

DRAFT FOR CONSULTATION

Customer and Product Data Bill

Government Bill

Explanatory note

General policy statement

[To come]

Clause by clause analysis

[To come]

Hon Dr Duncan Webb

Customer and Product Data Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Customer and Product Data Act **2023**.

2 Commencement

This Act comes into force on X.

Part 1

Preliminary provisions

Purpose

3 Purpose

- (1) The purpose of this Act is to establish a framework to—

- (a) realise the value of certain data for the benefit of individuals and society; and
 - (b) promote competition and innovation for the long-term benefit of customers; and
 - (c) facilitate secure and efficient data services in certain sectors of the New Zealand economy.
- (2) The purpose is to be achieved by—
- (a) improving the ability of customers in those sectors to access and use the data held about them by participants in those sectors; and
 - (b) improving access to data about products in those sectors; and
 - (c) standardising certain safeguards, controls, and functionality in connection with those data services.

Overview

4 Overview

- (1) This Act regulates data services provided by persons that are designated as data holders under **subpart 1 of Part 5**.

- (2) Services relating to customer data are regulated as follows:

If ... A person (a data holder) is specified in designation regulations; and they hold customer data of the kind specified in the regulations; and
either—

- a customer requests the data or requests that the data holder perform an action; or
- an accredited requestor authorised by the customer requests the data or requests that the data holder perform an action.

Then ... The data holder must comply with the request (**sections 14, 15, 17, and 18**).

However ... Certain protections apply, including duties to—

- check that the customer has authorised the request (**section 33**); and
- check the customer's and the accredited requestor's identity (**section 37**); and
- have a complaints process (**section 43**).

In addition,—

- only a person granted accreditation under **subpart 2 of Part 5** may act as an accredited requestor; and
- an accredited requestor may only request actions of the type covered by the terms of their accreditation.

- (3) Services relating to product data are regulated as follows:

If ... A person (a data holder) is specified in designation regulations; and they hold product data of the kind specified in the regulations; and

- a person requests the data.
- Then ...** The data holder must comply with the request (**section 21**).
- (4) Additional details are set out in secondary legislation, including:
- Designation regulations** which designate the data holders and classes of data that are regulated under this Act (**subpart 1 of Part 5**).
- Other regulations** which specify general requirements relating to regulated data services (**section 28**).
- Standards** which specify technical requirements relating to regulated data services (**section 29**).
- (5) Data holders and accredited requestors may be granted exemptions under **subpart 8 of Part 5**.
- (6) This section is only a guide to the general scheme and effect of this Act.

Interpretation

5 Interpretation

In this Act, unless the context otherwise requires,—

accredited requestor has the meaning set out in **section 7**

authorisation and **authorise** have the meaning set out in **section 30**

chief executive means the chief executive of the Ministry

customer has the meaning set out in **section 8**

customer data has the meaning set out in **section 8**

data includes information

data holder has the meaning set out in **section 6**

director has the same meaning as in section 6 of the Financial Markets Conduct Act 2013

designated action, in relation to a data holder, means an action that is specified, or belongs to a class specified, in the data holder's designation regulations

designated customer data has the meaning set out in **section 8**

designation regulations—

(a) means designation regulations made under **section 59**; and

(b) in relation to a person that is a data holder, means any designation regulations that have the effect of designating that person

designated product data has the meaning set out in **section 9**

document has the same meaning as in section 4 of the Evidence Act 2006

goods has the same meaning as in section 2(1) of the Fair Trading Act 1986

IPP means an information privacy principle set out in section 22 of the Privacy Act 2020

IPP 5 means information privacy principle 5 (storage and security of personal information) set out in section 22 of the Privacy Act 2020

IPP 6 means information privacy principle 6 (access to personal information) set out in section 22 of the Privacy Act 2020

IPP 8 means information privacy principle 8 (accuracy, etc, of personal information to be checked before use or disclosure) set out in section 22 of the Privacy Act 2020

IPP 11 means information privacy principle 11 (limits on disclosure of personal information) set out in section 22 of the Privacy Act 2020

Minister means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act

Ministry means the department that, with the authority of the Prime Minister, is responsible for the administration of this Act

outsourced provider has the meaning set out in **section 23**

outsourced duty or power has the meaning set out in **section 23**

product has the meaning set out in **section 9**

product data has the meaning set out in **section 9**

secondary user has the meaning set out in **section 22**

senior manager, in relation to a person (A), means a person who is not a director but occupies a position that allows that person to exercise significant influence over the management or administration of A (for example, a chief executive or a chief financial officer)

services has the same meaning as in section 2(1) of the Fair Trading Act 1986

register means the register established under **subpart 5 of Part 5**

regulated data services has the meaning set out in **section 10**

regulations means regulations made under this Act

standard means a standard made under **section 87**

valid request has the meaning set out in **section 25**.

6 Data holder

A person is a **data holder** if—

- (a) the person is specified, or belongs to a class specified, in designation regulations; and
- (b) either—
 - (i) the person holds designated customer data or designated product data (or both); or

- (ii) another person holds that data on behalf of the person described in **paragraph (a)**.

7 Accredited requestor

A person is an **accredited requestor** if the person is accredited under **subpart 2 of Part 5**.

8 Customer, customer data, and designated customer data

- (1) **Customer** means a person that acquires, or is seeking to acquire, goods or services from a data holder.
- (2) **Customer data** means data that is about an identifiable customer that is held by or on behalf of a data holder (including, for example personal information within the meaning of the Privacy Act 2020).
- (3) **Designated customer data**, in relation to a data holder, means—
 - (a) customer data that is specified, or belongs to a class specified, in the data holder’s designation regulations; and
 - (b) that is held by (or on behalf of) the data holder on or after the day specified in, or determined in accordance with, the designation regulations.

9 Product, product data, and designated product data

- (1) **Product**, in relation to a data holder, means goods or services offered by the data holder.
- (2) **Product data**, in relation to a data holder,—
 - (a) means data that is about, or relates to, 1 or more of the data holder’s products; but
 - (b) does not include customer data.
- (3) **Designated product data**, in relation to a data holder, means product data—
 - (a) that is specified, or belongs to a class specified, in the data holder’s designation regulations; and
 - (b) that is held by (or on behalf of) the data holder on or after the day specified in, or determined in accordance with, the designation regulations.

10 Regulated data service and related terms

- (1) **Regulated data service** means either or both of the following:
 - (a) providing data under **Part 2**;
 - (b) performing an action under **Part 2**.
- (2) A regulated data service **relates to a customer** if the service relates to—
 - (a) providing data that is designated customer data; or
 - (b) performing an action on a request made by, or on behalf of, a customer.

*Territorial application of Act***11 Territorial application of Act**

- (1) This Act applies to—
- (a) a New Zealand agency (**A**), in relation to any conduct by A (whether or not while A is, or was, present in New Zealand) in respect of designated customer data or designated product data held by A;
 - (b) an overseas agency (**B**), in relation to any conduct by B in the course of carrying on business in New Zealand in respect of designated customer data or designated product data held by B.
- (2) For the purposes of **subsection (1)**, it does not matter—
- (a) where the data is, or was, collected by the agency; or
 - (b) where the data is held by the agency; or
 - (c) where the customer or product concerned is, or was, located.
- (3) For the purposes of **subsection (1)(b)**, an agency may be treated as carrying on business in New Zealand without necessarily—
- (a) being a commercial operation; or
 - (b) having a place of business in New Zealand; or
 - (c) receiving any monetary payment for the supply of goods or services; or
 - (d) intending to make a profit from its business in New Zealand.
- (4) In this section, **New Zealand agency** and **overseas agency** have the same meaning as in subpart 2 of Part 1 of the Privacy Act 2020.

