

To energyuse@mbie.govt.nz

10 October 2024

Release of information

Please let us know if you would like any part of your submission to be kept confidential.

I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated below** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

I would like my submission (or identified parts of my submission) to be kept confidential because
[\[Insert text\]](#)

[To check the boxes above: Double click on box, then select 'checked']

Personal details and privacy	
1.	I have read and understand the Privacy Statement above. Please tick Yes if you wish to continue* [To check the boxes below Double click on box, then select 'checked'] <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
2.	What is your name? * Neil Mallon Commissioner - Utilities Disputes Limited
3.	Do you consent to your name being published with your submission? * <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
4.	What is your email address? Please note this will not be published with your submission.* paulb@udl.co.nz
5.	What is your contact number? Please note this will not be published with your submission.* 04 901 0002
6.	Are you submitting as an individual or on behalf of an organisation? * <input type="checkbox"/> Individual (skip to 8) <input checked="" type="checkbox"/> Organisation
7.	If on behalf of an organisation, we require confirmation you are authorised to make a submission on behalf of this organisation. <input checked="" type="checkbox"/> Yes, I am authorised to make a submission on behalf of my organisation
8.	If you are submitting on behalf of an organisation, what is your organisation's name? Please note this will be published with your submission. Utilities Disputes Limited

9.

If you are submitting on behalf of an organisation, which of these best describes your organisation? Please tick one.

- Energy retailer
- Energy distributor
- Energy generator
- Metering services organisation
- Provider of energy services
- Energy regulator
- Consumer organisation
- Registered charity
- Non-governmental organisation
- Local government
- Central government
- Iwi, hapū or Māori organisation
- Academic/Research
- Other. Please describe: Utilities Disputes Limited operates the approved dispute resolution scheme for electricity (see s 95 of the Electricity Industry Act 2010).

Responses to questions

The Energy Use Policy team welcomes your feedback on as many sections as you wish to respond to; please note you do not need to answer every question.

UDL operates the approved Energy Complaints Scheme under s 95 of the Electricity Industry Act 2010 (EIA 2010). The purpose of the Energy Complaints Scheme is to ensure that when consumers cannot resolve a complaint with their retailer and/or distributor there is an independent body to help them resolve the complaint.¹ UDL considered 8,136 consumer queries, and 6,694 consumer complaints about electricity in the last reporting year.

The Energy Complaints Scheme is free to consumers. UDL staff are trained in the principles of dispute resolution, and outside specialist expertise is sought as needed.

UDL also operates the Broadband Shared Property Access Disputes Scheme, mandated by the Telecommunications Act 2001. This is in addition to voluntary schemes for water and telecommunications.

While the vast complaints are resolved by agreement, UDL's Commissioner has the ability to issue a decision that is binding on the utility provider.

This response should also be read in conjunction with UDL's submission to the Economic Development, Science and Innovation Committee on the proposed data right: UDL, Customer and Product Data Bill (CPD Bill), 5 September 2024 (*CPD Submissions*).

UDL appreciates the opportunity to comment on the proposal and if any further assistance is required at the first instance please contact, Paul Byers, Legal and Policy Officer, paulb@udl.co.nz

Status quo and problem definition

1.

What are your experiences of accessing consumer and product data for electricity under the status quo?

UDL regularly requests data from electricity retailers and distributors. Most often this comes in Excel spread sheets and in what are known heat maps. The purpose of this information is to identify unusual usage, and billing errors.

To understand this material requires in depth analysis. Often the spreadsheets are reviewed more than once, and findings are rechecked. This material is not user friendly and arrives with a cursory explanation (if any), which may or may not be accurate. Most consumers would not be able to understand such information without outside assistance.

¹ See EIA 2010, sched 4, cl 1.

