



FINANCIAL SERVICES FEDERATION

24 July 2023

Consumer Policy Team
Building, Resources and Markets
Ministry of Business, Innovation and Employment
PO Box 1473
Wellington 6140

By email to: consumerdataright@mbie.govt.nz

Dear Madam/Sir,

Re: Customer and Product Data Bill and Discussion Document

The Financial Services Federation (“FSF”) is grateful to the Ministry of Business, Innovation and Employment (“MBIE”) for the opportunity to respond on behalf of our members to the consultation paper and draft legislation concerning the Consumer Data Right (“the Consultation”).

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 over 90 members and affiliates providing these products to more than 1.7 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.

Introductory Comments

The FSF agrees with the purpose of the Bill, in particular we believe this will encourage necessary innovation and competition in the market in the financial services sector. The FSF has advocated for the establishment of a consumer data right (CDR) for many years and overall, we support the Customer and Product Data Bill. We believe that the Bill is a clear base from which to start the process. However, as further discussed below, we would prefer to ensure this is done correctly as opposed to quickly.

It is also worth noting that while the legislation itself is a blank slate the most important details will come in with the regulations and standards as more sectors are brought under the CDR. We expect that there will be further comprehensive consultation prior to any standards or regulations being introduced.

The Timeframe of the Consultation

The FSF feels it is necessary to express concern over the very tight timeframe in which this important piece of legislation has been released for consultation. This consultation only ran for four weeks and this is a very short amount of time for effective consultation, particularly as part of the consultation period was in the school holidays. The unreasonably short timeframe undermined many of the positive aspects of the Bill.

MBIE's Role as Regulator

Another concern we have is in regard to the Ministry of Business, Innovation and Employment (MBIE) taking on the role of regulator in this regime. Traditionally MBIE has been the policy shop as opposed to a Regulator and, in the FSF's view, it would be a lot clearer to keep these roles distinct as opposed to allowing them to merge together.

It does bring up the question of why the Office of the Privacy Commissioner (OPC) was not made regulator of the CDR due to its necessary overlap with the Privacy Act. We submit that it would make more sense for the OPC to be the only regulator under the CDR.

Consultation Questions

1. *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?*

The FSF is pleased that there has been consideration of how the Privacy Act will interact with the CDR. However as mentioned above we think a more logical option would be to have the OPC as the regulator as opposed to MBIE.

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

To avoid customers getting consent fatigue we submit that if there is to be a maximum duration for customer consent then it should be in line with Australia's regime which is now 12 months.

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

No comment

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

We agree with the proposed conditions outlined in the Consultation.

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

No comment

6. *What are your views on 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?*

The FSF wholeheartedly supports BusinessNZ's answer to this question. They assert that safeguards around consent should not create an inconvenient or burdensome customer experience and that compliance measures must be reasonable and proportionate.

We also support BusinessNZ's recommendation that "Ending consent must not be harder than agreeing to consent" be changed to "Ending consent must not be significantly harder than agreeing to consent" for the reasons outlined in their submission.

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

The FSF agrees with BusinessNZ's statement that "the active engagement and collaboration of the business community in setting standards is essential for developing robust and practical measures". In line with this we also support BusinessNZ's recommendation that clause 88 of the exposure draft is amended to include a specific mention of the need to consult with relevant representatives of the business community.

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

No comment, as mentioned above we think that OPC would be a more sensible regulator of the CDR due to the overlap between the CDR and the Privacy Act.

9. *From the perspective of other data holding sectors: which elements of the Payments NZ API Centre Standards are suitable for use in other sectors, and which would require significant modification?*

No comment.

10. *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?*

No comment.

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

The FSF agrees with MBIE's analysis in the Consultation that a class of accreditation for intermediaries would be irrelevant in the New Zealand context. This is because unlike Australia, the New Zealand regime allows accredited requestors to share with other entities as long as the customer consents.

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

No comment.

13. *What accreditation criteria are most important to support the participation of Maori in the regime?*

No comment.

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

The FSF believes that it will be incredibly important to ensure that the process for getting accredited is not overly onerous to ensure uptake. Australia's uptake of their CDR scheme has been slow due in part to the process data requestors and holders must go through to get accredited.

15. *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/ Maori*
- *Any specific aspirations for use and handling of customer and product data within iwi/ hapu/ Maori organisations, Te Whata etc, which could benefit from the draft law.*

No comment.

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

The FSF also supports BusinessNZ's submission on this point. In particular that MBIE must consider the CDR regime in light of small businesses and have regard to the effects of additional compliance and regulatory burden on them and this is particularly so in areas such as financial services which are already heavily regulated.

