



COVERSHEET

Minister	Hon Dr David Clark	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Establishing a Consumer Data Right	Date to be published	9 July 2021

List of documents that have been proactively released		
Date	Title	Author
June 2021	<i>Establishing a Consumer Data Right</i>	<i>Office of the Minister of Commerce and Consumer Affairs</i>
30 June 2021	<i>DEV-21-MIN-0145</i> <i>Establishing a Consumer Data Right</i>	<i>Cabinet Office</i>
June 2021	<i>Regulatory Impact Statement</i>	<i>MBIE</i>

Information redacted

YES

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Some information has been withheld for the reason of constitutional conventions.

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Economic Development Committee

Establishing a consumer data right

Proposal

- 1 This paper seeks agreement to establish a consumer data right to give New Zealanders greater choice and control over their data, enable greater sharing of consumer data between businesses and promote innovation and competition.

Relation to government priorities

- 2 A consumer data right will help to achieve the government's priority to grow and share New Zealand's prosperity more fairly.

Executive summary

- 3 Many businesses across the economy collect and hold significant volumes of data when providing goods and services. The collection and use of data has accelerated as businesses develop sophisticated means of collecting data, and as consumers increasingly transact and participate in society online.
- 4 I propose a new legislative framework for a consumer data right. This will allow consumers, whether individuals or companies and other entities, to securely share data that is held about them with trusted third parties, using standardised data formats and interfaces. To protect the security of data transfers, consumer privacy and commercial confidentiality, third party data recipients will need to be accredited and there will be a range of information protection safeguards.
- 5 Giving consumers more control over their data will make it easier for them to shop for services such as banking, electricity and telecommunications, and give them access to new and innovative products. In doing so, it will support competition, productivity and economic wellbeing. A consumer data right will also allow consumers to have greater trust that their data is shared safely and for their benefit, with their knowledge and consent.
- 6 In order for a consumer data right to be workable in practice, I propose that it be rolled out on a sector-by-sector basis, with the Minister of Commerce and Consumer Affairs designating individual markets, industries and sectors to which a consumer data right applies. The designation will specify the type of data and functionality that is covered, and be accompanied by rules and standards that govern the transfer of that data. Officials are carrying out work to identify which sectors should be considered for designation first.
- 7 I will be coming back to Cabinet later this year to seek further policy decisions, including decisions on institutional arrangements, enforcement and consumer redress.

Background

Consumer data right

- 8 Many businesses across the economy collect and hold significant volumes of data about the consumers they provide goods and services to. ‘Consumers’ can include individuals, companies and other end users. The collection and use of data has accelerated as businesses’ use of data becomes more sophisticated and as consumers are increasingly transacting and participating in society online.
- 9 A consumer data right would provide a statutory right for consumers to authorise data that is held about them to be securely transmitted to trusted third parties, or authorise third parties to carry out actions on their behalf. The third party could be:
- 9.1. a competing supplier – for example, an electricity retailer might receive a consumer’s electricity usage from another electricity retailer, and use it to offer the consumer a cheaper plan; or
 - 9.2. a business that provides the consumer with a different kind of product – for example, a mobile phone app that allows a consumer to share their banking transactions to monitor their carbon footprint.
- 10 Under a consumer data right, data would be exchanged in a specified machine-readable form, and protections would be put in place to ensure that information would be held or transmitted securely, allowing consumers greater control over their data.

Submissions on an options paper

- 11 On 29 July 2020 the Cabinet Economic Development Committee agreed to release a discussion document seeking feedback on options for establishing a consumer data right in New Zealand [DEV-20-MIN-0155 refers].
- 12 The Ministry of Business, Innovation and Employment (**MBIE**) received 59 submissions, with broad support for establishing a consumer data right using a ‘sectoral designation’ approach similar to that adopted by Australia.
- 13 The Australian consumer data right was introduced in 2019, and provides a cross-sectoral data portability regime. The Australian Treasurer determines which sector the consumer data right should apply to via a designation. The detailed rules are then designed taking note of the particular risks and requirements of the sector. The first sectors to be designated were the banking (open banking) and energy sectors, with phase one of open banking going live on 1 July 2020 and energy expected to be covered later this year.