Compare: 2020 No 31 s 4

*Transitional, savings, and related provisions***12 Transitional, savings, and related provisions**

The transitional, savings, and related provisions (if any) set out in the **Schedule** have effect according to their terms.

*Act binds the Crown***13 Act binds the Crown**

This Act binds the Crown.

Part 2
Regulated data services
Subpart 1—Main obligations

Customer data

14 Data holder must provide customer data to customer

- (1) This section applies if—
- (a) a customer requests that a data holder provide data to the customer; and
 - (b) the data is designated customer data that is about that customer; and
 - (c) the request—
 - (i) is made using the system described in **section 26**; and
 - (ii) is a valid request.
- (2) The data holder must provide the data to the customer using that system.

15 Data holder must provide customer data to accredited requestor if customer authorises it

- (1) This section applies if—
- (a) a customer authorises an accredited requestor (A) to request, on behalf of the customer, that a data holder provide data to A; and
 - (b) the data holder has carried out confirmation in relation to the request under **section 33**; and
 - (c) the data is designated customer data that is about that customer; and
 - (d) the request—
 - (i) is made using the system described in **section 26**; and
 - (ii) is a valid request.
- (2) The data holder must provide the data to A using that system.

16 Sections 14 and 15 do not prevent request to access personal information being made in some other manner

Sections 14 and 15 do not prevent an individual from exercising their rights under IPP 6 by making a request in some other manner.

Guidance note

IPP 6 (Information privacy principle 6) is set out in section 22 of the Privacy Act 2020. It confers an entitlement on an individual to access their personal information on request.

17 Data holder must perform certain actions on customer's request

- (1) This section applies if—

- (a) a customer requests that a data holder perform an action relating to the customer; and
 - (b) the requested action is a designated action; and
 - (c) the data holder would ordinarily perform actions of the type to which the request relates in the course of the data holder's business; and
 - (d) the request—
 - (i) is made using the system described in **section 26**; and
 - (ii) is a valid request.
- (2) The data holder must perform the action.
- (3) When considering whether a data holder would ordinarily perform an action in the course of its business for the purposes of **subsection (1)(c)**, regard must be had to the matters prescribed in the standards (if any).

18 Data holder must perform certain actions on accredited requestor's request if customer authorises it

- (1) This section applies if—
- (a) a customer authorises an accredited requestor (**A**) to request, on behalf of the customer, that a data holder perform an action relating to the customer; and
 - (b) the data holder has carried out confirmation in relation to the request under **section 33**; and
 - (c) the requested action is a designated action; and
 - (d) the data holder would ordinarily perform actions of the type to which the request relates in the course of the data holder's business; and
 - (e) the request—
 - (i) is made using the system described in **section 26**; and
 - (ii) is a valid request.
- (2) The data holder must perform the action.
- (3) When considering whether a data holder would ordinarily perform an action in the course of its business for the purposes of **subsection (1)(d)**, regard must be had to the matters prescribed in the standards (if any).

19 Data holders and accredited requestors must maintain systems or processes for dealing with joint customers

- (1) This section applies in relation to a regulated data service provided in connection with 2 or more joint customers.
- (2) A data holder and an accredited requestor must, in the manner prescribed by the regulations, maintain systems or processes in relation to—

-
- (a) when or how joint customers may or must make a request or give an authorisation under this subpart; and
- (b) how the data holder or accredited requestor may or must deal with a request or authorisation from 1 or more of the joint customers.
- (3) Regulations made for the purposes of this section may (without limitation) do any of the following:
- (a) authorise or require a data holder or an accredited requestor to deal with a request or an authorisation in any of the following ways (on the terms and conditions (if any) specified in the regulations):
- (i) that a request or an authorisation may be made or given by any 1 or more of the joint customers (without the other joint customers):
- (ii) that a request or an authorisation may be made or given only by 2 or more of the joint customers acting together:
- (iii) that a request or an authorisation may be made or given only if it is made or given by all of the joint customers acting together:
- (iv) that a request or an authorisation may not be made or given by or on behalf of the joint customers:
- (b) require a data holder or an accredited requestor to maintain systems or processes that allow 1 or more joint customers to view or change how 1 or more joint customers may or must make a request or give an authorisation.
- (4) A request made or an authorisation given by 1 or more joint customers is effective for the purposes of **sections 14 to 18** if, and only if, it is made or given in accordance with those regulations.
- (5) In this section, 1 or more customers are **joint customers** if—
- (a) they jointly hold a financial product issued by the data holder; or
- (b) they have rights or obligations under the same agreement with the data holder.

Example

Two people, A and B, have a joint bank account. The regulations require a data holder to maintain processes or systems that allow A and B to—

- authorise A or B acting alone to make a request or give an authorisation in certain circumstances; or
 - require both A and B acting together to make a request or give an authorisation in other circumstances.
-

20 Regulated data service relating to customer that is entity, etc

- (1) This section applies if the customer referred to in **sections 14 to 18** is not an individual (A).

- (2) A reference to an authorisation in those sections must be treated as a reference to an authorisation given by any of the following persons (**B**) that is within the scope of B's actual or apparent authority:
- (a) a director or senior manager of A;
 - (b) a person who belongs to a class of persons specified in the regulations as persons who may give an authorisation on behalf of A.

Example

A company wants to authorise an accredited requestor to request the company's designated customer data from a data holder.

A director or senior manager of the company may give the relevant authorisation to the accredited requestor.

Product data

21 Data holder must provide product data to any person

- (1) This section applies if—
- (a) a person requests that a data holder provide data to the person; and
 - (b) the data is designated product data; and
 - (c) the request—
 - (i) is made using the system described in **section 26**; and
 - (ii) is a valid request.
- (2) The data holder must provide the data to the person using that system.

Subpart 2—Additional obligations

Third parties

22 Data holders and accredited requestors must maintain systems or processes for dealing with secondary users

- (1) A data holder and an accredited requestor must, in the manner prescribed by the regulations, maintain systems or processes in relation to—
- (a) when or how a secondary user may or must make a request or give an authorisation under this subpart on behalf of a customer; and
 - (b) provide for how the data holder or an accredited requestor may or must deal with a request or an authorisation from a secondary user.
- (2) Regulations made for the purposes of **subsection (1)** may (without limitation) provide for any of the following:
- (a) when or how a customer may authorise a secondary user to make a request or give an authorisation on behalf of the customer:

-
- (b) when or how a customer may view, change, or revoke the authority of a secondary user:
 - (c) a duty for the data holder or an accredited requestor to notify the customer of actions taken by a secondary user.
- (3) A request made or an authorisation given by a secondary user is effective for the purposes of **sections 14 to 18** if, and only if, it is made or given in accordance with those regulations.
 - (4) A person (**A**) is a **secondary user** in relation to a customer (**B**) if—
 - (a) A is specified, or belongs to a class specified, in designation regulations as a secondary user in relation to a class of customers; and
 - (b) B belongs to that class of customers.
 - (5) This section does not limit the ability of the relevant customer to make a request or give an authorisation under this subpart.

23 Outsourced providers must comply with certain obligations

- (1) An outsourced provider must—
 - (a) perform or exercise an outsourced duty or power in accordance with the requirements and limitations prescribed in the regulations (if any); and
 - (b) comply with all other requirements prescribed by the regulations.

