

Submission by



to

Ministry of Business, Innovation & Employment

on

Customer and Product Data Bill

24 July 2023

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NZTECH SUBMISSION ON CUSTOMER AND PRODUCT DATA BILL

INTRODUCTION

1. NZTech welcomes the opportunity to comment on the Customer and Product Data Bill Exposure Draft. We appreciate the Ministry's willingness to engage with industry and industry organisations to help ensure that the proposed legislation reflects their views and informs the final legislation.
2. Our submission does not seek to address all aspects of the related Discussion Document but instead focuses on certain key aspects of the proposed legislation: consent settings, ethical use of data, and accreditation. We understand there will be opportunities to comment on more detailed and technical aspects of the proposed legislation – including related regulations and standards – in subsequent consultations.
3. The Ministry notes that the Bill proposes a very focussed intervention. For example, the Bill does not govern the creation, collection, storage or deletion of information; it does not set detailed rules or standards for any given sector; it does not limit on-use or on-disclosure of information; it does not change rules about data ownership or where data should be stored; and it does not prevent other methods of data exchange or voluntary use of the standards and safeguards. Our understanding is that these will continue to be governed by existing laws, including the Privacy Act. We support in principle this intent.
4. We support the Ministry's determination that the legislation be consistent with tikanga Māori, given the high value placed by Māori on safeguarding and protecting data, and ensuring data is used to advance collective and individual wellbeing.
5. We acknowledge the views already expressed to the Ministry by FinTechNZ and DINZ, organisations which have significant membership crossover with NZTech. We urge the Ministry to take these views into account as it consults further and refines the legislation.
6. We are also in favour of measures that would help ensure a level playing field and better access for FinTech and other services, not just for banks able to access the PaymentsNZ infrastructure.

ABOUT NZTECH

7. NZTech is the peak body for the tech sector in New Zealand and a leading voice for the New Zealand technology ecosystem. We represent 20 tech associations with over 2,000 members who collectively employ more than 100,000 New Zealanders.
8. Our mission is to support a values-led, nationally connected tech community that is collectively lifting equity, sustainability and prosperity for all in Aotearoa New Zealand by creating jobs, export growth and impact through tech for good.
9. NZTech is a lead partner in the Digital Tech ITP, a collaboration between the New Zealand tech sector and the New Zealand Government, to help grow the sector.

COMMENT

Consent Settings

10. We support in principle the Bill's intention to grant customers more access and control over their data, allowing designated customer data to be shared only if customers have provided express and informed consent. Customers will, however, need to be clearly and actively informed when their information is being shared.
11. We also welcome the requirement that data holders and receivers enable consent to easily be withdrawn at any time. One aspect of this worth further consideration is the process for withdrawing consent in a chain with multiple data providers. An example is the use case where a customer approves the release of data from one data provider, but then changes their mind when receiving the same request from another provider.
12. We understand that regulations yet to be drafted will provide more detail on consent safeguards, and that these will be subject to subsequent consultations. We look forward to participating in this process.
13. As the Ministry recognises, when used appropriately ongoing consent can incentivise the introduction of new products and services, making administration of consents easier for customers. At the same time, a robust consent management process will be required to counter the potential for abuse of ongoing consent, and we urge the Ministry to take this need into consideration.

Ethical Use of Data

14. We are pleased that the Discussion Document places great importance on ethical considerations when it comes to data usage, and its recognition of the need to balance ethical use protections against the need to ensure that accredited requestors do not find the provisions too onerous.
15. Our members would like to see a focus on "people rights" and not just "data rights" i.e. an approach that thinks of rights from an individual's point of view rather than that of data. For example, among the disabled community there is a feeling of lack of empowerment due to the inaccessibility of PDFs and apps. People may not know they have choices over the use of their data.
16. Processes should be co-designed with end users, to enable informed choices. Mechanisms are also needed to ensure customers aren't locked-in to their current providers who will be sharing data with multiple organisations.
17. The granting of consent may be kept with the data and used for a single purpose, akin to the European Union's General Data Protection Regulation (GDPR) model.
18. Types of ethical protection that we would like to see travel with the data and sit with the ultimate user include groupings for "like purpose" usage, declarations of purpose for transparency, minimum standards of protection for users of customer data, and guidelines to ensure consistency in how consent is presented to customers.

Accreditation

19. Accreditation of those who are trusted to request data or request actions is crucial in ensuring the CDR regime functions well.
20. FinTechNZ and DINZ have provided extensive feedback to the Ministry on this topic, and it is not our intention to replicate this. However, we would like to highlight some of the key risks facing – in turn – accreditors, customers, and data holders.
21. For accreditors, there needs to be clear designation of the boundaries of responsibility (when data is at rest and in transit) in case of a privacy breach. There also needs to be a way for accredited requestors to know that the customer requesting the release of the data is the correct owner of the data.
22. Customers need to be clearly and actively informed when their information is being shared. They should also have visibility over where their information is shared, in a way that's easy for them to see so they don't lose confidence and trust in the system.
23. Data holders face similar liability risks to accreditors. There is also a risk of accredited requestors behaving fraudulently and saying they are accredited when they are not, or that they have a different class of accreditation than the class applicable to the data risk. This has the potential to create reputational damage and mistrust, so it is important that accreditation is transparent and secure.

CONCLUSION

24. Thank you for the opportunity to provide feedback on the proposed legislation. We are happy to engage further to discuss our submission and provide any further assistance that might be helpful.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Graeme Muller".

Graeme Muller

Chief Executive

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