

Submission by



to

The Economic Development, Science and Innovation Committee

on

The Draft Consumer and Product Data Bill

5 September 2024

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NZTECH SUBMISSION ON THE DRAFT CONSUMER AND PRODUCT DATA BILL

5 September 2024

INTRODUCTION

NZTech thanks the Economic Development, Science and Innovation Committee for the opportunity to contribute to the consultation process on the Draft Consumer and Product Data Bill. We submitted last year to the Ministry of Business, Innovation & Employment on its Exposure Draft, and are pleased that certain measures we supported in that submission have been retained in the Bill.

We support the intention of the proposed legislation: to provide a framework to realise the value of certain data for the benefit of individuals and society; to promote competition and innovation for the long-term benefit of customers; and to facilitate secure and efficient data services.

This submission is intended to support the detailed submissions of our member organisations and individual members. As such, we have highlighted some key concerns rather than address all aspects of the Bill.

ABOUT NZTECH

NZTech is a member-funded, not-for-profit, non-governmental organisation that has multiple tech communities, associations and national initiatives that help create connections, promote tech and enhance New Zealand's ability to benefit from technology.

We bring together the NZ Tech Alliance and represent 24 tech associations such as AgriTechNZ, BioTechNZ, FinTechNZ, the AI Forum, the NZ Game Developers Association, Digital Health, Digital Identity NZ and more. We have more than 2,500 members who together employ 10 percent of the New Zealand workforce, comprising startups, local tech firms, multinationals, education providers, financial institutions, major corporations, network providers, hi-tech manufacturers and government agencies that work closely with the tech ecosystem.

COMMENTS

As stated in our submission on last year's Exposure Draft, we support the principle of very focused intervention by regulators, and continued governance of such matters as consent settings, accreditation, and ethical use of data, by existing laws that include the Privacy Act. If there are security concerns with the use of data, we believe these should continue to be addressed through the Privacy Act.

Storage and Security Requirements

The Privacy Act will apply to any personal information held by data holders regardless of the provision of Clause 53 ["CPD Storage and Security Requirements"]. Given the Bill is not intended to change broader legal settings regarding collection, storage or security of personal information, this provision may therefore cause confusion as to MBIE's and the government's intent.

We therefore recommend that Clause 53 be removed.

Derived Data

Clause 33 ["Accredited requestors must comply with requirements for dealing with data and making information available"] and Clause 34 ["Requirements for accredited requestors in regulations or standards"] introduce measures to deal with derived data that were not part of the Exposure Draft.

These clauses imply that limitations may be placed on customers' ability to share their data created by data requestors. We support the view of many of our members – particularly in the financial sector – that once an accredited data recipient has received a customer's permission to access their designated data from a data holder, that data should no longer be subject to the CPD regime. Customers should be able to on-send their derived data, with these subsequent data transmissions continuing to be covered by the Privacy Act.

Small businesses especially would suffer from the resulting legal and practical complexities created by the derived data proposals.

We also note the experience of Australia's CDR regime, which has been hampered by similar derived data measures, facing substantially higher than predicted implementation and operational costs, and struggling with low participation rates.

We believe that the scope and remit of the proposed legislative regime should end at the point of transfer of the customer's data from a data holder to an accredited data requester with the consent of the customer.

We therefore recommend that the Bill exclude any reference to derived data.

Electronic Systems

Clause 27 ["Data holder must operate electronic system for providing regulated data services"] is unnecessary. It assumes that a separate electronic system is required – which may not be the case – and would apply to data holders who already have sufficient electronic systems in place. We note that the government offers services through non-digital channels.

We recommend that clauses related to electronic systems be deleted. Data holders should be able to create their own processes to meet their obligations under the Bill.

Ministerial Judgement

Under Clause 98 ["Minister must have regard to certain matters"] the Minister can designate new sectors as part of the CDR regime. As drafted, the criteria for this decision is unclear.

We recommend more information be provided, making it clear what factors the Minister can consider in designating new sectors.

CONCLUSION

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', with a stylized flourish at the end.

Graeme Muller

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