



## FINANCIAL SERVICES FEDERATION

19 October 2020

Consumer Data Right Project Team  
Ministry of Business, Innovation & Employment  
Wellington

By email: [consumerdataright@mbie.govt.nz](mailto:consumerdataright@mbie.govt.nz)

### **Options for establishing a consumer data right in New Zealand**

#### **Introductory comments**

The Financial Services Federation (FSF) appreciates the opportunity to engage in consultation with the Ministry of Business, Innovation and Employment (MBIE) on options for establishing a consumer data right (CDR) in New Zealand to give individuals and businesses greater choice and control over their data.

By way of background, the FSF is the industry body representing the responsible and ethical finance, leasing and credit-related insurance providers of New Zealand. We have sixty-three members and affiliates providing these products to more than 1.5 million New Zealand consumers and businesses. Our affiliate members include internationally recognised legal and consulting partners. A list of our members is attached as Appendix A. Data relating to the extent to which FSF members (excluding Affiliate members) contribute to New Zealand consumers, society and business is attached as Appendix B.

The FSF fully supports developments that enable consumers to take control of their own data. Having watched the development of consumer data portability overseas, the FSF is particularly interested in how this could be applied in the banking and finance sector in New Zealand in order to provide increased benefits to consumers.

We anticipate this offering a wealth of benefits to both consumers and businesses, and we welcome any developments that enable those captured by the Credit Contracts and Consumer Finance Act 2003 (CCCFA) to better meet the requirements of responsible lending with a consistent level of ease for all lenders including banks and non-bank lenders. The CCCFA requires a lender to verify the income and expenses of a borrower, and as the recent amendments have seen the removal of Principal 9C(7) (which until recently allowed a lender to rely on the information provided to them by the borrower), this task of responsible lending is significantly easier for a bank to undertake due to its holding of all the borrower's transactional information, than for a non-bank lender in the absence currently of a consumer data right (CDR).

In addition, there are a vast range of other interactions that take place between a business and a consumer in the banking and finance sector that could be improved by way of the introduction of a CDR. The clarity a CDR would offer in regard to data sovereignty would go to great lengths in assisting in the process of identity verification, for example. For these and so many other reasons, the FSF considers that a CDR and, more specifically, open banking, would remove such inconsistencies and facilitate competition and innovation.

The benefits that a CDR may have offered New Zealanders during the COVID-19 pandemic are clear. However, with the time it would take to implement, a CDR would need to have been developed some time ago to allow for those benefits to have been effectively realised. Therefore, the FSF suggests that the development of a CDR should not be rushed as a response to the recent crisis and that it would instead be appropriate to ensure that a CDR is fit for purpose in New Zealand to be of value if and when we are faced with a future crisis.

Therefore, despite the FSF's anticipation for the development of a CDR in New Zealand, it is vital that this process is only gone through once and gone through right, in order to avoid the development of an inefficient and ineffective regime subject to modification and tinkering for years to come. The FSF strongly suggests that the preliminary process of developing a CDR involves the release of a further discussion paper to allow for industry input at a more granular and practical implementation level, before drafting any legislation. Industry and business will be tasked with providing and enabling a CDR in New Zealand and as such, there needs to be adequate opportunities to enable these voices to be heard.

## **Discussion**

### **Glossary**

As to the definition of 'consumer data' that is provided in the discussion document, the FSF notes that this is currently very broad, capturing almost anything and everything and does not appear to be subject to any limits. As it captures data relating to both individuals and entities, the FSF understands this translates to natural persons and companies, businesses or partnerships too. However, what is unclear is whether any limitations are to be placed on the definition of an 'individual', such as whether this is only to include living natural persons or whether a CDR shall be a proprietary right capable of also being held by deceased persons. In addition, the FSF anticipates this would include trusts in the scope of the framework but what is not clear, however, is whether this would extend to the beneficiaries of such trusts. The FSF therefore requests consideration be had to this issue and clarification provided in further opportunities for consultation as the inclusion of deceased persons or future beneficiaries of trusts would present significantly undesirable implications.

### **Current regulatory settings**

The FSF shares the majority of the concerns identified in the discussion document about how current regulatory settings, or lack thereof, limit consumer data portability.

