

# Submission template

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## Unlocking value from our customer data

*This is the submission template for the discussion document, Unlocking value from our customer data.*

*The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in the discussion document by **5pm on Monday 24 July 2023**. Please make your submission as follows:*

1. Fill out your name, organisation and contact details in the table: “Your name and organisation”.
2. Fill out your responses to the consultation document questions in the table, “Responses to discussion document questions”. Your submission may respond to any or all of the questions in the discussion document. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.
3. If you would like to make any other comments that are not covered by any of the questions, please provide these in the “Other comments” section.
4. When sending your submission:
  - a. Delete these first two pages of instructions.
  - b. If you wish for your submission to be published anonymously, please state this in the cover letter or e-mail accompanying your submission.
  - c. Note that, except for material that may be defamatory, MBIE intends to upload PDF copies of submissions received to MBIE’s website. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission. If your submission contains any confidential information:
    - i. Please state this in the cover page or in the e-mail accompanying your submission, and set out clearly which parts you consider should be withheld and the grounds under the Official Information Act 1982 that you believe apply. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.
    - ii. Indicate this on the front of your submission (eg the first page header may state “In Confidence”). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).
  - d. Note that submissions are subject to the Official Information Act 1982 and may, therefore, be released in part or full. The Privacy Act 2020 also applies.
5. Send your submission:
  - as a Microsoft Word document to [consumerdataright@mbie.govt.nz](mailto:consumerdataright@mbie.govt.nz) (preferred), or
  - by mailing your submission to:

*Consumer Data Right Project Team*

*Commerce, Consumers and Communications  
Ministry of Business, Innovation & Employment  
PO Box 1473  
Wellington 6140  
New Zealand*

Please direct any questions that you have in relation to the submissions process to [consumerdataright@mbie.govt.nz](mailto:consumerdataright@mbie.govt.nz).

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

## Your name and organisation

<b>Name</b>	Margaret Cooney
<b>Organisation (if applicable)</b>	Octopus Energy NZ Limited
<b>Contact details</b>	Privacy of natural persons

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

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

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

## Please check if your submission contains confidential information:

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

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

## Responses to discussion document questions

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

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

*We are generally supportive of the approach taken.*

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

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

The appropriate duration of consent will depend on the scenario where the customer gives consent.

If the consent is to enable an ongoing service provided using the data it seems reasonable to review the consent annually, this can be done fairly easily with an app prompt or email questionnaire.

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

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

Yes, we agree with these. Consent should also be renewed if a new party is added to an account.

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

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

*We support what is proposed.*

### *Care during exchange: standards*

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

We support this approach, secondary legislation provides the flexibility to change arrangements to keep abreast with emerging technology and changing needs.

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

*From the perspective of other data holding sectors: which elements of the Payments NZ API Centre Standards<sup>1</sup> are suitable for use in other sectors, and which could require significant modification?*

This needs more consideration. The most useful information for energy consumers is probably their usage and cost information rather than payment transaction information. The standards seem fine from a tech and naming convention point of view however the structure of data and API services for transferring Energy data will have different requirements. Increasingly there are higher volumes of data and meta data available (for example we collect and manage dynamic charging of EV's so have instantaneous usage data and information about the location of the EV). The technical standards will need to be fit for the purpose.

The NZ Payments API's relate to payment transactions. For the energy sector payment services are used for collection of funds in consideration for a service provided, this is quite a different role to being a transaction enabler as banks and financial service providers are. Energy companies will have a variety of approaches for initiating customer payments and storing transaction information within the CRM systems used for managing customers. Octopus for example use third party payment service providers.

We have technical experts that can contribute to discussions about what is appropriate for energy services.

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

The data requirements and industry structure need to be considered thoroughly.

### **Trust: accreditation of requestors**

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

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

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

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

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

## Unlocking value for all

Please provide feedback on:

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

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

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

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

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## Ethical use of data and action initiation

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

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If there is no way of personally identifying the data, express consent is unnecessary, but the firm should make it clear that this use is part of their practices in their data policy. If a customer could be identified it seems appropriate.

Ethical requirements similar to the Australian approach would seem appropriate. All uses of the data are hard to anticipate in advance but it's important that they are consistent with consumer's reasonable expectations.

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

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## Preliminary provisions

What is your feedback on the purpose statement?

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We agree with the purpose statement.

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

Yes we agree that the definition should in effect capture foreign entities conducting business in NZ or providing services to companies that conduct business in NZ.

### **Regulated data services**

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

Provided the data request is in a standardised form and using the defined system this is acceptable. In the technical standards there will inherently be some technical constraints on the frequency of the requests.

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

### **Protections**

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

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

### **Regulatory and enforcement matters**

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

### **Administrative matters**

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

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

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

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*Which additional information in the closed register should be machine-readable?*

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*Is a yearly reporting date of 31 October for the period ending 30 June suitable? What alternative annual reporting period could be more practical?*

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*Should there be a requirement for data holders to provide real-time reporting on the performance of their CDR APIs? Why or why not?*

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*What is your feedback on the proposal to cap customer redress which could be made available under the regulations, in case of breach?*

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### **Complaints and disputes**

*In cases where a data holder or requestor is not already required to be member of a dispute resolution scheme, do you agree that disputes between customers and data holders and/or accredited requestors should be dealt with through existing industry dispute resolution schemes, with the Disputes Tribunal as a backstop? Why or why not?*

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UDL is the energy sector dispute resolution service, they only deal with disputes involving member organisations. It might be necessary to extent the membership of UDL as part of the accreditation requirements however.

## **Other comments**

Thank you for the opportunity to comment on the Draft Consumer and Product Data Bill. We strongly agree with the valuable role unlocking consumer data can play in making choices easier and enabling more innovation for the benefit of energy consumers.

Octopus Energy is a global energy innovator and entrant retailer to the New Zealand electricity market. We also provide enterprise billing technology for energy providers around the world and have experience implementing consumer data right requirements for clients.

We see the benefit the consumer data right could have on enabling customers to make better choices about the most cost effective energy plans and the technology options for them. We also think it is a foundation of a smarter energy system that enables New Zealand homes and businesses to decarbonise more quickly and affordably (for example, enabling more demand shifting, or helping customers understand their economics of investing in rooftop solar). Given these benefits we believe there is a strong case for implementing the Consumer Data Right arrangements for the energy sector as soon as it is practical to do so.

In the table above we provide a brief response to the questions posed in the consultation document. We are also happy to provide insight into our experience implementing technology solutions in other markets if it is of value to MBIE.