The Productivity Commission has recommended New Zealand introduce a consumer data right

- 14 In April 2021, the Productivity Commission published its report, *New Zealand firms: Reaching for the frontier*. The Productivity Commission recommended that the Government introduce a consumer data right that would enable individuals, businesses and other entities to access their data from a variety of data holders and transfer it at their discretion to trusted third parties. The Commission considered that consumer data rights would encourage technology adoption, innovation and

productivity growth, particularly in the fintech sector and other digital businesses, while enhancing privacy and data protections. It considered the reform should be consistent with Australia's sectoral-designation regime and aim for trans-Tasman and international interoperability.

- 15 The proposals in this paper are consistent with the Productivity Commission's recommendation.

A consumer data right will benefit consumers and the economy

- 16 Giving consumers greater control over their data will make it easier for them to shop around and switch providers for services such as banking, electricity and telecommunications. This will give them access to new products that are only viable when data is shared. A consumer data right will allow them to have greater trust that their data is secure and only shared for their benefit, with their knowledge and consent.
- 17 At the same time, a consumer data right will create opportunities for new entrants to break into established markets, and to introduce more efficient processes and innovative products. This type of activity can lead to increased competition, higher productivity and greater economic wellbeing.

There are barriers preventing data access and sharing

- 18 A consumer data right seeks to remove barriers that are preventing consumers from being able to access and share their data. These include:
- 18.1. A lack of incentives for data holders to transfer data to third parties. This includes cases where data holders maintain competitive advantages by not sharing data, or do not wish to incur system costs necessary to store and share data. Data holders dealing with sensitive customer data may also lack trust in potential data recipients.
 - 18.2. High costs in negotiating agreements and transferring usable data – data transfer agreements need to be negotiated between individual data holders and recipients, where there may be significant imbalances in bargaining power. A lack of industry-wide standardisation and adoption of application programming interfaces (**APIs**) and data formats for data transfers makes it difficult and expensive to set up any new data sharing arrangement.
- 19 These barriers have prevented data sharing and its resulting benefits. They have also led to the emergence of data sharing via third parties that use insecure technologies or otherwise pose data security and privacy concerns. For instance, consumers wanting to share their banking transaction data may be asked to provide their internet banking details to a third party who has not been subject to any vetting, who then 'screen scrapes' the contents of the consumer's internet banking to gather the transaction data. Consumers may be in breach of their bank's terms and conditions by using such platforms.
- 20 More generally, existing approaches to data sharing often involve consumers giving very broad authorisations to transfer and use their data through long and complex

standard-form contracts. These authorisations may not meet information privacy principles under the Privacy Act 2020 and consumers may not be aware what data is being collected and how it is being used.

- 21 Without government intervention, expansion of arrangements for consumers to share their data will be inhibited and continue to be slow, and security and privacy concerns are likely to grow. New Zealanders will miss out on opportunities and benefits that consumers in other countries will increasingly take for granted.

Proposed new consumer data right framework

- 22 To address these issues, I propose to establish a legislative framework for a consumer data right in New Zealand. Businesses that hold data (**data holders**) will be required to transmit certain data that they hold about consumers (**CDR data**) to trusted third parties (**accredited persons**), and carry out actions on behalf of the consumer, with the consumer's consent. To help consumers compare or manage offerings from different providers, there will also be obligations to share data relating to goods and services that the data holder offers (**product data**).
- 23 I propose that any end user of a good or service should have access to the consumer data right. This will allow companies and other entities to request that their data be shared in the same way that an individual will be able to.
- 24 Consumers (i.e. any individual or entity) will be able to consent to:
- 24.1. read access – the ability for an accredited person to read consumer data; and
 - 24.2. action initiation – the ability for an accredited person to carry out an action with the consent of a consumer.
- 25 Action initiation will allow consumers to, for example, ask a third party payment provider (the accredited person) to action a bank funds transfer from the consumer's bank account to a business's bank account when paying for a good or service. While this comes with additional risks, it is necessary to support many of the use cases of the consumer data right, and the accompanying safeguards will provide protection for consumers. I note that the Australian consumer data right excluded action initiation, but a 2020 review into its framework recommended that it be amended to include action initiation.
- 26 In order for a consumer data right to be workable in practice, I propose that it be rolled out on a sector-by-sector basis, with the Minister of Commerce and Consumer Affairs designating individual sectors to which a consumer data right applies. During the designation process, the data sets and functionality will be specified. Before designating the consumer data right as applying in a certain sector, the Minister would need to have regard to its impacts, and consult with relevant persons (e.g. the Privacy Commissioner).
- 27 My proposed approach would greatly improve trust and confidence in data sharing, initially within specified sectors but gradually across the broader economy. Applying the same legislative framework to different sectors will improve certainty and predictability for businesses operating in multiple markets, and the interoperability