	<p>This is of concern considering the CPD Bill allows for individual customer requests (see cls 8, 14). The standard of information supplied will have to significantly improve, if such consumption information is to help the consumer make an informed choice.</p> <p>The present review by the Electricity Authority (EA) of the Electricity Industry Participant Code 2010 (Code), cl 11.32A-11.32B, allows a consumer to request their consumption data. This review could be an opportunity to further progress these issues: https://www.ea.govt.nz/projects/all/code-amendment-omnibus/consultation/code-amendment-omnibus-4/</p>
<p>2. 22.</p>	<p>Do you agree with our summation of the status quo and problem definition? Is anything missing or incorrect in your view? And please provide any evidence you may have to support your views.</p> <p>How do you believe a CDR and the Code could/could not work together?</p>
	<p>UDL will be making submissions to the EA about the proposed amendments to Code 11.32A-11.32B. The proposed amendments shorten the time for responding to a request, limit fees, and clarify the meaning of consumption. UDL will invite the EA to go further in its amendments to further clarify the format of information provided and mandating a plain language explanation of the data.</p> <p>These further changes would also align with the EA’s statutory obligation to adopt the view of the consumer in considering Code issues (see Electricity Industry Act 2010, s 32(1)(d).</p> <p>Such changes will also assist the EA in further preparing retailers for the introduction of the consumer data right (CDR). UDL sees the Code and CDR working in tandem, and changes to the Code may help prepare the industry for the CDR.</p> <p>UDL supports <i>MBIE’s Summary</i>,² although notes the complexity of the electricity sector with a number of actors such as distributors, retailers, meter equipment providers, and secondary retailers who are likely to lack the capability to respond in the same way as retailers. Customers also have various arrangements for electricity supply which can present challenges in terms of joint accounts, and authority to act on an account (see qs 13, 21).</p> <p>Overall, UDL views the CDR as an opportunity, that if rolled out in stages, will assist the consumer in finding the best products for their needs.</p>

² All references to *MBIE Summary* refer to: *MBIE Discussion Paper: Exploring a Consumer Data Right for the Electricity Sector* (August 2024).

3.

Do you think that regulatory options are necessary to unlock better access to customer and product data?

UDL sees the CDR as an opportunity which with advancements in technology has the capacity both to aid vulnerable consumers and produce savings for consumers. The overall vision of the data right is captured in this statement from an Australian review of their CDR:

“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.”³

To achieve this vision some regulation seems necessary:

- a) to both address and protect privacy but allow for an almost immediate process to access data;
- b) to highlight the provision of customer and business information is an expectation of industry practice;
- c) to provide some consumer safeguards and to ensure consumer information is protected and is used appropriately;
- d) that accredited requestors have the freedom to achieve the purposes of the CDR but also the necessary constraints to act appropriately;⁴ and
- e) to move the focus in the industry to consider providing all types of data, along with consumption data.

³ Inquiry (Treasury), *The Inquiry into the Future Directions for the Consumer Data Right*, (October 2020), v-vi.

⁴ Note the Australian review, perhaps surprisingly, uses the metaphors of new roads opening and swimming at the beach for the future possibilities of the CDR while noting that success requires some rules, and safeguards. See Inquiry (Treasury), *The Inquiry into the Future Directions for the Consumer Data Right*, vi-vii.

4.	What do you consider to be the likely outcomes for access to customer and product data in the absence of a CDR for electricity?
	The likely outcome is an uneven progression where some retailers will respond to technology more than others. There may be continued changes to the Code which mandate retailers provide further information to help the consumer gather information. However, the whole of sector shift, as envisaged by CDR, will likely take longer to achieve.
What a consumer data right for electricity could look like	
5. 10.	<p>Who else may be impacted by a designation of the electricity sector? Should particular groups or classes of entities be explicitly included or excluded from a potential designation?</p> <p>What factors should be considered when identifying who the best data holder is under a potential CDR regime? And how might contracting agreements affect the application of a CDR in regard to data holders? (e.g., contracts between metering equipment providers and retailers to share data).</p>
	<p>UDL notes the discussion in the <i>MBIE Summary</i> regarding Metering Equipment Providers (MEPs).⁵ We understand contracts between retailers and MEPs often only oblige data to be shared with the retailer. In some cases consumers may not be customers of the MEP, as most customers get their meter through their retailer, who has chosen a particular type for their customers.</p> <p>UDL's overall view, is that there should be a controlled roll out of the CDR. The first step could be to focus on larger retailers (and any others who wish to take part) and the provision of consumption data. Then as any issues are clarified the data right can be expanded.</p> <p>UDL adopts this approach noting the Australian recommendation that focusing on the scope of the data right in the initial stages is important.⁶ The uneven experience of the data right in the Australian banking sector, the first sector included in the Australian data right, also suggests that beginning with a broad data right may not be advisable.⁷</p>

⁵ See *MBIE Summary*, para 77.