Example

The regulations may require an outsourced provider to maintain records and provide information to the relevant data holder or accredited requestor.

- (2) An outsourced provider must also comply with the requirements and limitations under this Act (including the protections in **Part 3**, the regulations, and the standards) that apply to the relevant data holder or accredited requestor in connection with the performance or exercise of the outsourced duty or power.
- (3) The relevant data holder or accredited requestor must, in relation to an outsourced provider, comply with the requirements prescribed in the regulations (if any).

Example

The regulations may require a data holder or accredited requestor to give information to a customer about an outsourcing arrangement.

- (4) In this section,—
 - (a) a person (**A**) is an **outsourced provider**, in relation to a data holder or an accredited requestor (**B**), if B contracts out to A the performance or exercise of a duty or power under this Act:
 - (b) the **outsourced duty or power** is the duty or power that has been contracted out.

24 Data holder or accredited requestor must take reasonable steps to ensure outsourced provider complies

- (1) This section applies—
 - (a) in relation to an outsourced provider (**A**) that performs or exercises an outsourced duty or power for a data holder or an accredited requestor (**B**); and
 - (b) to the extent that A is subject to a requirement or limitation under this Act.
- (2) B must—
 - (a) take all reasonable steps to ensure that A complies with the requirement or limitation; or
 - (b) comply with the requirement or limitation on A's behalf.
- (3) If A contravenes the requirement or limitation, B must be treated as also having contravened the requirement or limitation.
- (4) **Subsection (3)** does not apply if B proves that it complied with **subsection (2)(a)**.

*Requests***25 Valid request**

A request is a **valid request** if the person making the request—

- (a) specifies the data or action being requested; and
- (b) complies with the requirements provided for in the standards about making requests (if any); and
- (c) otherwise makes the request in the manner prescribed in the regulations (if any).

*Electronic system***26 Regulated data services must be provided using electronic system**

- (1) A data holder must operate an electronic system that has the capacity to do all of the following with reasonable reliability:
 - (a) enable the data holder to receive requests for regulated data services:
 - (b) enable the data holder to provide regulated data services in response to those requests:
 - (c) comply with any technical or performance requirements in the regulations and standards.
- (2) Regulations or standards made for the purposes of **subsection (1)(c)** may (without limitation) relate to any of the following:
 - (a) security:

- (b) data quality:
- (c) reliability and timeliness of responses to requests for data and requests to perform an action:
- (d) availability:
- (e) useability:
- (f) accessibility:
- (g) monitoring use and functionality:
- (h) reporting on any of the matters referred to in **paragraphs (a) to (g)** (including to the chief executive).

Note

This provision will permit regulations to be made that require data holders' systems to have reporting functionality. This capacity would be in addition to the annual reporting requirement under clause 63. Systems' capacity requirements set out in regulations made under clause 26 could include capacity for live and automated reporting.

Secondary legislation

27 Data holders and accredited requestor must comply with secondary legislation

A data holder or an accredited requestor must comply with the requirements in the regulations and standards in connection with the following:

- (a) making or receiving requests for regulated data services (including in relation to performing an action):
- (b) providing those services:
- (c) communicating with customers about those services:
- (d) otherwise dealing with designated customer data or designated product data.

Guidance note

The regulations and standards may also specify other requirements, not described in this section. For example, the standards may specify requirements relating to how an authorisation must be confirmed (see **section 33**).

28 Requirements in regulations

Regulations made for the purposes of **section 27** may (without limitation) relate to any of the following:

Making or receiving requests

- (a) requirements about charging amounts payable in connection with regulated data services, including—
 - (i) when an amount may, must, or must not be charged; and

- (ii) prohibitions or restrictions relating to charging those amounts (for example, a cap on how much may be charged):

Providing services

- (b) requirements about providing sufficient evidence that the person is a data holder or an accredited requestor:
- (c) requirements about what information (a **service communication**) must be given to any of the following in connection with a regulated data service:
 - (i) a person (for example, a customer) that requests a regulated data service:
 - (ii) a data holder or their outsourced provider:
 - (iii) an accredited requestor or their outsourced provider:
 - (iv) the chief executive:
- (d) requirements about the content, form, delivery method, and timing of service communications:

Dealing with data

- (e) de-identifying data, including so that it no longer relates to an identifiable person:
- (f) requirements about the matters described in **section 29** (requirements in standards):
- (g) any other requirement, or restriction, relating to how data is used, modified, or accessed.

Guidance note

See **subpart 8 of Part 5** for provisions relating to the making of regulations.

29 Requirements in standards

- (1) Standards made for the purposes of **section 27** may (without limitation) relate to any of the following:

Data

- (a) the format and description of data:
- (b) the manner in which data is provided and received, including in connection with—
 - (i) the mechanisms for providing that data (for example, a requirement to use an application programming interface (API)); and
 - (ii) timeframes within which the data must be provided; and
 - (iii) security and identity verification measures for requesting, providing, and receiving data:
- (c) the manner in which data is received:

- (d) the quality of data:
Actions
 - (e) the manner in which requests to perform an action are sent or received:
General
 - (f) the manner in which authorisations are confirmed under **section 33(2)**.
- (2) In this section, **data** means designated customer data or designated product data (or both), as the case may be.

Guidance note

See **subpart 8 of Part 5** for provisions relating to the making of the standards.

Part 3 Protections

Authorisation

30 Giving authorisation

- (1) A customer has given an **authorisation** to another person (A) if—
 - (a) they gave the authorisation expressly, including by specifying any limits on the scope of the authorisation; and
 - (b) at the time of giving the authorisation, they were reasonably informed about the matter to which the authorisation relates; and
 - (c) the authorisation is otherwise given in the manner prescribed by the regulations and the standards; and
 - (d) the authorisation has not ended.
- (2) To **authorise** an action means to give an authorisation for that action.
- (3) Regulations and standards made for the purposes of **subsection (1)** may (without limitation) relate to any of the following:
 - (a) requiring A to take certain steps to facilitate the customer being reasonably informed about the matter to which the authorisation relates:
 - (b) requiring A to use certain methods to obtain an authorisation (for example, a tool that requires the customer to perform an affirmative action in order to give authorisation):
 - (c) prohibiting an authorisation from being given in specified circumstances:
 - (d) providing for the modification of the authorisation (for example, requiring the systems under **section 34** to meet requirements relating to modifications):

- (e) prohibiting or regulating A's conduct in connection with obtaining the authorisation.

31 Ending authorisation

An authorisation ends on the earliest of the following:

- (a) the expiry of the maximum period for an authorisation specified by the regulations (if any);
- (b) the occurrence of an event specified by the regulations (if any) (for example, when the customer closes an account with a data holder);
- (c) the time specified by the customer.

32 Customer must have authorised request

An accredited requestor must not request a regulated data service relating to a customer unless the customer authorised the accredited requestor to make the request.

33 Customer's authorisation must be confirmed

- (1) This section applies if a data holder receives a request from an accredited requestor to provide a regulated data service relating to a customer.
- (2) The data holder must, in accordance with the regulations, check that the service is within the scope of the authorisation given by the customer (**confirmation**).
- (3) The data holder must not provide the regulated data service until confirmation has been completed.
- (4) A confirmation is valid for any service within the scope of that authorisation until the time when the scope of the authorisation is modified or the authorisation ends (whichever is earlier).
- (5) If the scope of the authorisation is modified or the authorisation ends, **subsection (2)** applies again.

Example

A customer authorises their electricity provider (a data holder) to provide details of their electricity usage to a company that makes recommendations about the best electricity deals in the market.

