

24 July 2023

Consumer Policy Team
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140

Via email: consumerdataright@mbie.govt.nz.

Re: Seeking feedback on the Customer and Product Data Bill (consumer data right)

To Whom It May Concern:

The Association of Digital Service Providers Australia New Zealand (DSPANZ) welcomes the opportunity to make this submission on behalf of our members and the business software industry.

About DSPANZ

Digital Service Providers Australia New Zealand is the gateway for the government into the dynamic, world-class business software sector in Aotearoa New Zealand and Australia. [Our 90+ members](#) range from large, well-established companies to new and nimble innovators working at the cutting edge of business software and app development on both sides of the Tasman.

This submission primarily provides feedback on the standards setting and accreditation information outlined in the Bill and the accompanying discussion document. DSPANZ looks forward to future consultation on making the consumer data right a reality in Aotearoa New Zealand.

DSPANZ welcomes the opportunity to provide further feedback on our submission. Please contact Maggie Leese for more information.

Yours faithfully,

Matthew Prouse,
President & Director
DSPANZ.



Submission on discussion document: *Unlocking value from our customer data*

Your name and organisation

Name	Maggie Leese
Organisation (if applicable)	Digital Service Providers Australia New Zealand (DSPANZ)
Contact details	

[Double click on check boxes, then select 'checked' if you wish to select any of the following.]

- The Privacy Act 2020 applies to submissions. Please check the box if you do not wish your name or other personal information to be included in any information about submissions that MBIE may publish.
- MBIE intends to upload submissions received to MBIE's website at www.mbie.govt.nz. If you do not want your submission to be placed on our website, please check the box and type an explanation below.

I do not want my submission placed on MBIE's website because... [Insert text]

Please check if your submission contains confidential information:

- I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated below** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

I would like my submission (or identified parts of my submission) to be kept confidential because... [Insert text]

Responses to discussion document questions

How will the draft law interact with protections under the Privacy Act?

1

Does the proposed approach for the interaction between the draft law and the Privacy Act achieve our objective of relying on Privacy Act protections where possible? Have we disapplied the right parts of the Privacy Act?

Consent settings: respecting and protecting customers' authority over their data

2

Should there be a maximum duration for customer consent? What conditions should apply?

3

What settings for managing ongoing consent best align with data governance tikanga?

4

Do you agree with the proposed conditions for authorisation ending? If not, what would you change and why?

5

How well do the proposed requirements in the draft law and regulations align with data governance tikanga relating to control, consent and accountability?

6

What are your views on the proposed obligations on data holders and accredited requestors in relation to consent, control, and accountability? Should any of them be changed? Is there anything missing?

Care during exchange: standards

7

Do you think the procedural requirements for making standards are appropriate? What else should be considered?

While the Bill requires the chief executive to consult on proposed standards, DSPANZ would like to emphasise the importance of broad consultation within designated sectors to ensure all participants, even those who could be indirectly impacted, have the opportunity to provide their feedback and insights.

For example, during the consultation on how the Australian Consumer Data Right (CDR) rules should apply to intermediaries, there was limited consultation with the third parties who would be directly impacted, such as accounting software, accountants and bookkeepers.

8

Do you think the draft law is clear enough about how its storage and security requirements interact with the Privacy Act?

9

From the perspective of other data holding sectors: which elements of the Payments NZ API Centre Standards¹ are suitable for use in other sectors, and which could require significant modification?

10

What risks or issues should the government be aware of, when starting with banking for standard setting? For example, could the high security standards of banking API's create barriers to entry?

DSPANZ believes starting with banking level security may create a barrier to entry for accredited requestors and may be challenging to apply to other designated sectors in the future.

The high standard set for Accredited Data Recipients (ADRs) in Australia for Open Banking made it costly and complex to become accredited and participate in the CDR. In 2019, FinTech Australia estimated that the average cost of becoming accredited was between A\$50,000 and A\$100,000 in annual compliance fees. So far, these high costs and complexity have made becoming an ADR in Australia inaccessible, particularly for smaller players.

There is an opportunity to introduce tiered accreditation for accredited requestors and other participants to make accreditation more accessible.

Trust: accreditation of requestors

11

Should there be a class of accreditation for intermediaries? If so, what conditions should apply?

