

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

Your name and organisation

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Responses to discussion document questions

Does New Zealand need a consumer data right?	
1	<p><i>Are there any additional problems that are preventing greater data portability in New Zealand that have not been identified in this discussion document?</i></p> <ul style="list-style-type: none">• Though Payments NZ has been working on developing industry standards for the banking sector, data holders are still not required to adhere to them in implementation even if a CDR was legislated in NZ.• Consumers are often better educated than the banks' front-line staff about the risks and opportunities associated with data portability. This is problematic when consumers approach banks for more information on integrating with fintech tools, and are unable to get a clear perspective. Instead they are told that such products are threats to their security, which isn't accurate. As a consequence, this propagates a protectionist environment that hurts innovation and slows down adoption of consumer fintech solutions that could help people better manage their money the way they want.• Data holders should not be allowed to charge consumers or third-parties for access to data under the CDR as this should be folded into an organisation's COGS, which is no different to other online service infrastructure (e.g. costs to deliver web traffic).
2	<p><i>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?</i></p> <ul style="list-style-type: none">• Yes, I believe that the benefits and costs/risks outlined in the discussion document are reasonably accurate.• Under 'increased security and privacy concerns', I think it's important to consider the relative risk of secure, authorised read-only data sharing relative to current, bigger risks present in the financial ecosystem, such poor password and PIN management, card skimming, phishing, and the like.
3	<p><i>Are there additional benefits, costs or risks that have not been explored in the above discussion on a consumer data right?</i></p>

- It's possible that we simply do not have the expertise required on-shore to help government and industry implement an effective CDR, therefore lengthening the time to delivery over multiple iterations. One example is in the ACCC's implementation of ADR accreditation over in Australia.

The feedback has been that the cost (\$150k - \$200k) and time (6+ months) for industry accreditation has been highly prohibitive for small businesses. As a result, the ACCC is now looking at implementing a tiered system that caters to different data requirements.

The result however has been that some businesses have had to run the gauntlet, and others are now holding back to see if costs will come down in due course.

4

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

- The benefits include increased transparency for the consumer, and though this may result in increased competition, businesses could also benefit from an increased ability to trade with each other through bundling and referral mechanisms, resulting in an active, interoperable and dynamic digital business ecosystem.
- Businesses like ours (PocketSmith), which aggregate data across multiple financial institutions, would be able to leverage additional data to help our customers make better decisions on utilities and household spending in order to plan ahead and save money. As such a CDR would allow existing companies to deliver more value to consumers.
- The costs to implement will arguably vary depending on the business, products offered, and variability and complexity of pricing models.

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')?

- Aside from what has been floated in the discussion document, inclusions and exclusions should be determined after the establishment route (i.e. sectoral-designation, or economy-wide) as the scope for types of data is incredibly broad.

6

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

- I think the benefits of read/write have been well-covered, but one additional benefit to implementing write access in particular for the banking sector is the potential to create alternative payment systems for vendors and customers looking to avoid the extortionate merchant fees introduced by systems like Paywave. It has been widely acknowledged that the additional ~1.2% fee imposed puts additional pressure on small businesses struggling to stay afloat in the era of Covid.
- I would place the lack of financial education as a higher risk than trust or security, particularly as the latter will be taken care of by a stringent accreditation process. The power to pay and move funds is ultimately in the hands of the user, who will need to have a clear understanding of how to use the new technology. As an example, fast digital commerce has been shown to exacerbate poor spending habits.

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?

- Under ‘consumer welfare’, financial education and literacy should be another key outcome. From our perspective at PocketSmith, the lack of a CDR and open data sharing results in a higher barrier to entry for Kiwis looking to manage and learn more about their money. This is because we have to pass on costs incurred in the process of data aggregation and management, and the resulting subscription fee is prohibitive to many who may otherwise see benefit in being able to get impartial insights into their money, and possible choices, beyond what is offered by their financial institution.

8

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

- **Expertise.** Do we have access to the right people and experience who can help us implement a CDR based on the lessons learned in the UK, Europe and Australia?

