Submission by

to the

Ministry of Business, Innovation and Employment (MBIE)

on the consultation document

Exploring a consumer data right for the electricity sector

10 October 2024

– SUBMISSION BY THE BUSINESSNZ ENERGY COUNCIL –

EXPLORING A CONSUMER DATA RIGHT FOR THE ELECTRICITY SECTOR

Executive Summary

1. The BusinessNZ Energy Council (BEC)[1] appreciates the opportunity to submit feedback on the Ministry of Business, Innovation and Employment's (MBIE) Discussion paper titled "*Exploring a consumer data right for the electricity sector*".

2. BusinessNZ and BEC have previously submitted on the issue of consumer data rights on three occasions. This includes our response to MBIE's 2020 Discussion Document entitled '*Options for Establishing a Consumer Data Right in New Zealand'*, our response to MBIE's 2023 Discussion Document entitled *'Unlocking Value from our Customer Data and the Customer and Product Data Exposure Draft Bill'* and our response to the Economic Development, Science and Innovation Committee on the *"Consumer and Product Data Bill"* [2] in 2024. As highlighted in previous submissions, we see economic opportunities for New Zealand if a CDR is implemented efficiently and effectively, particularly if it fosters innovation.

3. This submission emphasises our backing for a Consumer Data Right (CDR) in the electricity sector, focusing on its economic advantages and need to encourage innovation. Efficient, instant data flow with standardised methods is crucial for New Zealand's future energy system.

4. As the energy landscape evolves, greater data access for consumers becomes increasingly essential. Advances in technology enable the emergence of intelligent grids and interconnected devices, supporting peer-to-peer trading and enhancing market participation. However, with these advancements come risks that need to be managed, particularly concerning cyber security and privacy. The complexity of data systems and their uses can be mitigated by designing systems that reduce administrative and compliance costs through automation.

5. We would like to stress the importance of balancing amendments to the Electricity Industry Participation Code with legislative changes for strong consumer protection. Clear definitions of product data are essential to safeguard proprietary information.

6. The costs of implementing a CDR in electricity should be assessed against its benefits and consumer willingness to pay. While a CDR might improve customer decisions, its value compared to other methods is still uncertain. A thorough cost-benefit analysis is vital for MBIE's next phase of electricity CDR development.

7. Collaboration between industry and government is crucial for the effective implementation of the CDR, ensuring regulations are practical and not overly prescriptive. We suggest a statutory review within five years of enactment to ensure the legislation remains fit for purpose.

8. Overall, this submission reflects our commitment to supporting a consumer-centric approach while addressing the potential risks and challenges associated with greater data access in the electricity sector.

General Comment

9. Greater data access for consumers is crucial in today's evolving energy landscape. With the increasing adoption of sophisticated electricity market tools, electric vehicles, solar panels, batteries, and home energy management systems, consumers are no longer just passive users.

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[1] More about BusinessNZ Energy Council can be found in appendix one.

[2] See BusinessNZ Submission on Options for Establishing a Consumer Data Right in New Zealand, Unlocking Value from our Customer Data and Customer & Product Data Exposure Draft Bill and Customer and Product Data Bill

They are becoming electricity storage providers, energy producers, and energy aggregators. This shift presents numerous opportunities with significant impacts across the sector.

10. Advances in real-time management and data management systems enable innovation by non-traditional, third-party vendors of technology and services. This allows for the emergence of intelligent grids and the interconnectedness of devices, supporting peer-to-peer trading and opening up the market to households. It could also help increasing participation and competition can lead to improved consumer well-being and system security.

11. However, with these opportunities come with risks that need to be managed. The shift towards greater data access also introduces cyber risks and privacy issues. As consumers take on more active roles in the energy value chain, the potential for cyber-attacks increases, posing a threat to both individual privacy and overall system security. Additionally, the interconnectivity of devices and the reliance on real-time data management systems require robust communication and coordination to ensure the stability and security of the energy system.

12. While greater data access for consumers is essential for fostering innovation and improving the energy sector, it is crucial to address the associated cyber risks and privacy concerns. By implementing strong security measures and ensuring effective communication and coordination, consumers can benefit of greater data access while mitigating the potential risks.

