

5 September 2024

Select Committee: Economic Development, Science, and Innovation Committee

Bill: Customer and Product Data Bill

Submitter: Utilities Disputes Limited

Introduction

Utilities Disputes Limited Tautohetohe Whaipanga (UDL) welcomes the opportunity to make a submission on the Customer and Product Data Bill. The key points of the submission are:

- I. UDL supports the purposes of the Customer and Product Data Bill (CPD Bill).
- II. For the consumer data right to succeed, the data holder will need to supply quality data that the customer can understand. This may present some challenges for electricity retailers, and any other organisations in the electricity sector that may be captured by the CPD Bill.
- III. UDL is available to act as a dispute resolution provider for the consumer data right.
- IV. The role of accredited requestors has the possibility to grow in importance as more industries are included within the consumer data right. The importance of a dispute resolution service for such bodies may also increase as these bodies develop.
- V. UDL affirms the importance of regulations for joint account holders, and vulnerable persons.

UDL also notes it appears the intention is for the regulations to do much of the work in the CPD Bill. Such regulations will require further consultation to ensure each new industry can comply with its consumer data right obligations.

UDL is available to appear before Economic Development, Science, and Innovation Committee and to speak to these submissions.

UDL

UDL is an independent, not-for-profit organisation that resolves complaints between utilities companies and their customers. All UDL dispute resolution schemes are free to the consumer.

The Electricity and Gas Complaints Scheme is our largest scheme.¹ Under this scheme last reporting year we processed 8,136 queries about a range of matters connected with electricity. In addition, we processed 6,694 complaints.

UDL also operates the Broadband Shared Property Access Disputes Scheme, mandated by the Telecommunications Act 2001 and a number of voluntary schemes for water and telecommunications. Our staff are trained in the needs of each scheme, the principles of dispute resolution, and outside specialist expertise is sought as needed. While we resolve most complaints quickly and efficiently by applying alternative dispute resolution, UDL's Commissioner can also issue recommendations and binding determinations.

We have good relationships with industry stakeholders, especially their complaints teams. This enables emergency situations to be considered quickly, misunderstandings to be corrected early – so that complaints may be resolved without the need of a long process.

1. General Support for the New Data Framework

UDL, within its role of offering dispute resolution services, sees opportunities in the proposed data framework.

Consumer Knowledge

The utilities sector is complex, and consumers are not always aware of plans suited to their needs. Consumers in hardship, who might most benefit from changing their plan, may also face added obstacles preventing them from switching providers in terms of access, and knowledge. The CDP Bill may help these consumers make informed choices.

As an example, in the electricity sector it is recognised that New Zealand has low switching rates of about 6% or 10,000 switches per month (excluding move in switches).² Yet there are savings to be made. Consumer NZ notes that consumers who switch retailers can make savings of \$400 per year.³

¹ See Electricity Industry Act 2010, s 95.

² See EA, *Supporting Consumers to Compare and Switch Electricity Plans*, 8 July 2024, 2.12 & Electricity Market Information Website, *Switching Trends – Trader Switch (24 months)*, https://www.emi.ea.govt.nz/Retail/Reports/R_SwT_C?DateFrom=20220801&DateTo=20240731&SwitchTypecode=TR&ShowAs=Rate12M&rsdr=L24M&si=v|3

³ See Consumer, "As Power Bills Surge It Pays to Change," 8 April 2024, & Consumer, "Powerswitch Savings Increase to an Average \$409 per Year," 8 February 2024.

Other studies have also shown the low rates in awareness by consumers of their billing information.⁴ Yet such information when analysed often shows the customer could achieve lower charges by being on a different plan.

While it appears the CPD Bill is primarily aimed at electricity retailers, it should be noted some electricity distributors and Metering Equipment Providers (MEPs) are likely to hold data captured by the bill. Solar and distributed energy operators may also be captured.

Spending Across the Household

As the consumer data right develops it is also likely to lead to savings across the total amount of household spending. For with more industries falling under the right, the greater ability of new businesses to recommend savings right across the utilities sector both in terms of bundling and unbundling products.

An Opportunity for Complaint Resolution

The data right may also assist the resolving of complaints. Data is crucial to resolving technical complaints, and a provider may consider becoming an accredited requestor to access customer data quickly.

Unlocking all types of Data

Understandably the focus on the CPD Bill is on hard data sets: product, and consumer data (cls 8-9). In time as accredited requestors mature soft data sets, which might include matters such as accessibility, and customer service indicators can also be incorporated in the consumer data right. This type of data is important for some consumers, in making an informed choice. For example, for some customers having phone access to a retailer is important.

Some of this work, may also be done by the different accredited requestors whose business models might incorporate CPD information and information from outside sources.

2. Understandable Data of Quality

In the Australian review of their data right, the importance of data holders providing understandable, and quality data was emphasised.⁵ Such data issues were also seen as a reason for not providing such information direct to the consumer.⁶ A reflection on the Australian experience of the consumer data right also noted that complete data sets were not always provided.⁷

⁴ See discussion, Consumer NZ, *Submission On 'Options To Support Consumer Plan Comparison And Switching' Consultation Paper*, 8 March 2024, 2, 4.