among different sectors enabled by a consistent framework will significantly increase the scale and reach of the consumer data right.

- 28 Importantly, the flexibility enabled by this approach will ensure that costs are minimised by only applying the consumer data right where there is a demonstrable benefit, and by adjusting the detailed requirements to reflect the unique factors of a specific sector. Based on international experience, there are likely to be significant costs to implementing the systems needed for an effective consumer data right. It is important that any designation and associated rules are well designed and targeted.
- 29 This is the same approach adopted in Australia, but contrasts with the economy-wide regulation used in the EU under the General Data Protection Regulation. I do not propose an economy-wide right at this stage. I consider that sector-specific rules and standards are needed to achieve thriving data-sharing eco-systems that will truly benefit consumers and help to grow the economy. Without taking a sectoral approach, many commercial and technological barriers to transferring data would remain and the benefits would not be fully realised. An economy-wide right would impose compliance costs across the economy, including in areas where the benefits are low, without providing corresponding benefits.

Obligations on participants in designated sectors

- 30 Detailed rules will be needed to effectively set out how the consumer data right will function. This may include, among other things, the facilities that data holders need to provide, and, if necessary, limitations on the prices that may be charged by data holders for accessing data so they are not excessive and do not restrict access by third parties. While some of these rules will apply to all sectors, and can be incorporated into primary legislation, others are likely to be specific to particular sectors and may change over time as technology changes.

Obligations on data holders to provide online services and CDR data

- 31 I propose that the following basic obligations on data holders be placed in primary legislation:
- 31.1. data holders be required to provide a service that:
 - 31.1.1. provides CDR data to consumers and accredited persons; and
 - 31.1.2. allows accredited persons to initiate actions on behalf of consumers;
 - 31.2. if a consumer requests some or all of their CDR data, data holders be required to disclose that data (similar to current requirements for personal information under the Privacy Act 2020);
 - 31.3. if an accredited person requests CDR data, and has a valid consent from the consumer, data holders be required to disclose that data without any restrictions on its use;
 - 31.4. if an accredited person requests that the data holder take relevant actions on behalf of a consumer, and has a valid consent from the consumer, data holders be required to take those actions; and

- 31.5. data holders be required to provide a service that provides product data in a machine-readable format, and disclose that data to any person who makes a request.

Consent framework and information and consumer protection safeguards

- 32 To protect the privacy, security, and accountability of all participants, the consumer data right requires robust safeguards. The increased flow of data across the economy increases the risks associated with the handling of information, such as misuse, breach of privacy or unauthorised release of commercially sensitive information. The creation of additional information safeguards will complement existing protections in the Privacy Act and allow consumers to derive value from their data without compromising their privacy and data security.
- 33 Consent is central to the proposed consumer data right regime, and is one way to provide consumers with control over their data.
- 34 I propose that data can only be shared when a consumer has provided consent that is informed, express (i.e. through a clear opt-in), time-limited, and can easily be revoked or amended. Consumers should only be required to consent to uses and transfers of their data that are necessary to receive the goods or services they have requested, and consent to any additional uses of their data should be optional and given separately.
- 35 The consent framework will be supported by a number of other information protection safeguards, including that:
 - 35.1. the consumer's identity must be authenticated, and the consumer must authorise the data holder to comply with an accredited person's request to receive data;
 - 35.2. the data holder must verify the identity of the accredited person;
 - 35.3. consumers will be notified once the transfer of data to a third party has been completed;
 - 35.4. data holders must maintain consumer data records noting the transfers the data holder has initiated of a consumer's data, including the types of data consented to and disclosed, and identifying all the accredited recipients in possession of the consumer's data; and
 - 35.5. any limits on the permissible uses of consumer data.
- 36 System participants will also be required to provide information about how consumers can revoke or amend consents and make complaints. Participants will be required to produce and implement a consumer data right policy that sets out how it will implement its obligations under CDRs, and which identifies risks and processes to limit inappropriate or unauthorised access to CDR data.