Problem Definition

13. We agree with the problem definition outlined in the discussion document. The document accurately identifies the challenges faced by consumers in accessing and controlling their data, which is crucial for making informed decisions in the electricity sector. Easier access to data could help consumers optimise energy use and compare services. It would give them more control over their data, boost innovation, and enhance competition in the electricity sector. Allowing third-party access with consent could lead to new products and services tailored to consumer needs, improving market efficiency and satisfaction.

14. However, we caution to carefully consider the extent to which changes should be delegated to the Electricity Industry Participation Code (the Code) versus being included under legislation. While some aspects of the proposed CDR can be effectively managed through amendments to the existing Code, such as technical standards and operational guidelines, other elements might require legislative backing to ensure robust consumer protection and compliance. Legislation should address fundamental rights and obligations, enforcement mechanisms, and penalties for non-compliance, providing a solid legal framework that supports the successful implementation of the CDR.

Alignment between the CDR and Code

15. As mentioned in the consultation paper, the electricity sector has already taken several initiatives in terms of making consumption data available to both individuals and businesses. For example, efforts have been made by electricity retailers to invest in systems to allow customers to understand their electricity consumption patterns and make such data available free of charge to consumers to download and provide to third parties.

16. The CDR must align with current regulations and ongoing initiatives by MBIE, EA, and others to avoid duplication, confusion, and increased costs. The government should consider industry efforts and existing regulations before introducing CDR-related rules in the electricity sector. Proposed changes should enhance ongoing work, refine current processes, and foster innovation. How CDR will fit with existing rules is still unclear but will be clarified in drafting relevant regulations.

17. Alignment with the Code is essential. Clauses such as 11.32E to 11.32EG within the Code already address consumer permissions allowing an agent to request data from electricity retailers on behalf of customers, detailing actions and procedures that retailers must follow upon receiving such requests and confirming authorisations. Further examination is required to determine the most

effective method for enhancing consumer access to data, whether it be through the Code or another means. The discussion document lacks detail in identifying the specific gap that a new CDR regulation aims to address and understanding how ongoing work programmes might fill this gap.

18. The introduction of a CDR requires participants in the electricity sector to enhance their data systems, including proposed changes to the registry and future flexibility needs. We therefore urge the government to coordinate all agencies for comprehensive planning, ensuring aligned systems across the industry. Since all consumers bear the costs of upgrades, it is crucial to have well-designed systems.

Access to customer data and data holder

19. We agree with the paper's identification of parties classified as data holders. To prevent arbitrary scale thresholds that might inadvertently affect competition, we support designating all retailers and metering providers as data holders. We also suggest that all retailers, metering providers, and distributors be recognised as accredited requestors, with clear definitions stated in the regulations.

20. Access to product data is beneficial to consumers to better assess plans offered by respective retailers. This access would likely enhance competition to the benefit of such consumers. There is a risk however of a broad definition of product data. As outlined in the Bill, Sections 22 and 100(2) of the Bill outline guardrails for when a company can refuse to provide product data and what can be defined as product data. It is unclear as to whether product data can include any information that is not ordinarily available to the public.

21. We advise that the Government explicitly states that product data should never encompass information not typically accessible to the public—especially ensuring it doesn't contain a data holder's proprietary details, confidential information, or commercially sensitive information.

22. We believe this will reduce the risk of a data holder being asked to share product data that allows third parties to reverse-engineer products that are proprietary or contain trade secrets. We do not believe that the Government intends to ask data holders to share product data that will undermine the ingenuity and research and development that data holders have invested in proprietary products. Therefore, increased clarification here should mitigate these concerns.

Initial framework

23. We support the initial framework outlined in the document for identifying and then designating data holders. The framework provides a comprehensive approach to ensuring that data holders are clearly defined and appropriately designated, which is crucial for maintaining transparency and accountability.

24. As highlighted in the consultation document, the framework also emphasises the importance of coordination and collaboration among all stakeholders to support and accelerate the transition whilst maintaining energy security.

Costs and benefits

25. Businesses that manage customer data within a specific sector will need to offer data access to the customers and, with customer consent, to accredited third parties. Although this seems simple, businesses employ various systems for data storage and sharing.

26. Ensuring data is shared with external entities in a consistent format could entail considerable expenses in both resources and funding. Given the diverse array of energy companies and their varying systems, the challenge will be to identify commonalities and determine the most effective CDR implementation strategies in collaboration with the industry.