The FSF is aware that some financial services providers use secure methods (that is customers do not share their banking credentials with the financial services provider) of data mining to support income and expense verification in line with responsible lending obligations required under CCCFA. The sole objective of utilising these tools is to ensure that the customer is not extended credit they cannot reasonably afford and that the related credit decision doesn't result in a hardship outcome. Unfortunately, there is occasionally some resistance from customers to the use of such tools because their bank has emphatically warned against the sharing of their internet banking credentials with anyone which the CDR would alleviate.

These tools are essential to non-bank lenders to determine that the credit they are extending is being done so responsibly. Clearly doing no verification or checking of affordability whatsoever, especially in the current climate, is actually a worse outcome than using such data mining and income and expense categorisation tools especially in light of the fact that lenders are not able to rely on what a customer tells them. Hence financial services providers must look for ways to verify information to inform responsible decisions whilst meeting customer expectations for time to credit decision. CDR would be a material advancement for such tools and would provide uniform access to a borrower's financial information to support informed and responsible lending decisions.

The FSF does not, however, know of any additional problems that are preventing greater data portability in New Zealand that have not been identified in this discussion document.

### **The benefits of a consumer data right**

As identified in the discussion document, the benefits of a establishing a CDR would be significant for both consumers and businesses. The FSF places particular significance on the benefits of facilitating competition and of improving consumer welfare. The FSF understands that introducing a CDR would impose financial costs on industry and government. Businesses may be required to increase investment in IT infrastructures that enable system changes, as well as a need to upskill employees. However, the FSF considers that the benefits available to consumers by establishing a CDR would outweigh these costs by further allowing for more innovative and improved outcomes for customers.

### **The scope of a consumer data right**

The FSF appreciates the reasoning behind the proposition in the discussion document that only observed data would be subject to the CDR. It is noted that inclusion of derived data in Australia has received a lot of negative feedback with financial institutions, in particular, preferring only raw basic data be included rather than any data that draws on the proprietary insights of the institution holding the data.

However, the FSF also considers that the key to establishing a successful CDR is consumer awareness and uptake. In the UK, a very small percentage of consumers know what open banking is and how to use it. This may be due to overly detailed communications surrounding the technicalities of the open banking regime that have precluded average consumers from understanding how it works in practice or understanding their rights over the data they are sharing.

Promoting consumer awareness on how the concept works in practice in simple language therefore ought to be a priority if a CDR is established here. The FSF also considers that if derived data is also subject to the CDR, this would greatly increase the likelihood for optimum consumer awareness and uptake. In part this is due to the inclusion of derived data likely allowing for the demonstration of the extent of benefits that a CDR can offer, thus inviting consumer support and adoption.

The FSF is, however, also very conscious of ensuring a CDR is developed once and well. Therefore, it is suggested that a CDR is developed with a smaller level of functionality in its earlier stages, permitting only for observed data, followed by a further consultation on increasing functionality and ensuring derived data may be appropriately introduced at a later date.

The FSF considers that it would be appropriate for a CDR to incorporate information about the products or services offered to consumers by a business. This would allow for an increase in market transparency and would empower consumers to make informed decisions about consumption that is most suitable for their needs. In the financial services sector, for example, there is a large number of smaller businesses competing with large well-known banks. By establishing a CDR that incorporates product data, information regarding the competitive advantages these smaller businesses may be able to offer consumers could become more apparent and accessible, thus driving innovation and competition in the sector.

The proposal that a CDR should provide for both read access and write access is fully supported by the FSF. The risks of providing for write access, however, are significant. For example, where a customer fraudulently passes an Anti-Money Laundering and Countering the Financing of Terrorism check, it would be easy for them to defraud the whole system. The FSF considers that this risk could be mitigated by developing a complimentary digital ID framework and by ensuring an appropriate accreditation regime is in place that requires data users and recipients to demonstrate how their policies and procedures will offer comparable protections for consumer data.

#### **Options to establish a consumer data right: Option one: Status quo**

The FSF considers that continuing to rely on existing protections and industry-led solutions will not provide a satisfactory outcome for consumers or businesses, as demonstrated by the slow pace at which development is progressing at present. Whilst the electricity sector appears to be making progress, the banking and finance sector is not addressing consumer needs at an appropriate pace.