Before sharing any of the customer's data for the first time, the electricity provider must confirm the customer's authorisation.

However, it is not necessary to carry out confirmation for any subsequent actions performed within the scope of that authorisation. The electricity provider will only have to re-confirm the customer's authorisation if the scope of the authorisation is modified or the authorisation ends.

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- (6) A person who carries out a confirmation must carry out the confirmation in the manner prescribed by the regulations and the standards (if any).

34 Customer must be able to control authorisation

- (1) If a data holder has confirmed a customer's authorisation under **section 33**, the data holder—
 - (a) must have systems in place to enable the customer to view or end the authorisation; and
 - (b) must ensure that those systems meet the requirements provided for by the regulations and standards (if any).
- (2) If an accredited requestor obtains a customer's authorisation, the accredited requestor—
 - (a) must have systems in place to enable the customer to view or end the authorisation; and
 - (b) must ensure that those systems meet the requirements provided for by the regulations and standards (if any).
- (3) The data holder or accredited requestor must ensure that the systems are able to give effect to a withdrawal of an authorisation with immediate effect.

35 Authorisation must not be required as condition of providing product

- (1) This section applies if a person provides goods or services, other than regulated data services, to a customer (a **product**).
- (2) The person must not, as a condition of providing the product, require the customer to authorise a regulated data service unless that service is reasonably necessary to facilitate the person providing the product.

*Identity***36 Only customer or accredited requestor may request regulated data services**

A person must not request a regulated data service that relates to a customer unless they are—

- (a) the customer; or
- (b) an accredited requestor authorised by the customer to request the service.

37 Customer's and accredited requestor's identity must be authenticated

- (1) This section applies if a data holder receives a request from a customer or an accredited requestor to provide a regulated data service relating to the customer.
- (2) Before the data holder provides the service, the data holder must verify the identity of both the customer and the accredited requestor (**authentication**).
- (3) However, if the request was made by the customer, only the customer's identity must be authenticated.

- (4) An authentication may be carried out by—
 - (a) the data holder; or
 - (b) a person acting on behalf of the data holder for the purposes of this section (for example, an accredited requestor or an outsourced provider).
- (5) A person who carries out an authentication must perform the authentication in accordance with the requirements provided for by the regulations and standards (if any).

Notification

38 Data holder must notify customer after providing regulated data service

- (1) This section applies if a data holder provides a regulated data service relating to a customer.
- (2) The data holder must—
 - (a) notify the customer that the service has been provided; and
 - (b) if the customer's personal information has been provided under the service, notify the customer of their entitlement under information privacy principle 7 (correction of personal information) set out in section 22 of the Privacy Act 2020.
- (3) The notification must be made in the manner prescribed by the regulations and standards (if any).

39 Data holder must notify customer if regulated data service is not provided

- (1) This section applies if a data holder—
 - (a) receives a request to provide a regulated data service relating to a customer; but
 - (b) does not provide the regulated data service in response to the request.
- (2) The data holder must notify the following that the service has not been provided:
 - (a) the customer, if the customer made the request;
 - (b) the accredited requestor, if the accredited requestor made the request.
- (3) In the case of **subsection (2)(b)**, the accredited requestor must provide a copy of the notification to the customer.
- (4) The notification must be made in the manner prescribed by the regulations and standards (if any).

Record-keeping

40 Data holder must keep certain records

- (1) A data holder must keep records of the following matters in respect of any regulated data service relating to a customer that the data holder provides:

- (a) the request made for the service;
 - (b) whether the data holder has given effect, or has attempted to give effect, to the request;
 - (c) the customer's authorisation (if relevant), including—
 - (i) any limitations on the scope of the authorisation; and
 - (ii) any modifications to the authorisation; and
 - (iii) any previous authorisation given by the customer;
 - (d) whether the authorisation has been confirmed under **section 33** and whether the identity of both the customer and the accredited requestor have been authenticated under **section 37**;
 - (e) whether a duty under **section 33 or 37** has been performed by an outsourced provider and, if so, who the outsourced provider is;
 - (f) the information specified by the regulations (if any).
- (2) A data holder must keep records of the following matters in respect of providing data under **section 21**:
- (a) the request made for the data;
 - (b) whether the data holder has given effect, or has attempted to give effect, to the request;
 - (c) the information specified by the regulations (if any).
- (3) The records must be kept—
- (a) for 5 years; and
 - (b) otherwise in the manner prescribed by the regulations (if any).
- (4) If a person ceases to be a data holder, this section continues to apply with all necessary modifications as if they were still a data holder.

41 Accredited requestor must keep certain records

- (1) An accredited requestor must keep records of the following matters in respect of any regulated data service relating to a customer that the accredited requestor requests:
- (a) the customer's authorisation (if relevant), including—
 - (i) any limitations on the scope of the authorisation; and
 - (ii) any modifications to the authorisation; and
 - (iii) any previous authorisation given by the customer;
 - (b) if, after receiving data under **section 15**,—
 - (i) the accredited requestor provided the data to another person (other than the customer), who the data was provided to and the basis upon which the accredited requestor considers they are permitted to provide the data to that person;

- (ii) the accredited requestor de-identified the data so that it no longer relates to an identifiable person, how the data was de-identified; and
 - (c) the information specified by the regulations (if any).
- (2) The records must be kept—
 - (a) for 5 years; and
 - (b) otherwise in the manner prescribed by the regulations (if any).
- (3) If a person ceases to be an accredited requestor, this section continues to apply with all necessary modifications as if they were still an accredited requestor.

Customer data, product data, and action performance policies

42 Data holders and accredited requestors must have customer data, product data, and action performance policies

- (1) A data holder or an accredited requestor (A) must develop, publish, implement, and maintain 1 or more policies relating to customer data, product data, and action performance.
- (2) A must comply with this section in the manner prescribed by the regulations and standards (if any).

Complaints

43 Data holders and accredited requestors must have customer complaints process

- (1) A data holder or an accredited requestor (A) must have a process that—
 - (a) allows customers to make complaints about A’s conduct in connection with regulated data services that A provides or requests; and
 - (b) provides for how those complaints must be investigated and otherwise dealt with.
- (2) A must ensure that,—
 - (a) as far as practicable, the process enables complaints to be investigated and otherwise dealt with fairly, efficiently, and effectively; and
 - (b) the process meets the requirements provided for by the regulations (if any).

Privacy Act 2020

44 Application of sections 45 to 47

Sections 45 to 47 apply to a request that a data holder provide data under **section 14 or 15** to the extent that the request relates to personal information.

45 Request treated as request for personal information under Privacy Act 2020

The request must be treated as being a request made under IPP 6 (an **IPP request**).

46 Privacy Act 2020 provisions that do not apply to request

The following provisions of the Privacy Act 2020 do not apply to the IPP 6 request:

- (a) section 41 (urgency):
- (b) section 42 (assistance):
- (c) section 43 (transfer of IPP 6 request):
- (d) section 44 (responding to IPP 6 request):
- (e) section 45 (decision to grant access to personal information):
- (f) section 47 (decision to neither confirm nor deny personal information is held):
- (g) section 48 (extension of time limits):
- (h) section 55 (withholding personal information contained in document):
- (i) section 56 (ways personal information in document may be made available):
- (j) section 57(a), (c), and (d) (responsibilities of agency before giving access to personal information).

Note

The Discussion Document is seeking feedback on s 57(b).

