provide a broad framework for the standardisation of some

²<http://www.coagenergycouncil.gov.au/sites/prod.energycouncil/files/publications/documents/Facilitating%20Access%20to%20Consumer%20Energy%20Data%20-%20Consultation%20Paper.pdf>, page ii

elements across designated sectors (e.g. development of common standards for the accreditation of third parties seeking to access data) without stifling innovation and customisation for each sector.

For the energy sector, we prefer that data standards be allowed to evolve and be developed by industry forums and bodies. We believe that a flexible principles-based approach is more appropriate for this sector where many services are still emerging or rapidly evolving. This removes the need to amend rules or regulations every time a data-related issue crops up relating to particular services.

How could a consumer data right be designed?

16 *Do you agree with the key elements of a data portability regime as outlined in this section? Are there any elements that should be changed, added or removed?*

Vector generally agrees with the key elements of a data portability regime outlined in the discussion document – designation process, scope of a designation, rules and data standards, accreditation regime, privacy safeguards, and liability, enforcement and redress.

We consider the above list to be sufficiently comprehensive for the purposes of introducing a CDR in New Zealand.

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

We broadly agree with MBIE's discussion of the key elements for inclusion in a CDR for New Zealand and its reasons for doing so.

18 *Are there any areas where you think that more detail should be included in primary legislation?*

We broadly agree that the legislation introducing a CDR in New Zealand could cover the areas identified in the discussion document.

Our general preference is for most of the details to be left for each designated sector to develop, to ensure that sector innovation will not be stifled and allow each sector to progress at its own pace.

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

Vector supports a CDR that includes provisions to protect vulnerable consumers. Any options should take into account consumer-related responsibilities stipulated in privacy legislation and arrangements for medically dependent and vulnerable consumers.

In the case of the New Zealand energy sector, we note that the Electricity Authority is reviewing its *Guideline on arrangements to assist medically dependent consumers* and *Guideline on arrangements to assist vulnerable consumers* (MDVC Guidelines), in consultation with stakeholders. Processes such as this could additionally and specifically consider issues and opportunities that could arise for vulnerable consumers from the implementation of a CDR.

20

Do you have any suggestions for considering how Te Tiriti o Waitangi should shape the introduction of a consumer data right in New Zealand?

Vector supports a CDR that reflects the principles of the Treaty of Waitangi. We suggest that MBIE actively consult with the appropriate Māori authorities and communities so that their perspectives can be considered and reflected in any CDR that will be implemented in New Zealand.

21

How could a consumer data right be designed to ensure that the needs of disabled people or those with accessibility issues are met?

Vector supports a CDR that addresses the needs of disabled people and those with accessibility issues. We suggest that MBIE actively consult with the disability sector and its representatives.

As indicated in our response to Q19, the Electricity Authority is reviewing its MDVC Guidelines. Processes such as this could additionally and specifically consider issues and opportunities that could arise for disabled people and those with accessibility issues from the implementation of a CDR.

22

To what extent should we be considering compatibility with overseas jurisdictions at this stage in the development of a consumer data right in New Zealand?

Compatibility with overseas jurisdictions, particularly with the Australian CDR, has its benefits. For example, many banks in New Zealand are owned by, or affiliated with, Australian banks. Adopting processes already tested by the Australian banks would be more cost-effective and facilitate the implementation of a CDR in New Zealand, assuming open banking will also be adopted in New Zealand.

While any benefits from compatibility with overseas jurisdictions should be explored, it should be done in a manner that ensures the proposed CDR regime in New Zealand is sufficiently flexible to be able to be customised to meet the unique needs of each designated sector.

For example, and as indicated in our response to Q10, a gateway model could well be appropriate for the energy CDR in Australia as a centralised B2B platform operated by the market operator is well established. The New Zealand electricity market, on the other hand, runs on a distributed data model. It would be costly to replicate and maintain a centralised model in this market.

We suggest that the implementation of a CDR in New Zealand, regardless of its design, start with simple transactions so that its benefits can be delivered cost effectively and in a timely manner to as many consumers and sectors as possible. Complex transactions can be considered at later stages as the CDR regime evolves.

23

Do you have any comments on where a consumer data right would best sit in legislation?

Given the potentially widespread impact of a CDR on the New Zealand economy, we consider its introduction to New Zealand via a standalone act to be appropriate. The proposed legislation can reference other relevant legislation, where necessary and appropriate.

24

Do you have any comments on the arrangements for establishing any new bodies to oversee parts of a consumer data right?

We are inclined to support the implementation of a CDR by established bodies (similar to the approach adopted in Australia) to take advantage of the deep expertise of these bodies. This would also avoid prolonged delays in the implementation of a CDR and the delivery of its consumer benefits. The creation of a new CDR-specific agency could be considered at later stages.

A 'lead agency' that would play a similar role to that assumed by the Australian Competition and Consumer Commission (ACCC) in the ongoing implementation of the Australian CDR could be identified.

25

What are the pros or cons of having multiple regulators, or a single regulator, involved in a consumer data right?

In line with our response to Q24, we do not have any issues with having multiple regulators overseeing the implementation of a CDR in New Zealand, similar to the approach adopted in Australia. This would take advantage of the deep expertise of the relevant agencies and avoid any prolonged delays in the delivery of the consumer benefits from a CDR. The creation of a new CDR-specific agency could be considered at later stages.

Again, a 'lead agency' that would play a similar role to that assumed by the ACCC in the ongoing implementation of the Australian CDR could be identified.

26

If government decides to establish a consumer data right, do you have any suggestions of how its effectiveness could be measured?

The effectiveness of a consumer data right could be measured, at least initially, by:

- the rate by which consumers are using applications to authorise third parties to access and use their data, reflecting the level of consumer confidence in the new CDR regime; and
- the number of third parties applying for accreditation and accessing data from data holders, as authorised by consumers.

Other comments

Should a CDR be introduced in New Zealand, we suggest the use of working groups comprising representatives from the designated sector in the development of CDR rules or guidelines for their sector.

For the energy sector, we suggest that MBIE work closely with the Electricity Authority to consider practical and low-cost approaches for the implementation of CDR rules or guidelines that are not unduly onerous on industry participants. This would also avoid overlapping work (e.g. around data access), confusion, and unnecessary costs for industry participants and consumers.

We further suggest a review of the CDR regime, say three years following its introduction, to assess the achievement of the desired outcomes, and regular reviews thereafter.