#### **Options to establish a consumer data right: Option two: A sectoral-designation approach**

The FSF considers that establishing a legislative framework that allows for a consumer data right to be 'turned on' in sectors could be a good basis on which to proceed. The FSF supports the principles of this option, in particular that it may allow for targeted development in the banking and finance sector where there would be significant consumer benefit, and that it would allow the CDR to apply to individuals as well as businesses and to product data. However, as discussed earlier in this submission, the FSF would expect to see a further round of consultation on the design of such a framework before providing its full support for this option.

### **Options to establish a consumer data right: Option three: An economy-wide consumer data right**

On principle, the FSF does not consider option three to be an appropriate basis on which to establish a CDR in New Zealand. This is because it is important to ensure a CDR is appropriate in the context of all relevant sectors; what works in the banking sector may not work in the electricity sector, for example. Whilst the FSF recognises the value in having a CDR that is fully understood by consumers and businesses in order for its benefits to be fully realised, it would be considerably more beneficial if consumer awareness was instead promoted by clear communications in simple language rather than by proceeding with option three at the development stage.

In addition, as the FSF represents the responsible non-bank finance and leasing sector, our priority is supporting the customers of this sector, and therefore any additional delay involved in proceeding with developing a CDR that is appropriate for the entire economy would then delay benefits being conferred upon these customers. Furthermore, if the CDR is limited to information relating to individuals only, and not to businesses or product data, the FSF considers that this would severely limit its successfulness in New Zealand.

### **Options to establish a consumer data right: Option four: A sector-specific approach**

The FSF considers that option four would largely confer the same benefits which it considers to be a priority upon consumers and businesses as would option two, and therefore considers that it could also be a good way of establishing a CDR in New Zealand. The FSF particularly likes that option four would allow for quicker implementation in the relevant sectors. While the FSF accepts that this may lead to inconsistencies in the way that consumer data is handled across sectors, the FSF is unsure that this would necessarily be inappropriate due to the inherent differences in data from a range of sectors.

## **The design of a consumer data right**

### **Establishing an implementation body**

The FSF considers that as part of the process of the overall design of the framework for a consumer data right in New Zealand, a new national body ought to also be established to oversee its effective and efficient implementation. As has been demonstrated in the relatively slow progress of the sector-led initiatives to promote data portability, increased involvement is necessary to see the more efficient delivery of positive outcomes for consumers. The FSF considers that an implementation entity would be invaluable in aiding this delivery.

Specifically, the FSF proposes establishing an entity that is appointed by, but operates independently of, any regulator. This entity would be responsible for ensuring data holders timely compliance with a pre-determined roadmap and technical standards to ensure the effective introduction of a CDR. Activities that may be undertaken by such an entity could also include the monitoring of the timeliness of data holders' compliance with the roadmap and standards, and could also include making independent recommendations to the appointed regulator and the issuing of directions to data holders.

No such entity was established in Australia prior to the establishment of a CDR, and upon review it has been considered that the existence of such an entity could have led to a more successful transition. The FSF also notes the recent report released by the Senate committee on Financial Technology and Regulatory Technology, which included the recommendation for the establishment of such an entity to consolidate regulatory responsibilities in relation to the implementation of the CDR.<sup>1</sup>

In the UK, an Implementation Entity has more recently been set up on a temporary basis to serve the functions of agreeing, consulting upon, implementing, maintaining, and making widely available, some common banking standards on which their Open Banking regime rests. This was done by way of a directions order from the Competition and Marketing Authority and has since allowed for the issuance of directions to banks, requiring their compliance with requisite timeframes for compliance.

Whilst the FSF recognises that this too would involve increased financial costs, we consider that these costs will pay off over time, and we reiterate our concern about the need to only develop a CDR once, but to develop it right. These increased costs would be outweighed by the benefits that consumers will obtain from the efficient implementation of a regime in which they can be confident across all sectors of the economy.

### **An accreditation regime**

The FSF certainly agrees, in principle, that establishing an accreditation regime for third parties would be important in the design of a consumer data right in New Zealand. The FSF also considers an accreditation regime would assist in promoting consumer confidence and trust in a CDR by ensuring that data is only shared with entities that are able to hold the data safely and securely. Removing the need for third parties to have multiple bi-lateral agreements with separate data holders would also greatly improve the efficiency of the regime, in the FSF's opinion.