47 Certain contraventions treated as breaching IPP 6 (access)

If the data holder contravenes **section 14 or 15**, the contravention must be treated as an action that breaches IPP 6 for the purposes of Parts 5 and 6 of the Privacy Act 2020 (complaints, investigations, proceedings, etc).

Note

Instead of treating a contravention as a breach of an IPP, consideration is being given to treating a contravention as an interference with the privacy of an individual under section 69 of the Privacy Act 2020.

48 Certain contraventions relating to storage and security treated as breaching IPP

- (1) If a data holder contravenes the CPD storage and security requirements in relation to personal information, the contravention must be treated as an action that breaches an IPP for the purposes of Parts 5 and 6 of the Privacy Act 2020 (complaints, investigations, proceedings, etc).

Note

Instead of treating a contravention as a breach of an IPP, consideration is being given to treating a contravention as an interference with the privacy of an individual under section 69 of the Privacy Act 2020.

- (2) In this section, **CPD storage and security requirements** means the requirements imposed under this Act relating 1 or more of the following that are prescribed by the regulations for the purposes of this section:
- (a) storage and security of data:
 - (b) technical or performance requirements for the electronic system:
 - (c) authentication or confirmation:
 - (d) providing regulated data services:
 - (e) otherwise dealing with designated customer data.

Part 4**Regulatory and enforcement matters**

Subpart 1—Regulatory powers

49 Chief executive may require person to supply information, produce documents, or give evidence

- (1) If the chief executive considers it necessary or desirable for the purposes of performing or exercising their functions, powers, or duties under this Act, the chief executive may, by written notice served on any person, require the person—
- (a) to supply to the chief executive, within the time and in the manner specified in the notice, any information or class of information specified in the notice; or
 - (b) to produce to the chief executive, or to a person specified in the notice acting on their behalf in accordance with the notice, any document or class of documents specified in the notice (within the time and in the manner specified in the notice); or
 - (c) if necessary, to reproduce, or assist in reproducing, in usable form, information recorded or stored in any document or class of documents specified in the notice (within the time and in the manner specified in the notice).
- (2) Information supplied in response to a notice under **subsection (1)(a)** must be—
- (a) given in writing; and
 - (b) signed in the manner specified in the notice.
- (3) If a document is produced in response to a notice, the chief executive, or the person to whom the document is produced, may—

- (a) inspect and make records of that document; and
- (b) take copies of the document or extracts from the document.

50 Witnesses and counsel to have privileges of witnesses and counsel in court

Every person has the same privileges in relation to providing information and documents to the chief executive, or a delegate of the chief executive, as witnesses have in proceedings before a court.

51 Effect of proceedings

- (1) If a person commences a proceeding in any court in respect of the exercise of any powers conferred by **section 49**, until a final decision in relation to the proceeding is given,—
 - (a) the powers may be, or may continue to be, exercised as if the proceeding had not been commenced; and
 - (b) no person is excused from fulfilling their obligations under that section by reason of the proceeding.
- (2) However, an interim order may be made by the High Court overriding the effect of **subsection (1)**, but only if the High Court is satisfied that—
 - (a) the applicant has established a prima facie case that the exercise of the power in question is unlawful; and
 - (b) the applicant would suffer substantial harm from the exercise or discharge of the power or obligation; and
 - (c) if the power or obligation is exercised or discharged before a final decision is made in the proceeding, none of the remedies specified in **subsection (3)**, or any combination of those remedies, could subsequently provide an adequate remedy for that harm; and
 - (d) the terms of that order do not unduly hinder or restrict the chief executive in performing or exercising their functions, powers, or duties under this Act.
- (3) The remedies are as follows:
 - (a) any remedy that the High Court may grant in making a final decision in relation to the proceeding (for example, a declaration);
 - (b) any damages that the applicant may be able to claim in concurrent or subsequent proceedings;
 - (c) any opportunity that the applicant may have, as defendant in a proceeding, to challenge the admissibility of any evidence obtained as a result of the exercise or discharge of the power or obligation.

52 Effect of final decision that exercise of powers under section 49 unlawful

- (1) This section applies in any case where it is declared, in a final decision given in any proceedings in respect of the exercise of any powers conferred by **section 49**, that the exercise of any powers conferred by that section is unlawful.
- (2) If this section applies, to the extent to which the exercise of those powers is declared unlawful, the chief executive must ensure that, immediately after the decision of the court is given,—
 - (a) any information obtained as a consequence of the exercise of powers declared to be unlawful and any record of that information are destroyed; and
 - (b) any documents, or extracts from documents, obtained as a consequence of the exercise of powers declared to be unlawful are returned to the person previously having possession of them, or previously having them under their control, and any copies of those documents or extracts are destroyed; and
 - (c) any information derived from or based on such information, documents, or extracts is destroyed.
- (3) However, the court may, in the court's discretion, order that any information, record, or copy of any document or extract from a document may, instead of being destroyed, be retained by the chief executive subject to any terms and conditions that the court imposes.
- (4) No information, and no documents or extracts from documents, obtained as a consequence of the exercise of any powers declared to be unlawful, and no record of any such information or document,—
 - (a) are admissible as evidence in any civil proceedings unless the court hearing the proceedings in which the evidence is sought to be adduced is satisfied that there was no unfairness in obtaining the evidence:
 - (b) are admissible as evidence in any criminal proceedings if the evidence is excluded under section 30 of the Evidence Act 2006:
 - (c) may otherwise be used in connection with the exercise of any power conferred by this Act unless the court that declared the exercise of the powers to be unlawful is satisfied that there was no unfairness in obtaining the evidence.

53 Criminal liability for obstructing exercise of powers

- (1) Every person commits an offence who—
 - (a) refuses or fails, without reasonable excuse, to comply with a notice under **section 49**; or
 - (b) in purported compliance with a notice under **section 49**, supplies information, or produces a document knowing it to be false or misleading.

- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding [to come].

54 Notices

- (1) A notice served by the chief executive for the purposes of this subpart is sufficiently served if it is—
- (a) in writing; and
 - (b) served in accordance with **section 55**.
- (2) All documents purporting to be signed by or on behalf of the chief executive must, in all courts and in all proceedings under this Act, be treated as having been so signed with due authority unless the contrary is proved.

55 Service of notices

- (1) Any notice required or authorised to be served on any person for the purposes of this subpart may—
- (a) be served on an individual—
 - (i) by delivering it personally or by an agent (such as a courier) to the person; or
 - (ii) by sending it by post addressed to the person at the person's usual or last known place of residence or business; or
 - (iii) by sending it by email to the person's email address provided by the person for the purpose; or
 - (iv) in any other manner a District Court Judge directs:
 - (b) be served on a company, within the meaning of the Companies Act 1993, in a manner provided for in section 388 of that Act:
 - (c) be served on an overseas company in a manner provided for in section 390 of the Companies Act 1993:
 - (d) be served on any other body corporate in a manner in which it could be served if the body corporate were a company within the meaning of the Companies Act 1993.
- (2) In the absence of proof to the contrary, a notice sent to a person in accordance with—
- (a) **subsection (1)(a)(ii)** must be treated as having been served on the person when it would have been delivered in the ordinary course of post; and, in proving the delivery, it is sufficient to prove that the letter was properly addressed and posted:
 - (b) **subsection (1)(a)(iii)** must be treated as having been served on the person on the second working day after the day on which it is sent.
- (3) Section 392 of the Companies Act 1993 applies for the purposes of **subsection (1)(b) to (d)**.