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

No comment.

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

No comment.

19. *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?*

No comment.

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

No comment.

21. *What is your feedback on the purpose statement?*

We believe this is reasonable.

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

We believe this is reasonable.

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

No comment.

24. *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?*

No comment.

25. *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?*

No comment.

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

No comment.

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

No Comment.

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

The FSF submits that these listed matters are an excellent starting point, but the Minister should also be required to consider the outcome of any consultation that has been had with the affected sector prior to recommending designation.

29. *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?*

No comment

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

No comment.

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

No comment.

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

On the face of it this period is suitable but as BusinessNZ discussed in their submission, it is important that MBIE considers the other potential reporting requirements that could fall at the same time. An excellent example of this is the Business Payments Practices Scheme for which the reporting periods are yet to be announced.

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

No comment.

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

The FSF supports the proposal to cap customer redress in cases of breach to allow for commercial certainty, particularly in cases where a smaller entity is responsible for the breach. There should be the ability to apply a proportionate approach in regard to both what caused the breach (internal error as opposed to malicious activity) and the size of the entity/expected impact.

35. *In cases where a data holder or requestor is not already required to be a 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?*

No comment.

Please do not hesitate to reach out if you wish for us to speak further on any of the points made in this submission.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Katie Rawlinson', with a long horizontal flourish extending to the right.

Katie Rawlinson
Legal and Policy Manager
Financial Services Federation

Appendix A



FSF Membership List as at July 2023

Non-Bank Deposit Takers, Specialist Housing/Property Lenders, Credit-related Insurance Providers	Vehicle Lenders	Finance Companies/ Diversified Lenders	Finance Companies/ Diversified Lenders, Insurance Premium Funders	Affiliate Members	Affiliate Members contd., and Leasing Providers
<p>XCEDA (B)</p> <p>Finance Direct Limited ➤ Lending Crowd</p> <p>Gold Band Finance ➤ Loan Co</p> <p>Mutual Credit Finance</p> <p><u>Credit Unions/Building Societies</u></p> <p>First Credit Union</p> <p>Nelson Building Society</p> <p>Police and Families Credit Union</p> <p><u>Specialist Housing/Property Lenders</u></p> <p>Basecorp Finance Limited</p> <p>First Mortgage Managers Ltd.</p> <p>Liberty Financial Limited</p> <p>Pepper NZ Limited</p> <p>Resimac NZ Limited</p> <p><u>Credit-related Insurance Providers</u></p> <p>Protecta Insurance</p> <p>Provident Insurance Corporation Ltd</p>	<p>AA Finance Limited</p> <p>Auto Finance Direct Limited</p> <p>BMW Financial Services ➤ Mini ➤ Alpera Financial Services</p> <p>Community Financial Services</p> <p>Go Car Finance Ltd</p> <p>Honda Financial Services</p> <p>Kubota New Zealand Ltd</p> <p>Mercedes-Benz Financial</p> <p>Motor Trade Finance</p> <p>Nissan Financial Services NZ Ltd ➤ Mitsubishi Motors Financial Services ➤ Skyline Car Finance</p> <p>Onyx Finance Limited</p> <p>Scania Finance NZ Limited</p> <p>Toyota Finance NZ ➤ Mazda Finance</p> <p>Yamaha Motor Finance</p>	<p>Avanti Finance ➤ Branded Financial</p> <p>Basalt Group</p> <p>Blackbird Finance</p> <p>Caterpillar Financial Services NZ Ltd</p> <p>Centracorp Finance 2000</p> <p>Finance Now ➤ The Warehouse Financial Services ➤ SBS Insurance</p> <p>Future Finance</p> <p>Geneva Finance</p> <p>Harmony</p> <p>Humm Group</p> <p>Instant Finance ➤ Fair City ➤ My Finance</p> <p>John Deere Financial</p> <p>Latitude Financial</p> <p>Lifestyle Money NZ Ltd</p> <p>Limelight Group</p> <p>Mainland Finance Limited</p> <p>Metro Finance</p> <p>Nectar NZ Limited</p>	<p>NZ Finance Ltd</p> <p>Personal Loan Corporation</p> <p>Pioneer Finance</p> <p>Prospra NZ Ltd</p> <p>Smith's City Finance Ltd</p> <p>Speirs Finance Group(L &F) ➤ Speirs Finance ➤ Speirs Corporate & Leasing ➤ Yoogo Fleet</p> <p>Turners Automotive Group ➤ Autosure ➤ East Coast Credit ➤ Oxford Finance</p> <p>UDC Finance Limited</p> <p>Yes Finance Limited</p> <p><u>Insurance Premium Funders</u></p> <p>Elantis Premium Funding NZ Ltd</p> <p>Financial Synergy Limited</p> <p>Hunter Premium Funding</p> <p>IQumulate Premium Funding</p> <p>Rothbury Instalment Services</p>	<p>Buddle Findlay</p> <p>Chapman Tripp</p> <p>Credisense Ltd</p> <p>Credit Sense Pty Ltd</p> <p>Experian</p> <p>Experieco Limited</p> <p>EY</p> <p>FinTech NZ</p> <p>Finzsoft</p> <p>Happy Prime Consultancy Limited</p> <p>KPMG</p> <p>Landscape Ltd</p> <p>Loansmart Ltd</p> <p>LexisNexis</p> <p>Motor Trade Association</p> <p>One Partner Limited</p> <p>PWC</p> <p>Sense Partners</p> <p>Simpson Western <u>Credit Reporting, Debt Collection Agencies.</u></p> <p>Baycorp (NZ)</p>	<p>Centrix</p> <p>Credit Corp</p> <p>Debt Managers</p> <p>Debtworks (NZ) Limited</p> <p>Equipax</p> <p>Gravity Credit Management Limited</p> <p>IDCARE Ltd</p> <p>Illion</p> <p>Quadrant Group (NZ) Limited</p> <p><u>Leasing Providers</u></p> <p>Custom Fleet</p> <p>Euro Rate Leasing Limited</p> <p>Fleet Partners NZ Ltd</p> <p>ORIX New Zealand</p> <p>SG Fleet</p> <p>Total 94 members</p>