However, the FSF is cautious about developing an accreditation model based on the one used for the Australian CDR. This is because the Australian process is standardised with no scalability for smaller entities or third parties, thereby limiting their ability to become accredited and thus threatening the ability to realise the potential benefits of a CDR. This is another element that the FSF considers would require further consultation surrounding what an accreditation regime would look like, and what requirements would need to be satisfied in order to become accredited depending on the size of the business or entity. This scalability is essential to ensure maximum participation in the CDR framework by all parties is enabled, so as to ensure consumers are able to enjoy the benefits to the fullest extent possible.

The FSF considers that a tiered accreditation system would be the most appropriate. Smaller finance companies do not have the same resources at their disposal as do large banks in order to pay for the same level of accreditation or to comply with the same regulatory requirements. For example, by having a tiered system, this could allow for smaller entities to have 'read access' for consumer data, with larger entities being accredited to also have 'write access'.

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<sup>1</sup> See paragraph 8.82 of the [Senate's Report](#).

## **Privacy safeguards**

The FSF considers that having sufficient complementary privacy safeguards is critical in establishing a CDR in New Zealand, as consumers need to trust the system in order to optimise it. The amended version of New Zealand's Privacy Act is set to come into force in December of this year. The FSF considers that significant regard must be had to the interplay between the Privacy Act and any CDR legislation. In order for a CDR regime to be clearly understood by consumers, they must be easily able to access information regarding their rights, and the FSF believes that this will be severely limited where there are two different sets of laws concerning privacy that consumers might be required to cross reference and decipher.

## **Interoperability with overseas jurisdictions**

The FSF agrees that a trans-Tasman approach to open banking and data portability could be hugely beneficial. We have many relationships with our Australian counterparts in both a personal and commercial capacity. However, New Zealand is now in a position to learn from similar models implemented in other jurisdictions. Whilst it would be commercially sensible to create a parallel system here with that of Australia, it is more important to have a regime that is efficient. Therefore, any deficiencies in the ACDR ought to be identified in order for New Zealand to appropriately avoid encountering any of the same deficiencies.

## **Legislative design, institutional arrangements, and evaluation of the CDR**

Whilst the purpose of a legislative framework enabling a CDR may align with that of competition, consumer, and privacy laws, the FSF considers that as the legislative instruments all deliver on these purposes in different ways, it is appropriate for CDR legislation to be independent.

As discussed earlier, the FSF is concerned about inherently different sectors of the New Zealand economy overlapping to an extent that it is not beneficial. The FSF does not consider holding out one regulator to oversee the CDR framework to be an appropriate way of proceeding. As is the case in Australia, a multi-regulator approach, in which the lead agency in the relevant sector is clearly designated to take the role of regulator, would also likely allow for the most transparency and efficiency.

Where a sector specific approach is taken to the establishment of a CDR in New Zealand, the FSF considers that an appropriate mechanism of evaluating the effectiveness of the regime could be by consultation between accredited entities with the relevant regulator for each sector. Data collection by entities surrounding the consumer uptake of the CDR would also be helpful, with demographic information also allowing for targeted improvements where it is needed most.

Thank you again for the opportunity for the FSF to engage in consultation on options for establishing a consumer data right in New Zealand. Please do not hesitate to contact me if you require anything further.