⁵ See E Kelly (Statutory Reviewer), *Statutory Review of the Consumer Data Right*, 2022, 18-19.

⁶ *Ibid.*, 25-27.

⁷ *Ibid.*, 30.

UDL's experience affirms the difficulty of obtaining understandable data sets, this is evident in terms of electricity consumption. The importance of which has been seen as a gateway to consumer choice.⁸ Data is commonly provided in complex spreadsheets, which is difficult to decipher, even for experienced staff. Retailers may provide an accompanying explanation, but this also may lack clarity. A similar experience is seen in billing practices, and has led to the Consumer Advocacy Council suggesting an industry model invoice.⁹ Consumer NZ has also noted some issues in obtaining quality data in terms of consumer plans and for the operation of its website Powerswitch.¹⁰

CPD Bill Commentary

The CPD Bill relies on regulatory instruments to address the requirements of each industry. This will be important in relation to the form and quality of data supplied to the customer (see cl 32(1) c-e). This appears key as the CPD Bill allows for individual customer requests. Therefore, the customer's ability to act on information will largely rest on their ability to understand the information supplied (see cls 8, 14).

The Australian reflection on their data right also highlights the importance of getting issues such as data quality and scope clarified at the beginning of implementation (see cls. 97-100).¹¹ It will require knowledge of a sector's data practices and may require the particular sector to amend their practices. Some participants may find it easier than others to set up the mandated delivery system for passing on information (see cls 27-28).

3. Dispute Resolution Service – Industry Participants

UDL determines electricity complaints by deciding what is fair and reasonable. Under this standard, the UDL Commissioner must consider relevant legal rules or authorities and industry standards and guidelines.¹² However, the consumer focus of the fair and reasonable standard allows the Commissioner to depart from any legal rule for a good reason but must clearly state their reasons for doing so.¹³ The courts have highlighted the flexibility of such dispute resolution schemes and the importance of them for efficiently resolving consumer complaints.¹⁴

⁸ Independent Panel, *Electricity Price Review: Final Report*, (21 My 2019), 34. See also Electricity Participation Code 2010, cl 11.32A for the requirement to provide yearly consumption data on request; and EA, Code Amendment Omnibus Four: September 2024, 3 September 2024, 8-14.

⁹ Consumer Advocacy Council, "Developing a Model Electricity Bill," <https://www.cac.org.nz/our-work/research/electricity-billing/model-electricity-bill>

¹⁰ See discussion, *Submission On 'Options To Support Consumer Plan Comparison And Switching' Consultation Paper*, 15-16.

¹¹ See general discussion, *Statutory Review of the Consumer Data Right*, 21.

¹² See *Energy Complaints Scheme Rules*, (1 April 2019), general rule 24.

¹³ See *Contact v Moreau*, CIV 2017-485-962, [2018] NZHC 2884, para 121.

¹⁴ See the discussion, *ibid.*, paras 107-121.

CPD Bill Commentary

UDL is ready to take up a role as a dispute resolution provider when electricity is included within the scope of the consumer data right (see clause 50).¹⁵ The Energy Complaints Scheme already considers complaints about the goods or services provided by electricity retailers and lines companies.¹⁶ The scheme is free to consumers. Yearly fees are charged according to the size of the provider's market share, and then additional fees are charged as a particular complaint moves through the scheme.¹⁷ Under the Energy Scheme rules there is no appeal of a final determination, but legal remedies such as judicial review are available. Decisions of the UDL Commissioner can be enforced by the District Court.¹⁸

The Energy Complaints Scheme's fair and reasonable standard appears suited to any consumer issues that may arise involving the consumer data right.

UDL notes existing dispute resolution schemes, if approved, will have the ability to amend their schemes to consider the scope of a complaint about the consumer data right (see cl 51). These issues can be considered when the scope of the data right is defined for the industry, however some changes may be required to expressly include data right actions (see cls 6 and 97-100).

UDL, under the current Energy Complaints Scheme, is used to managing relationships with the Office of the Privacy Commissioner, the Commerce Commission (as the electricity regulator), to ensure complaints are heard by the appropriate body. Therefore, UDL would be comfortable managing those relationships as they apply within the CPD Bill.¹⁹

Under the current CPD Bill, it is not clear that the Office of the Privacy Commissioner would be able to consider complaints by businesses, the office being concerned with individuals' personal information (see cls. 24 and 52).

¹⁵ UDL notes the discussion document from MBIE concerning the electricity industry falling under the consumer data right: MBIE, *Exploring a Consumer Data Right for the Electricity Sector*, August 24.

¹⁶ See *Energy Complaints Scheme Rules*, general rule 14.

¹⁷ See *Energy Complaints Scheme Rules*, Appendix One.

¹⁸ See *Electricity Industry Act 2010*, s 97.