Accreditation

- 37 An important element of promoting confidence is to ensure that data recipients can be trusted to hold the data safely and securely.

- 38 I propose to achieve this through an accreditation model, in which data recipients would need to demonstrate that they adhere to information protection and security standards and would comply with their obligations. Once accredited, a third party could interact with other system participants.
- 39 I propose that the accreditation model take a risk-based approach to setting the conditions (in particular, security protocols) that data recipients must meet in order to receive consumer data. The conditions would be determined by the risks associated with the data they are seeking to hold, the functionality they wish to provide, and the vulnerability of the third party. For example, a data recipient that only wishes to display information for consumers may be required to meet lower standards for accreditation than a data recipient who wishes to initiate payments on a consumer's behalf. This model could also take into account any existing regulatory regimes with comparable requirements.
- 40 A similar recommendation for a graduated, risk-based accreditation system was made in Australia following the 2020 review of their consumer data right framework. The Australian review considered elements of the framework that were inhibiting its efficacy. A graduated accreditation system was recognised as being a key lever for facilitating the participation of third party service providers in the regime.

Secondary legislation

- 41 To support the primary obligations discussed above, I propose that more detailed rules covering the following matters be implemented by secondary legislation:
- 41.1. how consumers may give consent to the collection, use and disclosure of consumer data, and how that consent may be amended or revoked;
 - 41.2. any additional purposes for which consumer data can be used or disclosed (beyond supplying requested goods and services to the consumer), and conditions that need to be met for use and disclosure;
 - 41.3. when data holders may charge for access to CDR data, guidelines that must be followed in setting fees, the terms on which fees may be charged, and restrictions on fees;
 - 41.4. what secondary users (other than the main account holder) may request consumer data and initiate actions (e.g. a secondary card holder on a bank account), how secondary users are given access privileges, and restrictions on those privileges; and
 - 41.5. exceptions to and exemptions from obligations.
- 42 There may be other matters identified through the drafting process that are appropriate for secondary legislation.

Common data standards

- 43 A set of data standards would determine the technical detail of how information is shared between data holders and third parties in a given sector.

- 44 Standard APIs and data formats are essential for information to be accessible and usable at least cost, and a key reason for adopting a sectoral approach to the consumer data right. In the absence of these standards, each data holder may adopt their own systems for providing data in machine-readable format, and these may not be well designed or documented. Data recipients would therefore need to build, maintain and update customised systems for retrieving and processing data from dozens of data holders, adding enormous cost and making the consumer data right unworkable in many instances. Data standards are also critical for the security of data storage and transfers.
- 45 I propose that requests for data, disclosure of data and security arrangements must be made in accordance with data standards. New Zealand would aim to align its data standards with equivalent international standards, in order to ease the development of IT systems, and provide interoperability between the systems used by New Zealand and overseas businesses.

Relationship to the Digital Identity Trust Framework

- 46 On 17 February 2021, Cabinet agreed to proposals to establish a Digital Identity Trust Framework (**DITF**) in legislation [DEV-21-MIN-0006]. This is a policy and regulatory framework that sets and applies standards for security, privacy, identification management and interoperability, and enforces the standards through accreditation of participants and governance of the rules. The aim of this work is to address gaps in regulation and accelerate the development and update of digital identity services that are secure, trusted and interoperable.
- 47 The DITF will support the development of trusted services that will enable users to securely share their identity online, which is likely to make it easier and safer for them to access their data under the consumer data right. I will look for opportunities to align the DITF and the consumer data right to fully realise the benefits of both initiatives and minimise compliance costs on system participants. For example, the two systems could share a data standards body or have mutual recognition between the accreditation frameworks.

Further decisions to be made on other matters


- 48 I intend to seek Cabinet agreement by 30 November 2021, on further matters:
- 48.1. institutional responsibilities – who will be responsible for overseeing implementation of the consumer data right, accrediting entities, developing and maintaining technical data standards and enforcing obligations;
 - 48.2. the funding of my proposals and any cost recovery;
 - 48.3. compliance and enforcement – what enforcement tools and penalties will be available for breaches of obligations; and
 - 48.4. redress – how consumers and other participants can obtain redress when consumer data right obligations or information protection safeguards are breached.