Lyn McMorran  
EXECUTIVE DIRECTOR



Membership List as at 1 October 2020

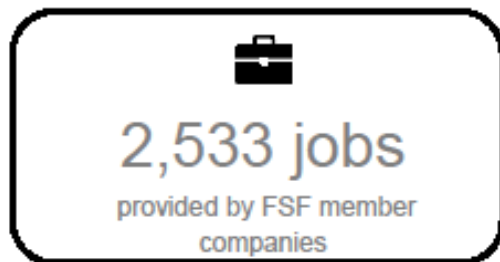
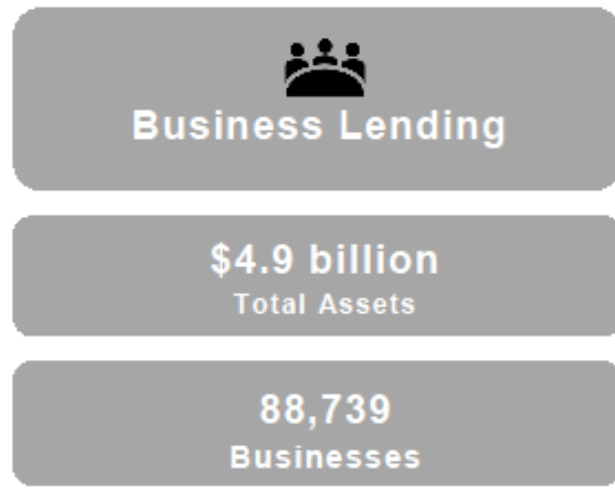
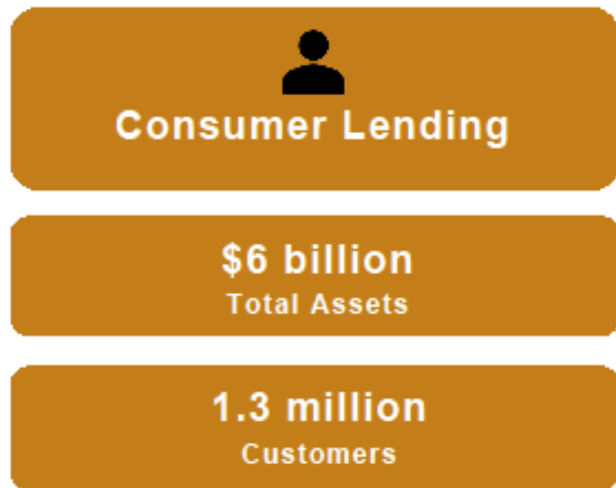
Appendix A

Non-Bank Deposit Takers Leasing Providers	Vehicle Lenders	Finance Company Diversified Lenders	Finance Company Diversified Lenders	Credit-related Insurance Providers	Affiliate Members
<u>Rated</u> Asset Finance (B)	AA Finance Limited	Avanti Finance	Speirs Finance Group	Protecta Insurance	255 Finance Limited
<u>Non-Rated</u> Mutual Credit Finance Gold Band Finance ➤ Loan Co	Auto Finance Direct Limited BMW Financial Services ➤ Mini ➤ Alphaera Financial Services	➤ Branded Financial Caterpillar Financial Services NZ Ltd CentraCorp Finance 2000	➤ Speirs Finance ➤ Speirs Corporate & Leasing ➤ Yogo Fleet Thorn Group Financial Services Ltd	Provident Insurance Corporation Ltd Southsure Assurance	Buddle Findlay Chapman Tripp Experian EY
<u>Leasing Providers</u> Custom Fleet Fleet Partners NZ Ltd Lease Plan ORIX NZ SG Fleet	Community Financial Services European Financial Services Go Car Finance Ltd Honda Financial Services Mercedes-Benz Financial Motor Trade Finance Nissan Financial Services NZ Ltd ➤ Mitsubishi Motors Financial Services ➤ Skyline Car Finance Onyx Finance Limited Toyota Finance NZ Yamaha Motor Finance	Finance Now ➤ The Warehouse Financial Services Flexi Group (NZ) Limited Future Finance Geneva Finance Home Direct Instant Finance ➤ Fair City ➤ My Finance John Deere Financial Latitude Financial Metro Finance Pepper NZ Limited Personal Loan Corporation Pioneer Finance Prospa NZ Ltd South Pacific Loans	Turners Automotive Group ➤ Autosure UDC Finance Limited <u>Credit Reporting &amp; Debt                      Collection Agencies</u> Baycorp (NZ) ➤ Credit Corp Centrix Collection House Equifax (prev Veda) Illion (prev Dun & Bradstreet (NZ) Limited Intercoll Quadrant Group (NZ) Limited	Happy Prime Consultancy Limited HPD Software Ltd KPMG PWC Simpson Western	Total: 63 members



FINANCIAL SERVICES FEDERATION

The Financial Services Federation (FSF) is the association for responsible finance and leasing companies operating in New Zealand. This infographic is a snapshot of our 61 members, the membership list can be found at our website: [www.fsf.org.nz](http://www.fsf.org.nz)



FSF lending members data survey period as at 31 July 2019 . Data collected and aggregated by KPMG