If a class of accreditation for intermediaries is introduced, DSPANZ highly recommends consulting extensively with Digital Service Providers (DSPs), accountants and other participants that would fall into this classification. As our answer to question 7 mentioned, the lack of consultation with intermediaries during the Australian CDR rollout led to unintended consequences.

We recommend recognising standards that those who will be classified as intermediaries already adhere to and introducing tiered accreditation where possible.

12

Should accredited requestors have to hold insurance? If so, what kind of insurance should an accredited requestor have to hold?

13

What accreditation criteria are most important to support the participation of Māori in the regime?

14

Do you have any other feedback on accreditation or other requirements on accredited requestors?

¹ New Zealand API standards to initiate payments and access bank account information. They are based on the UK's Open Banking Implementation Entity standards but tailored for the New Zealand market. Market demand has driven development and led to the creation of bespoke functionality for New Zealand.

DSPANZ recommends exploring options for tiered accreditation to make meeting accreditation and security requirements easier for different participants.

Unlocking value for all

Please provide feedback on:

15

- *the potential relationships between the Bill safeguards and tikanga, and Te Tiriti/the Treaty*
- *the types of use-cases for customer data or action initiation which are of particular interest to iwi/Māori*
- *any specific aspirations for use and handling of customer and product data within iwi/hapū/Māori organisations, Te Whata etc, which could benefit from the draft law.*

16

What are specific use cases which should be designed for, or encouraged for, business (including small businesses)?

DSPANZ encourages the government to think about how payroll, tax and accounting software would participate in the CDR to facilitate user interactions. We recommend consulting specifically with DSPs to ensure their everyday processes and future use cases are designed for in the legislation and accompanying regulations. It may also be helpful to consider how government agencies could leverage the CDR approach to consent-driven consumer data sharing for their processes.

17

What settings in the draft law or regulations should be included to support accessibility and inclusion?

18

In what ways could regulated entities and other data-driven product and service providers be supported to be accessible and inclusive?

Ethical use of data and action initiation

19

What are your views on the proposed options for ethical requirements for accreditation? Do you agree about requirements to get express consent for de-identification of designated customer data?

20

Are there other ways that ethical use of data and action initiation could be guided or required?

Preliminary provisions

21

What is your feedback on the purpose statement?

22 Do you agree with the territorial application? If not, what would you change and why?

Regulated data services

23 Do you think it is appropriate that the draft law does not allow a data holder to decline a valid request?

24 How do automated data services currently address considerations for refusing access to data, such as on grounds in sections 49 and 57(b) of the Privacy Act?

Protections

25 Are the proposed record keeping requirements in the draft law well targeted to enabling monitoring and enforcement? Are there more efficient or effective record keeping requirements to this end?

26 What are your views on the potential data policy requirements? Is there anything you would add or remove?

Regulatory and enforcement matters

27 Are there any additional information gathering powers that MBIE will require to investigate and prosecute a breach?

Administrative matters

28 Are the matters listed in clause 60 of the draft law the right balance of matters for the Minister to consider before recommending designation?

29 What is your feedback on the proposed approach to meeting Te Tiriti o Waitangi/Treaty of Waitangi obligations in relation to decision-making by Ministers and officials?

30 What should the closed register for data holders and accredited requestors contain to be of most use to participants?

31	<i>Which additional information in the closed register should be machine-readable?</i>
32	<i>Is a yearly reporting date of 31 October for the period ending 30 June suitable? What alternative annual reporting period could be more practical?</i>
33	<i>Should there be a requirement for data holders to provide real-time reporting on the performance of their CDR APIs? Why or why not?</i>
34	<i>What is your feedback on the proposal to cap customer redress which could be made available under the regulations, in case of breach?</i>
Complaints and disputes	
35	<i>In cases where a data holder or requestor is not already required to be member of a dispute resolution scheme, do you agree that disputes between customers and data holders and/or accredited requestors should be dealt with through existing industry dispute resolution schemes, with the Disputes Tribunal as a backstop? Why or why not?</i>

Other comments

DSPANZ suggests leveraging the definition of “agency” provided in the Privacy Act 2020 to help explain what " person " means throughout the Bill as it is used to describe both organisations and individuals.