9

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

- The status quo is *untenable*. As a nation that made significant headway in our payments and banking systems in the early 90’s, innovation in service of the consumer has stagnated – possibly because the situation has always been “just good enough”. As a result, we now lag behind other countries that have seen their legacy banking systems spur a boom in fintech due to consumer pressure. A couple of examples are Alipay and Venmo.
- If a CDR isn’t established, we’re staring at a future where our banking sector is ensured continued profits at the expense of the Kiwi consumer.

10

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

- This is a feasible and sensible option, as a sector-designation approach would offer a degree of agility that permits tailoring as well as the ability to respond to changes (technology, economy, consumer demand, etc).

11

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

- This approach seems too broad and unwieldy to result in concrete, working implementations in various sectors in a meaningful period of time.

12

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

- The appeal of a sector-specific approach is in potential similarity to the creation of PSD2, and its effectiveness in delivering Open Banking to a large and complex market in the EU and UK.
- The cons outlined here, particularly around interoperability, can be addressed as need arises.

13

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

- I think the four options outlined are the most viable.

14

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

- Only that 'expertise' should be considered as an additional assessment criterion.

15

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

- I am largely in agreement, although the specificity of Option Four holds appeal, and we really want to get moving!

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?

- I agree with the key elements as presented and have no recommendations for changes, additions or removals.

17

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

- I think that the designation process should account for the risk of strong influence by large organisations, and to legislate in favour of the consumer following impartial, internationally-backed research. In the financial services sector, we need to avoid protectionist measures put forward by banks under the veils of security and privacy in order to continue anti-competitive behaviour.

18

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

- We are sorely lacking in programmes for financial literacy here in New Zealand. A CDR should de-risk innovation around financial literacy, and consequently empower our population to be informed about our finances.

19

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

- 'Notice fatigue' as an example is a current problem, and this can be addressed through sharing industry best-practices with data-holders and third-parties in order to elevate the quality of services delivered under the CDR, including the security of vulnerable consumers.

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?

- I think that treating data as taonga is a valuable principle that should be adopted universally. It's no secret that a significant proportion of the global population has been compromised due to the breaches and abuse of customer data. We have an

	<p>opportunity to set an example by not only interacting with the concept of indigenous data sovereignty, but to practice it and have the Crown offer similar levels of protection to all Kiwis.</p>
21	<p><i>How could a consumer data right be designed to ensure that the needs of disabled people or those with accessibility issues are met?</i></p> <ul style="list-style-type: none"> • This could begin with an understanding of what’s been implemented in the UK, Europe and Australia, and include consultations with industry bodies working to digitally enable disabled people.
22	<p><i>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?</i></p> <ul style="list-style-type: none"> • This should be a high priority where possible, as accreditation in multiple jurisdictions is prohibitively expensive and time-consuming. We understand that the ACCC and FCA are interested in the concept of ‘passporting’ CDR qualifications, which is a promising start. Taking compatibility into consideration at the very start will not only ensure an alignment of best-practices and step-wise evolution, but also provide an industry advantage to Kiwi businesses (like us) exporting to these jurisdictions.
23	<p><i>Do you have any comments on where a consumer data right would best sit in legislation?</i></p> <ul style="list-style-type: none"> • I agree that it should be a stand-alone Act, not just for the ability to work at the intersection of competition, consumer and privacy law, but also for the flexibility to adapt to rapidly-changing technological and consumer trends.
24	<p><i>Do you have any comments on the arrangements for establishing any new bodies to oversee parts of a consumer data right?</i></p> <ul style="list-style-type: none"> • Not at this stage, no.
25	<p><i>What are the pros or cons of having multiple regulators, or a single regulator, involved in a consumer data right?</i></p> <ul style="list-style-type: none"> • This really depends on the regulators. In Australia, our experience has been that all regulators are working well together and have responded very well to industry in terms of guidance in implementation and feedback on legislation.
26	<p><i>If government decides to establish a consumer data right, do you have any suggestions of how its effectiveness could be measured?</i></p> <ul style="list-style-type: none"> • The suggestions put forward (measure of participants and use, consumer surveys, level of growth) are all great places to start.

Other comments