27. To enhance CDR benefits and minimise risks, interoperable systems must identify and authenticate customers, including retailers and third parties. These systems should ensure strong privacy

protections and a seamless user experience. Without these measures, the uptake of CDR may remain low, as seen in Australia with only 0.31% of customers using CDR products.

28. To facilitate the prompt provision of data upon request, regulation must be technology-forward. Nevertheless, there's a concern that the CDR may struggle to keep up with fast-paced technological progress. Major technological changes could significantly alter the future landscape of the CDR. Should these changes happen, the Government might face challenges in adapting to a digital environment where public policy lags behind private sector innovation. Therefore, it is essential that regulations are principle-based rather than overly prescriptive. We recommend conducting a statutory review five years after enactment to ensure the legislation and accompanying regulations remain relevant. This review should be comprehensive, evaluating whether MBIE's dual role as both compliance and policy agency has been effective.

Industry and Government collaboration

29. As regulations under the Bill are conceptualised and drafted, we consider it important for both industry and Government to collaborate to ensure regulations are robust but not overly prescriptive. The Government should create a place at the table for the private sector to outline ways in which they can contribute suggestions around how to collaborate, as well as address key concerns.

30. Room for collaboration was one of the several lessons learnt in the United Kingdom through the partnership between the Competition and Market's Authority (CMA) and the UK's nine largest banks during the roll out of open banking.[3] The eventual success of CDR, reflected in less friction in the access and transfer of customer and product data, will evidentially depend on the effectiveness of software interoperability and how retailers' existing IT systems can evolve to meet new requirements outlined in regulation.

31. There is a risk that regulations may impose requirements that are difficult or costly to implement. This gap between regulatory goals and practical execution can be bridged through industry-led working groups. Leveraging industry expertise in areas like cybersecurity, fraud risk, privacy, authentication, data management, and payment systems can ensure that regulations are both practical and effective.

[3] *Lessons Learned from Australia and the Untied Kingdoms, The Consumer Data Right and Open Banking,* Brad Carr, Alysia Abeyaratne, and Claire Melling

Appendix One - Background information on BusinessNZ Energy Council

About the BusinessNZ Energy Council

The BusinessNZ Energy Council (BEC) is a group of New Zealand energy organisations taking on a leading role in creating an affordable, reliable, and sustainable energy system for New Zealand. The BEC is a division of BusinessNZ, New Zealand's largest business advocacy group and the New Zealand Member Committee of the World Energy Council (WEC). The BEC offers a unique opportunity to shape the New Zealand's energy-system with business leaders, government, and research as well as access to global thinking on energy issues via our involvement with WEC.

About the World Energy Council

The World Energy Council is an independent global organisation that promotes an affordable, reliable and sustainable energy system for all. It is comprised of over 100 member countries. The Council provides impartial information on critical issues that affect society's well-being such as climate change mitigation strategies; energy efficiency; renewable energies; nuclear power; clean coal technologies; rural electrification; energy access; regional integration; urbanisation; geopolitics; innovation; finance; human capital; governance; resilience; hydrogen; storage; digitalisation; mobility; cooling; heating; behaviour change; scenarios; and transition leadership.

About the BusinessNZ

BusinessNZ is New Zealand's largest business advocacy body, representing:

- BusinessNZ Energy Council of enterprises leading sustainable energy production and use
- Buy NZ Made representing producers, retailers and consumers of New Zealand-made goods
- Regional business groups EMA, Business Central, Canterbury Employers' Chamber of Commerce, and Employers Otago Southland
- Major Companies Group of New Zealand's largest businesses
- Gold Group of medium sized businesses
- Affiliated Industries Group of national industry associations
- ExportNZ representing New Zealand exporting enterprises
- ManufacturingNZ representing New Zealand manufacturing enterprises
- Sustainable Business Council of enterprises leading sustainable business practice

BusinessNZ is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy. In addition to advocacy and services for enterprise, BusinessNZ contributes to Government, tripartite working parties and international bodies including the International Labour Organisation (ILO), the International Organisation of Employers (IOE) and the Business and Industry Advisory Council (BIAC) to the Organisation for Economic Cooperation and Development (OECD).