- 49 I also intend to seek Cabinet agreement on a potential pipeline of the initial sectors that will be explored for designation.

Financial implications

- 50 There are no financial implications from creating the framework for a consumer data right. However, the work needed to designate a sector, create accompanying sector-specific rules and data standards, and carry out accreditation will require funding. There will also be costs from enforcement, and any systems for more proactive identification of areas for designation. The Australian Government recently announced A\$111.3 million of new funding over two years to accelerate the implementation of the CDR into new sectors. This funding is in addition to the previous forecast of A\$100 million over five years.
- 51 I am confident that New Zealand can learn from Australia's experience to implement the consumer data right at a significantly lower cost. I will explore opportunities to leverage existing initiative or achieve economies of scale. For example, there may be opportunities to share systems or explore mutual accreditation with the Digital Identity Trust Framework DITF, or to utilise existing data standards developed in the banking sector.
- 52 I expect to address these matters in the next set of Cabinet decisions.

Legislative implications

- 53 Constitutional conventions 
Officials are working with the Parliamentary Counsel Office and the Legislation Design Advisory Committee to determine the most appropriate legislation design approach.
- 54 The resulting Act will bind the Crown.

Impact analysis

Regulatory Impact Statement

- 55 The impact analysis (IA) requirements apply to the proposals in this paper. An impact statement has been prepared and is attached.

Quality of the impact analysis

- 56 A quality assurance panel with members from the Treasury's Regulatory Impact Analysis Team and MBIE has reviewed the Regulatory Impact Statement (RIS) "Establishing a consumer data right" produced by MBIE. The review panel considers that it meets the Quality Assurance criteria.
- 57 The RIS presents a clear problem definition and provides robust analysis on a range of options relating to high-level policy decisions in establishing a consumer data right in New Zealand. A wide range of stakeholders have been consulted, with stakeholder views accounted for in the identification and assessment of options. The Panel notes that the detailed costs and benefits of a consumer data right are difficult

to assess at this point, however this will be considered further in a second RIS to be produced at a later stage on detailed and second-order design questions.

Population implications

Māori interest in data

- 58 I am aware that Māori have a particular interest in data, and that there are particular considerations I should have regard to in the ongoing development of a consumer data right. For example, a te ao Māori lens emphasises the whakapapa of data associated with a person, and therefore data may need culturally appropriate infrastructure and safeguards to reduce any risk of it being mishandled. I have instructed my officials to undertake consultation to understand how a Te Tiriti and te ao Māori lens might shape the consumer data right, and how a consumer data right might present unique opportunities and risks to Māori individuals, communities and businesses.
- 59 The decisions I am seeking agreement to at this stage are at a sufficiently high level to enable consultation with Māori subject-matter experts, consumers and businesses to shape the particular components of a consumer data right. This will enable positive outcomes for Māori and ensure alignment with tikanga and te ao Māori.

Vulnerable and technologically illiterate consumers

- 60 The consumer data right poses a risk of exclusion for consumers who lack experience and comfort with online systems and the data economy, and consumers who have poor or no access to the internet. A lack of digital literacy could increase an individual's susceptibility to online risks. However, it is likely that individuals with limited digital literacy may already be exposing themselves to risk which a consumer data right might prevent through introduction of information safeguards and standards. It is important to maintain a focus on digital inclusion to ensure that all New Zealanders have what they need to participate in a digital world.
- 61 The ability to receive services online can reduce the isolating effects of living in more rural or remote areas, and the ability to access and compare services could enable consumers to negotiate on behalf of their own interests or seek better deals. As discussed above, a number of safety mechanisms will be built into the consumer data right, such as privacy protections and a consent framework.

Consumers with disabilities

- 62 There are likely to be specific implications for disabled people from establishing a consumer data right. A consumer data right may positively benefit the participation of people with disabilities in the digital era. If implemented with due consideration of accessibility requirements, it can give people with disabilities confidence that they are able to manage their personal data by ensuring that informed authorisation and consent decisions are made. Consultation will be undertaken with disabled people's organisations and accessibility experts throughout the establishment of this regime.