FINANCIAL SERVICES FEDERATION (FSF)

THE NON-BANK FINANCE INDUSTRY SECTOR - 2022



48%



of personal consumer loans are financed by the **non-bank sector** represented by FSF members.

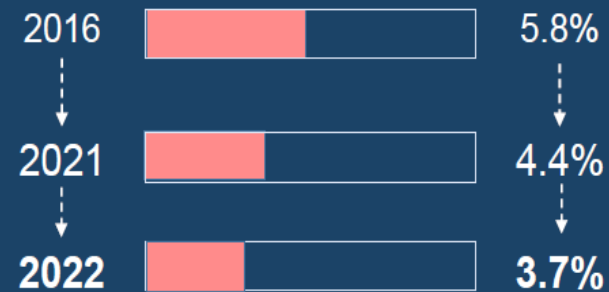
Setting industry standards for responsible lending, promoting compliance and consumer awareness.

Percent of Loan Requests Approved

46%



Percent of Loan Book in Arrears



KEY FACTS: THE NON-BANK FINANCE INDUSTRY SECTOR

FSF Members (as at 28 Feb 2022)

Number of Members	57
Number of Employees	3,561
Applications Processed	1,085,739
Loan Requests Approved	495,434
Percent of Loan Book in Arrears	3.7%

Bank Sector (as at 28 Feb 2022)

Value of Mortgage Loans	\$329B
Value of Consumer Loans	\$7.6B
Value of Business Loans	\$118B

Non-Bank Sector Share (as at 28 Feb 2022)

% of Total Mortgage Loans	0.4%
% of Total Consumer Loans	47.7%
% of Total Business Loans	5.9%

Insurance Credit Related (as at 28 Feb 2022)

Number of Employees	237
Number of Policies	311,409
Gross Claims (annual)	\$27.2M
Days to Approved Claim	20 days

Consumer Loans (as at 28 Feb 2022)

Total Value of Loans	\$8.1B
Number of Customers	1,699,683
Number of Loans	1,584,984
Monthly Instalments:	\$330M

Average Value of Loan:

Mortgage	\$171,932
Vehicle Loan	\$12,393
Unsecured	\$2,467
Other Security	\$5,754
Lease Finance	\$2,804

Average Monthly Instalment:

Mortgage	\$257
Vehicle Loan	\$463
Unsecured	\$144
Other Security	\$302
Lease Finance	\$241

Business Loans (as at 28 Feb 2022)

Total Value of Loans	\$7.3B
Number of Customers	136,830
Number of Loans	264,827
Monthly Instalments:	\$590M

Average Value of Loan:

Mortgage	\$443,784
Vehicle Loan	\$28,869
Unsecured	\$7,443
Other Security	\$32,374
Lease Finance	\$24,921

Average Monthly Instalment:

Mortgage	\$2,281
Vehicle Loan	\$1,064
Unsecured	\$799
Other Security	\$11,044
Lease Finance	\$939