¹⁹ Under the current CAD Bill many complaints would fall to be decided under the privacy principles as they apply (see cls 52-53), there is also an avenue for compensatory orders by the courts and Dispute Tribunal (see cls 2, 72(2), 80). The Chief Executive also has wide powers including the ability to apply for pecuniary orders (see cls 73—76). Defences are set out in cls 91-92.

4. Dispute Resolution Scheme - Accredited Requestors

The realisation of the purposes of the CPD Bill (see cl 3(1)) includes the development of new business products: “The aim is to help innovators in our economy create new products and services and increase competition. This in turn will benefit customers by leading to reduced prices, improved product offerings, and greater productivity.”²⁰

Australia, reflecting on its scheme, paints this picture of the increased development of consumer data right services:

“Consumers will be able to safely use online services or apps on their mobile phone to:

- notify them which of their bills are due, arrange for bills to be paid at the best times, and move their money between their accounts to minimise interest costs and fees
- advise them in real time which services and plans are best for them, switch them onto those services and plans, and provide reports on the money saved, and
- give them an up-to-date dashboard showing who they are sharing data with, how it is being used, and allow them to change those things, or make the sharing stop.

By making data work for them, the future CDR should reduce the time consumers take on their ‘life admin’ so they can spend more time on what they enjoy and what really matters.”²¹

The accredited requestors will have then an important role in creating business products, through their requesting of customer data, and the designated actions they request on behalf of customers (see cls 15 and 19). In the future the importance of such accredited requestors will likely increase as new industries are included within the scope of the consumer data right.

CPD Bill Commentary

With the new measures in the CPD Bill, and the possibility of accredited requestors growing in significance a mandatory dispute resolution service appears required (see cls 50-51). It is likely that such bodies in their daily operations will give rise to consumer issues beyond privacy.²² It will be important that such a dispute resolution scheme has certainty in terms of its jurisdiction and the enforcement of its decisions. The issue of levies for dispute resolution services may also require an express inclusion in the CPD Bill (see cl 129).

UDL has completed some preliminary work on accredited requestors joining the Energy Complaints Scheme. This work arose arising from the development of the Energy Transfer Hub. The Energy Transfer Hub is a project of the EA and allows bodies who are not retailers

²⁰ MBIE, *Fact Sheet – Unlocking Value from Our Customer Data* (2023).

²¹ Inquiry (Treasury), *The Inquiry into the Future Directions for the Consumer Data Right*, (October 2020), v-vi.

²² But see MBIE, *Supplementary Regulatory Impact Statement*, 4 May 2022, 5-7.

and lines companies to request data for consumer and business purposes.²³ These bodies, in terms of their access to the registry, do not fall under the Energy Complaints Scheme.

In terms of changes to the Energy Complaints Scheme, some significant changes will be required. It may be easier to compile a new set of rules for accredited requestors. These rules could be an appendix to the Energy Scheme rules. However, this would require the full powers set out in cl 51 of the CPD Bill, concerning disapplying any restrictions in legislation. Particularly as the scheme is set up to consider complaints against distributors and retailers.²⁴

In time accredited requestors may also require their own dispute resolute scheme rather than falling under the oversight of a number of schemes. This may be required when accredited requestors begin to provide a whole-of-life assessment of businesses and individual customers across a number of utilities (see cl 102).

UDL, because of the importance accredited requestors, and the information that they may hold, affirms the importance of regulations setting out their manner of contacting consumers, suitability, and financial arrangements with data holders (if any).

5. At Risk Customers

UDL notes and supports the need for regulations for joint customers (see cl 21). Joint accounts can give rise to difficulties where a relationship ends, and a partner takes action on an electricity account for a residence occupied by their former partner (and in some cases children). Electricity retailers often allow authorised persons who are not account holders or joint account holders, to have access to account information and this class of persons may need to be considered (see cl 22).

UDL also notes a data holder may refuse to action a request for reasons such as harassment or where there is a serious threat to the life, health, and safety of an individual (see cls 16, 20). As the system is electronic, a data holder may have limited information on such matters and/or these issues may have not been raised previously within the consumer relationship.

UDL therefore recommends that the CPD Bill allow for regulations so that a residential consumer, who may or may not be an account holder, has: i) an avenue to make the data holder aware of their personal circumstances in relation to these issues, and ii) for such information to be recorded so it is easily accessible to the data-holder when making consumer right decisions (see cl 45). UDL is also unclear at this stage whether the reason for withholding information or refusing to perform an action due to a debt may need further reflection in relation to vulnerable and medically dependant consumers (see cls 16, 20).

²³ See Electricity Authority, "Access to Consumer Data," <https://www.ea.govt.nz/industry/consumer-data/> List of requestors is publicly available on the website.

²⁴ See EIA 2010 s. 95.

UDL thanks the Economic Development, Science, and Innovation Committee for the opportunity to submit on the Customer and Product Data Bill and is available to further assist as needed.

Yours sincerely

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