Human rights

- 63 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

- 64 The Department of Prime Minister and Cabinet, Treasury, Department of Internal Affairs, Ministry of Justice, Inland Revenue, Te Puni Kōkiri, Te Arawhiti, Statistics New Zealand, Ministry of Primary Industries, Commerce Commission, Electricity Authority, Financial Markets Authority, Reserve Bank of New Zealand and Privacy Commissioner were consulted on this paper and the regulatory impact statement.
- 65 The proposals in this paper were subject to consultation through a public discussion paper (see the background section above).

Communications

- 66 I intend to announce the decisions taken from this paper at an event on 6 July, and will issue an accompanying press release.

Proactive release

- 67 This paper will be published on MBIE's web site, subject to withholdings as appropriate under the Official Information Act 1982.

Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

- 1 **note** that a consumer data right is a mechanism for allowing consumers to require data held about them to be shared safely and securely with trusted third parties;
- 2 **note** that on 29 July 2020 the Cabinet Economic Development Committee agreed to release a discussion document seeking feedback on options for establishing a consumer data right in New Zealand [DEV-20-MIN-0155 refers];

Consumer data right

- 3 **agree** to establish a consumer data right legislative framework;
- 4 **agree** that the purpose of a consumer data right legislation framework is to:
 - 4.1. improve the ability for consumers to access and share their data;
 - 4.2. give consumers greater control over how their data is used and disclosed;
 - 4.3. promote innovation and facilitate competition;
- 5 **agree** that the consumer data right will require businesses that hold data (**data holders**) to share prescribed data that they hold about consumers (**CDR data**) with trusted third parties (**accredited persons**), on the consent of the consumer;
- 6 **agree** that consumers can include individuals and entities;
- 7 **agree** that data holders may also be required to share data about the goods and services that they offer (product data);

- 8 **agree** that consumers will be able to consent to read access (i.e. the ability for an accredited person to receive consumer data) and action initiation (i.e. the ability for an accredited person to carry out an action on the consent of a consumer);

Designation

- 9 **note** that the consumer data right is proposed to be applied gradually across the economy;
- 10 **agree** that an Order in Council, made on the recommendation of the Minister of Commerce and Consumer Affairs, may designate the consumer data right as applying in a certain sector, industry or market and to certain data sets;
- 11 **agree** that the Order in Council may specify the scope of the designation, such as:
- 11.1. the types of consumer data that are CDR data and subject to the designation (e.g. specific data sets about individuals or entities)
 - 11.2. the types of consumer data that is excluded from the designation (e.g. materially enhanced derived data);
 - 11.3. the products that are subject to the designation (e.g. product data, or data relating to certain types of products);
 - 11.4. the businesses or classes of businesses that are subject to the designation; and
 - 11.5. the functionality that may be enabled (e.g. read access or the actions that can be initiated);
- 12 **agree** that, before recommending the consumer data right apply in a certain sector and recommending other associated secondary legislation, the Minister of Commerce and Consumer Affairs must have regard to the impacts, and consult with affected parties and other relevant persons (e.g. the Privacy Commissioner);

Obligations on participants in designated sectors

- 13 **agree** that where a sector is designated:
- 13.1. data holders may be required to provide a service that:
 - 67.1.1. provides CDR data to consumers and accredited persons; and
 - 67.1.2. allows accredited persons to initiate actions on behalf of consumers;
 - 13.2. if a consumer requests some or all of their CDR data, data holders be required to disclose that data;
 - 13.3. if an accredited person requests CDR data, and has a valid consent from the consumer, data holders be required to disclose that data in machine-readable format without any restrictions on its use;

- 13.4. if an accredited person requests that the data holder take relevant actions on behalf of a consumer, and has a valid consent from the consumer, data holders be required to take those actions;
- 13.5. data holders be required to provide a service that provides product data in a machine-readable format, and disclose that data to any person who makes a request;