- (4) If a person is absent from New Zealand, a notice served on the person's agent in New Zealand in accordance with **subsection (1)** must be treated as having been served on the person.
- (5) If a person has died, the notice may be served, in accordance with **subsection (1)**, on their personal representative.

Subpart 2—Duties to take remedial action

56 Data holder or accredited requestor must take prescribed steps to avoid, mitigate, or remedy loss or damage caused by their contravention

- (1) This section applies if—
 - (a) a data holder or an accredited requestor contravenes a duty imposed by this Act or any secondary legislation made under this Act; and
 - (b) a customer has suffered, or is likely to suffer, loss or damage because of the contravention.
- (2) The data holder or accredited requestor must take the steps that are prescribed by the regulations to avoid, mitigate, or remedy that loss or damage.
- (3) *See* **section 84(2) and (3)**, which relates to those regulations.

57 Customer may recover amount as debt due

- (1) This section applies if regulations made for the purposes of **section 56** require a data holder or an accredited requestor to pay an amount to a customer (for example, to reimburse the customer for a charge incurred as a direct result of the contravention).
- (2) The customer may recover the amount from the data holder or accredited requestor in any court of competent jurisdiction as a debt due to the customer.

58 Other remedies or powers not limited

Section 56 does not limit—

- (a) any other remedy that a customer may obtain for the loss or damage that has been, or is likely to be, suffered because of the contravention referred to in that section; or
- (b) the powers of the chief executive or a court in respect of the contravention.

Subpart 3—Enforcement

Note

To come.

Part 5 Administrative matters

Subpart 1—Designation of data holders

59 Designation regulations

- (1) The Governor-General may, by Order in Council, on the recommendation of the Minister, make regulations that designate a person or a class of persons for the purposes of **section 6 (designation regulations)**.
- (2) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

60 Minister must have regard to certain matters

- (1) Before recommending that designation regulations be made, the Minister must have regard to the following:
 - (a) the interests of customers, including Māori customers:
 - (b) any likely costs and benefits for the person or class of persons that are proposed to become data holders:
 - (c) whether the regulations promote the implementation of secure, standardised, and efficient regulated data services:
 - (d) the likely benefits and risks associated with the proposed designation regulations in relation to—
 - (i) the security, privacy, confidentiality, or other sensitivity of customer data and product data; and
 - (ii) any intellectual property rights that may exist in relation to customer data or product data.
- (2) In this section, **intellectual property rights** includes patents, designs, trade marks, copyrights, plant variety rights, know-how, confidential information, trade secrets or similar rights.

61 Minister must consult on proposed designation

- (1) Before recommending that designation regulations be made, the Minister must consult the following about the proposed designation:
 - (a) the persons, or representatives of the persons, that the Minister considers will be substantially affected by the proposed designation regulations, including hapū, iwi, and Māori organisations:
 - (b) the Privacy Commissioner:
 - (c) tikanga experts who have knowledge of te ao Māori approaches to data governance:
 - (d) the public.

- (2) The Minister must decide which people or groups to consult under **subsection (1)(c)** after taking into account the particular subject matter of the proposed designation regulations.
- (3) **Subsection (1)(c) and (d)** do not apply to regulations that amend other regulations if the Minister is satisfied that the amendment—
 - (a) is only correcting a minor error; or
 - (b) is otherwise of a minor or technical nature only.
- (4) A failure to comply with this section does not affect the validity of the designation regulations.

62 Contents of designation regulations

- (1) Designation regulations must set out the following:
 - Designated persons*
 - (a) the persons or classes of persons (or both) being designated for the purposes of **section 6**:
 - Designated data*
 - (b) either—
 - (i) the customer data or classes of customer data (or both) being designated as designated customer data; or
 - (ii) if no such designation is being made, a statement to that effect:
 - (c) either—
 - (i) the product data or classes of product data (or both) being designated as designated product data; or
 - (ii) if no such designation is being made, a statement to that effect:
 - (d) matters for the purposes of **sections 8(3)(b) and 9(3)(b)**:
 - Designated actions*
 - (e) either—
 - (i) the action or classes of action (or both) being designated as designated actions; or
 - (ii) if no such designation is being made, a statement to that effect.
 - (2) The designation regulations may also set out the persons or classes of persons (or both) being designated as secondary users (including specifying eligibility criteria to be met before a person may be a secondary user).

Example

Designation regulations may designate—

- banks for the purposes of **section 6** (data holders);
- the transaction histories of a bank's customers as a class of designated customer data; and

- the home loan interest rates offered by a bank as a class of designated product data; and
- making payments or opening a new account as classes of designated actions.

63 Annual reporting for data holders

- (1) A data holder must give to the chief executive, before 31 October in each year, an annual report.
- (2) The report must—
 - (a) relate to the preceding 12-month period ending on 30 June; and
 - (b) set out—
 - (i) a summary of the complaints made about the data holder’s conduct in connection with regulated data services that it provides; and
 - (ii) the information prescribed for the purposes of this paragraph (if any).
- (3) The data holder must otherwise provide the report in the manner prescribed by the regulations (if any).

Subpart 2—Accreditation of requestors**64 Application for accreditation**

A person may apply to the chief executive to be accredited as an accredited requestor.

65 How application is made

The application must—

- (a) specify 1 or more designation regulations in relation to which the accreditation is requested; and
- (b) specify, by reference to those designation regulations, the classes of accreditation requested; and
- (c) contain the information specified by the regulations (if any); and
- (d) be accompanied by the fee prescribed by the regulations (if any); and
- (e) otherwise be made in the manner prescribed by the regulations (if any).

66 Chief executive must verify identity of applicant

The chief executive must take reasonable steps to verify each applicant’s identity so that the chief executive is satisfied that they know who the applicant is.

67 Decision by chief executive

- (1) The chief executive must—

- (a) have regard to the matters specified in the regulations (if any) before making a decision; and
 - (b) otherwise make the decision in the manner prescribed in the regulations (if any).
- (2) The chief executive may accredit an applicant if they are satisfied that—
- (a) the application meets the requirements of **section 65**; and
 - (b) they know who the applicant is under **section 66**; and
 - (c) the applicant meets the criteria or other requirements prescribed by the regulations (if any); and
 - (d) the applicant’s directors, senior managers, proposed directors, and proposed senior managers, meet the criteria or other requirements prescribed by the regulations (if any).
- (3) The chief executive may grant the application—
- (a) in whole or in part; and
 - (b) on the terms and conditions that they think fit (including specifying the date of expiry of the accreditation).
- (4) Those terms and conditions may be more limited or restrictive than those requested in the application (for example, more restrictive as to the classes of accreditation that are granted or with respect to the sectors that the accreditation applies to).

68 Notice of decision

- (1) The chief executive must give notice of their decision to the applicant.
- (2) If the chief executive declines the application (whether in full or in part) or imposes limitations or restrictions that are more restrictive than those requested in the application, the chief executive must also set out their reasons for acting in that manner.
- (3) If an application is successful (whether in full or in part), the chief executive must also give the applicant the following information:
 - (a) the designation regulations in relation to which the accreditation is granted;
 - (b) the classes of accreditation granted.

69 Application to modify accreditation

- (1) A person that is accredited as an accredited requestor may apply to the chief executive to modify the terms or conditions of their accreditation, including—
 - (a) to add or remove designation regulations in relation to which the accreditation is granted; and
 - (b) to add or remove classes of accreditation.

- (2) After deciding the application, the chief executive must give the applicant the information specified in **section 68(3)**.
- (3) **Sections 65 to 68** apply to the making of an application under this section as if it were an original application for accreditation (except to the extent that this Act or the regulations provide different requirements for applications for modifications).