Information and consumer protection safeguards for CDR data

- 14 **note** that a consumer data right increases the risks associated with the handling of information, such as misuse of information or breach of privacy, as it will increase the flow of data across the economy and open up access by third parties;
- 15 **note** that the creation of additional information and consumer protection safeguards for consumer data, beyond the existing protections in the Privacy Act 2020 in respect of personal information, will support consumer trust and confidence in the regime;
- 16 **agree** that data recipients must obtain consent from consumers for collecting, using or transferring CDR data in accordance with principles such as:
 - 16.1. consent must be express (i.e. through a clear opt-in);
 - 16.2. consent must be informed, including taking reasonable steps to assist the consumer to understand of the scope and purpose of the consent;
 - 16.3. consent must be time-limited;
 - 16.4. consent should not be sought as a condition of providing goods or services, unless the transfer is necessary for that purpose, and any additional consents given should be specific and optional;
 - 16.5. consumers must be given the ability to review and amend or withdraw consent at any time;
- 17 **agree** to require information and consumer protection safeguards, such as:
 - 17.1. the consumer's identity must be authenticated, and the consumer must authorise the data holder to comply with an accredited person's request to receive data;
 - 17.2. the data holder must verify the identity of the accredited person;
 - 17.3. consumers will be notified once the transfer of data to a third party has been completed;
 - 17.4. data holders must maintain consumer data records noting the transfers the data holder has initiated of a consumer's CDR data, including the types of data consented to and collected, and identifying the accredited recipients;
 - 17.5. limits on the permissible uses of consumer data;

- 17.6. data recipients must disclose clear information about how consumers revoke or amend their consent, or make a complaint;
- 17.7. data recipients must produce and implement a consumer data right policy that sets out how it will implement its obligations under CDRs, and which identifies risks and processes to limit inappropriate or unauthorised access to CDR data;

Accreditation

- 18 **note** that the success of the consumer data right depends on there being trust by all participants in the system;
- 19 **agree** that data holders will only be about to share CDR data with accredited persons or initiate relevant actions received from accredited persons;
- 20 **agree** that the accreditation regime is to be flexible to ensure that the requirements for accreditation are proportionate to the nature of the entity seeking accreditation, the level of risk associated with the degree of access/control over data being sought and the data set itself, and to avoid imposing undue compliance costs;
- 21 **agree** that the accreditation will include an assessment of the applicant's integrity, systems and process to protect consumer data, and ability to meet the obligations of the CDR;
- 22 **agree** that the accreditation may be suspended, revoked, downgraded, or subject to conditions;

More detailed rules in secondary legislation

- 23 **agree** that rules to be implemented by secondary legislation will include:
 - 23.1. how consumers may give consent to the collection, use and disclosure of consumer data, and how that consent may be amended or revoked;
 - 23.2. the purposes for which consumer data can be used or disclosed, and conditions that need to be met for use and disclosure;
 - 23.3. what may be charged for, guidelines that must be followed in setting fees, and restrictions on fees;
 - 23.4. what secondary users (other than the main account holder) may request consumer data and initiate actions (e.g. a secondary card holder on a bank account), how secondary users are given access privileges, and restrictions on those privileges;
 - 23.5. accreditation criteria;
 - 23.6. exceptions to and exemptions from obligations;

Common data standards

- 24 **agree** to require accredited persons and data-holders subject to a designation of the consumer data right to comply with shared data standards that cover all aspects of

provision, including the design of services and APIs, data formats, information protection safeguards, and the consumer experience of the consumer data right;

Legislation

- 25 **authorise** the Minister of Commerce and Consumer Affairs to issue drafting instructions to Parliamentary Counsel Office to give effect to the above recommendations;
- 26 **authorise** the Minister of Commerce and Consumer Affairs to make additional policy decisions and minor or technical changes to the policy decisions in this paper, consistent with the general policy intent, on issues that arise in drafting;

Further decisions

- 27 **invite** the Minister of Commerce and Consumer Affairs to report back to Cabinet by 30 November 2021 on institutional responsibilities, cost recovery, compliance, enforcement, and consumer redress for the consumer data right framework;
- 28 **note** that funding implications will be further considered as part of the next round of Cabinet decisions;
- 29 **note** that the Minister of Commerce and Consumer Affairs will issue a press release on Cabinet's decisions on the matters covered by the above recommendations.

Authorised for lodgement

Hon Dr David Clark

Minister of Commerce and Consumer Affairs