70 Duration of accreditation

An accredited requestor's accreditation starts when the chief executive makes their decision under **section 67** and ends on the earliest of the following:

- (a) the date the accredited requestor tells the chief executive is the date on which they no longer wish to remain accredited as an accredited requestor;
- (b) the date on which the accreditation is cancelled;
- (c) the date on which the accreditation expires.

71 Renewal of accreditation

- (1) An accredited requestor may apply to renew their accreditation.
- (2) If a renewal application is made before the accredited requestor's accreditation expires, the accreditation continues to have effect until the renewal application is decided by the chief executive.
- (3) If the accredited requestor's accreditation expires before a renewal application is made, instead of a renewal application, the accredited requestor must make a fresh application for accreditation under **section 64**.
- (4) A renewal application must be made in the manner prescribed by the regulations (if any).
- (5) **Sections 65 to 68** apply to the making of a renewal application as if it were an original application for accreditation (except to the extent that this Act or the regulations provide for different requirements for renewal applications).

72 When chief executive may suspend or cancel accreditation

The chief executive may suspend (for a specified period or until a specified requirement is met) or cancel an accreditation—

- (a) if the accredited requestor, by written notice, requests the chief executive to do so; or
- (b) the requirements referred to in **section 67(2)(b) to (d)** are no longer met in respect of the accredited requestor; or
- (c) if the chief executive is satisfied that the accredited requestor is incapacitated, has ceased to exist, or has become subject to an insolvency event within the meaning of section 6(4) of the Financial Markets Conduct Act 2013; or

- (d) if the chief executive is satisfied that the accredited requestor has materially contravened a term or condition of the accreditation or any other requirement imposed under this Act.

73 Annual reporting for accredited requestor

- (1) An accredited requestor must give to the chief executive, before 31 October in each year, an annual report.
- (2) The report must—
 - (a) relate to the preceding 12-month period ending on 30 June; and
 - (b) set out—
 - (i) a summary of the complaints made about the accredited requestor’s conduct in connection with regulated data services that it requests; and
 - (ii) a description of the goods or services that the accredited requestor provides in connection with the regulated data services that it requests; and
 - (iii) the information prescribed for the purposes of this paragraph (if any).
- (3) The accredited requestor must otherwise provide the report in the manner prescribed by the regulations (if any).

Subpart 3—Appeals

74 Appeals against accreditation decisions

A person may appeal to the High Court against a decision of the chief executive under **subpart 2** to—

- (a) decline to grant accreditation to a person; or
- (b) decline to renew a person’s accreditation; or
- (c) impose conditions on a person’s accreditation; or
- (d) decline an application to modify a person’s accreditation; or
- (e) suspend or cancel a person’s accreditation.

Subpart 4—Crown organisations

75 Crown organisations may be customer, data holder, or accredited requestor

- (1) An instrument of the Crown that is a Crown organisation (whether or not a body corporate)—
 - (a) must be treated as if it were a separate legal personality for the purpose of complying with this Act; and

- (b) may be a customer, a data holder, or an accredited requestor in its own right.
- (2) An instrument of the Crown that is neither a Crown organisation nor a body corporate—
 - (a) does not have separate legal personality; and
 - (b) cannot be a customer, a data holder, or an accredited requestor in its own right.
- (3) In this section, **Crown organisation** has the same meaning as in section 4 of the Crown Organisations (Criminal Liability) Act 2002.
Compare: 2015 No 70 s 5

Subpart 5—Register

76 Register of participants in customer and product data system

A register called the register of participants in the customer and product data system is established.

77 Purposes of register

The purposes of the register are to—

- (a) enable any person to—
 - (i) confirm whether a person is a data holder or an accredited requestor; and
 - (ii) obtain certain information about data holders and accredited requestors; and
- (b) enable data holders and accredited requestors to access certain information about each other; and
- (c) assist any person in the performance or exercise of the person's functions, powers, or duties under this Act or any other legislation.

78 Operation of register

- (1) The chief executive must, in accordance with the regulations, keep the register as an electronic register.
- (2) The register must be operated at all times unless—
 - (a) the chief executive suspends the operation of the register, in whole or in part, in accordance with **subsection (3)**; or
 - (b) otherwise provided in regulations.
- (3) The chief executive may refuse access to the register or otherwise suspend the operation of the register, in whole or in part, if the chief executive considers that it is not practical to provide access to the register.

79 Data holder must provide information after becoming designated

A data holder (**A**) must, in the manner prescribed by the regulations (if any), provide the following information to the chief executive within 20 working days after they become aware that they have become a data holder:

- (a) A's name:
- (b) a physical address for service in New Zealand for A:
- (c) the designation regulations in relation to which A is designated:
- (d) the identifying information, and contact details, for A, and its outsourced providers, that is prescribed by the regulations:
- (e) the information prescribed by the regulations to be included in the register under **section 81**:
- (f) the information prescribed by the regulations to be included in the register under **section 83**.

80 Chief executive must verify identity of data holder

The chief executive must take reasonable steps to verify each data holder's identity so that the chief executive is satisfied that they know who the data holder is.

81 Contents of register that is publicly available

- (1) The register must contain—
 - (a) the following information about each data holder (**A**):
 - (i) A's name:
 - (ii) the designation regulations in relation to which A is designated:
 - (iii) the name of each outsourced provider in respect of A:
 - (iv) the classes of customer data and product data that A has to provide and the dates from when they have to do so:
 - (v) the classes of action requests that A has to perform and the dates from when they have to do so:
 - (vi) how customers may make a complaint about A's conduct in connection with regulated data services that A provides:
 - (vii) how customers may contact A about those services; and
 - (b) the following information about each accredited requestor (**B**):
 - (i) B's name:
 - (ii) the designation regulations in relation to which B is accredited:
 - (iii) the name of each outsourced provider in respect of B:
 - (iv) each class of accreditation held by B:
 - (v) B's status given under **section 82**:

- (vi) how customers may make a complaint about B’s conduct in connection with regulated data services that B requests;
 - (vii) how customers may contact B about those services; and
 - (c) the information prescribed for the purposes of this paragraph (if any).
- (2) The chief executive must ensure that the information referred to in this section is publicly available.

82 Registration status

- (1) When the chief executive is satisfied that they know who the data holder is under **section 80**, the chief executive must add the information referred to in **section 81** to the register with a “Pending” status.
- (2) When an accredited requestor is accredited, the chief executive must add the information referred to in **section 81** to the register with a “Pending” status.
- (3) When the chief executive is satisfied that a data holder or an accredited requestor has demonstrated their ability to comply with the technical requirements prescribed by the regulations for the purposes of this subsection, the chief executive must—
- (a) add the information referred to in **section 83** to the register; and
 - (b) change their status on the register to “Active”.
- (4) If the chief executive is satisfied that a data holder is unable to comply with the technical requirements prescribed by the regulations for the purposes of this subsection, the chief executive must—
- (a) remove the information referred to in **section 83** from the register; and
 - (b) change their status on the register to “Pending”.
- (5) If an accredited requestor’s registration is cancelled or suspended, the chief executive must—
- (a) remove the information referred to in **section 83** from the register; and
 - (b) change their status on the register to “Cancelled” or “Suspended”.
- (6) **Subsection (3)** applies again if the chief executive is subsequently satisfied that a data holder or an accredited requestor has demonstrated their ability to comply as referred to in that subsection.

83 Contents of register that is available to data holders and accredited requestors

- (1) The register must contain [to come]
- (2) The chief executive must ensure that the information referred to in this section is reasonably available to data holders and accredited requestors.

Subpart 6—Financial and accountability matters

Note**To come.**

Subpart 7—Levy

Note**To come.**

Subpart 8—Regulations, standards, and exemptions

*Regulations***84 General regulations**

- (1) The Governor-General may, by Order in Council, make regulations—
 - (a) providing for anything this Act says may or must be provided for by regulations; and
 - (b) prescribing, for the purposes of any provision of this Act that requires a thing to be done in a manner prescribed by the regulations, the manner in which the thing must be done, including prescribing—
 - (i) by whom, when, where, and how the thing must be done;
 - (ii) the form that must be used in connection with doing the thing;
 - (iii) what information or other evidence or documents must be provided in connection with the thing;
 - (iv) requirements with which information, evidence, or documents that are provided in connection with the thing must comply;
 - (c) authorising the chief executive to determine or prescribe by notice any of the matters under **paragraph (b)**;
 - (d) specifying requirements about how the standards may be made (for example, consultation requirements);
 - (e) prescribing matters for the purposes of **section 56**;
 - (f) prescribing procedures, requirements, and other matters, not inconsistent with this Act, for the register, including matters that relate to—
 - (i) the operation of the register;
 - (ii) the form of the register;
 - (iii) the information to be contained in the register;
 - (iv) access to the register;
 - (v) search criteria for the register;
 - (vi) circumstances in which amendments must be made to the register;

- (g) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act.
- (2) Regulations under **subsection (1)(e)** may only be made on the recommendation of the Minister.
- (3) If the regulations under **subsection (1)(e)** require a data holder or an accredited requestor to pay an amount to, or on account, of a customer, the Minister may make a recommendation only if the Minister is satisfied that—
 - (a) the amount is to reimburse or compensate a customer for a cost or expense that the customer has incurred as a direct result of a contravention of a duty imposed under this Act; and
 - (b) the nature and extent of the cost or expense is readily ascertainable; and
 - (c) the amount does not exceed [\$].
- (4) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- (5) If regulations made under **subsection (1)(c)** authorise the chief executive to determine or prescribe matters by notice,—
 - (a) a notice made under the regulations is secondary legislation (*see* Part 3 for publication requirements); and
 - (b) the regulations must contain a statement to that effect.

85 Regulations relating to fees, charges, and costs

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
 - (a) requiring the payment to the chief executive of fees and charges—
 - (i) by any accredited requestor in connection with the performance or exercise by the chief executive of any function, power, or duty under this Act:
 - (ii) on an application or a request to the chief executive to perform or exercise any function, power, or duty under this Act:
 - (b) prescribing the amounts of those fees and charges or the manner in which those fees and charges are to be calculated.
- (2) Regulations may authorise the chief executive to refund or waive, in whole or in part and on any conditions that may be prescribed, payment of the fee or charge in relation to any 1 or more named persons.
- (3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

86 Miscellaneous provisions relating to fees and charges

- (1) The chief executive may refuse to perform a function or exercise a power until the prescribed fee or charge is paid.

- (2) Any fee, charge, or other amount payable to a person under this Act is recoverable by the person in any court of competent jurisdiction as a debt due to the person.

Standards

87 Standards

- (1) The chief executive may make 1 or more standards providing for anything that this Act says must or may be provided for by the standards.
- (2) If the standards are inconsistent with the regulations, the regulations prevail to the extent of the inconsistency.
- (3) Standards made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

88 Chief executive’s consultation on proposed standards

- (1) Before making a standard, the chief executive must consult the following:
- (a) the persons, or representatives of the persons, that the chief executive considers will be substantially affected by the issue of the proposed standard, including hapū, iwi, and Māori organisations:
 - (b) the Privacy Commissioner:
 - (c) tikanga experts who have knowledge of te ao Māori approaches to data governance:
 - (d) the public.
- (2) The chief executive must decide which people or groups to consult under **subsection (1)(c)** after taking into account the particular subject matter of the proposed standards.
- (3) **Subsection (1)(c) and (d)** do not apply to a standard that amends another standard if the chief executive is satisfied that the amendment—
- (a) is only correcting a minor error; or
 - (b) is otherwise of a minor or technical nature only.

89 Additional incorporated by reference requirements

- (1) Before a standard incorporates any of the following material by reference in reliance on section 64 of the Legislation Act 2019, the chief executive must have regard to the matters set out in **subsection (2)**:
- (a) an International Organization for Standardization Standard:
 - (b) a New Zealand Standard:
 - (c) an Australian Standard:
 - (d) an Australian/New Zealand Standard.
- (2) The matters are—

-
- (a) whether incorporating the material would meet an identified industry, customer, or regulatory need; and
 - (b) whether incorporating the material would create unnecessary obstacles to international trade and investment; and
 - (c) whether the material is consistent with tikanga Māori in relation to data governance.
- (3) Before a standard incorporates any other material (not referred to in **subsection (1)**) by reference in reliance on section 64 of the Legislation Act 2019, the chief executive must have regard to—
- (a) whether the persons involved in developing the material constitute a balanced representation of the stakeholder interests relevant to the standard that incorporates the material; and
 - (b) whether each person that is involved in developing the material has—
 - (i) skills, knowledge, and experience relevant to the material; or
 - (ii) knowledge and experience of the sector or sectors to which the material relates; and
 - (c) whether the material has been developed using a consensus process, whether that process included—
 - (i) public consultation, and whether due weight was given to the submissions received; and
 - (ii) advice from, or participation of, 1 or more tikanga experts who have knowledge of te ao Māori approaches to data governance, and whether due weight was given to the advice or to any submissions received; and
 - (d) whether the material is consistent with tikanga Māori in relation to data governance; and
 - (e) whether the material is based (in whole or in part) on any other national or international standard; and
 - (f) whether the material is compatible with national or international standards relevant to the subject matter of the material; and
 - (g) where the material is based on an international standard, whether there are good reasons for any differences between the material and the international standard; and
 - (h) whether incorporating the material would meet an identified industry, customer, or regulatory need; and
 - (i) whether incorporating the material would create unnecessary obstacles to international trade and investment.
- (4) This section applies in addition to the requirements of Schedule 2 the Legislation Act 2019.

*Exemptions***90 Exemptions**

- (1) The Governor-General may, by Order in Council, made on the recommendation of the Minister, make regulations exempting (on terms and conditions, if any) classes of persons from any requirement under this Act.
- (2) Before making a recommendation, the Minister must—
 - (a) have regard to the purpose of this Act as specified in **section 3**; and
 - (b) be satisfied that the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the regulations.
- (3) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

91 Effect of breach of term or condition of exemption

The breach of a term or condition of an exemption granted under this subpart is a breach of the obligation for which the exemption applies (unless the terms of the exemption otherwise provide).

Subpart 9—Miscellaneous

92 No contracting out

- (1) This Act has effect despite any provision to the contrary in any agreement.
- (2) A data holder commits an offence against section 13(i) of the Fair Trading Act 1986 who purports to contract out of any provision of this Act.

Example

A data holder enters into a contract with a customer. Under the contract, the data holder purports to contract out of its duty to provide data to the customer under **section 14**.

The data holder commits an offence.

Subpart 10—Consequential amendments

Note

To come.

Schedule
Transitional, savings, and related provisions

s 12

Part 1
Provisions relating to this Act as enacted

There are no transitional, savings, or related provisions in this Act as enacted.