⁶ See E Kelly (Statutory Reviewer), *Statutory Review of the Consumer Data Right*, 2022, 21.

⁷ See Australian Banking Association, *Consumer Data Right Strategic Review, July 2024*, 23. Other factors of concern highlighted were: there was limited engagement with industry and consumers on value of data sharing; no apparent cost/benefit analysis on operating changes and scope of data right; a large number of standards and obligations; and timelines were too compressed. See for list and explanation *ibid.*, 23-24.

	<p>UDL notes the <i>MBIE Summary</i>'s discussion of how the new data right may affect dispute resolution schemes. We address this separately at the end of this response.</p>
<p>6.</p>	<p>What customer data do you think is the most important? And what else (now or in the future) would be important? And why? What are the benefits from consumers having ready access to this data?</p>
	<p>UDL agrees with the <i>MBIE Summary</i> of the importance of the following information for consumers:</p> <p><i>“Customer data is at the core of a consumer data right and we consider taking a wide encompassing approach to what customer data could be designated would be appropriate. Applying the framework above, our initial thoughts on the customer data that could be designated are:</i></p> <p><i>a. customer-related data such as the name of current account holder, current plan they are on, meter type/configuration, installation control point (ICP), and address, and</i></p> <p><i>b. metered data i.e., consumption data in half hourly increments.”⁸</i></p> <p>Plan information is vital for any comparison and consumers may only have limited knowledge of the plan they have purchased.</p> <p>Consumers also regularly wish to identify their meter type. The meter type and configuration does affect the type of plan available to a consumer; and sometime can be relevant to a complaint.</p> <p>The importance of consumption data is highlighted in the <i>MBIE Summary</i> and will help the consumer choose between plans; identify irregular consumption, and also align their consumption with time periods where their plan enables them to get a cheaper rate.</p>
<p>7.</p>	<p>If access to customer data is designated for all consumers (residential, small business, large business and large consumers) what are the potential benefits, risks or costs associated with each type of customer? And why?</p>
	<p>UDL relies on the experience of other industry participants to assess this question. However, it notes the recent reflection of the Australian Banking Association on the difficulties of fulfilling the CDR's economic promise of cost-effective savings. The study suggests the following will require careful consideration: the scope of the data right; the type of standards set for information provision; and the timelines for implementation.⁹</p>

⁸ *MBIE Summary*, para 59.

⁹ See discussion *Consumer Data Right Strategic Review, July 2024*.

	<p>In terms of a structured electricity roll out of the CDR a focus on a portion of consumers, may be a beginning, and a case study to build upon (see above q5 & q10). However, UDL acknowledges any staged implementation will have to be economically viable.</p> <p>There will be some consumers such as those of secondary retailers who would appear not to be immediately ready to come under the CDR. Secondary retailers are bodies such as retirement villages, body corporates and lease holders (e.g. mall owners) who set the electricity for their lessees or members. However, that it is not to say these consumers would not benefit from a mechanism for obtaining clear information about their electricity. However, at this stage this responsibility may best lie with the EA.</p>
<p>8. 9.</p>	<p>What product data do you think is the most important? And what else (now or in the future) could be important? And why? What are the benefits from this data?</p> <p>Are there any other issues with product data we should be aware of? And why? Please provide examples.</p>
	<p>In terms of product data, the following are important (much like the <i>MBIE Summary</i> has identified):</p> <ol style="list-style-type: none"> 1. Rate for electricity and how and when it changes. 2. Length of term. 3. Class of consumer the product is for (business or consumer). 4. If the product is bundled and unbundled. 5. What happens if contract is broken. 6. What happens when term is completed. 7. Special conditions on product e.g. does it require a specific type of meter. 8. Requirement re payment (some retailers offer smooth pay facility) 9. Geographical range of product or other special conditions. 10. Service – is service by telephone or by internet. <p>The above is indicative only. Presentation of data will be important and such descriptions should be written in plain language.¹⁰</p> <p>In terms of new technologies such as solar, readily available data on these products in a clear format will assist consumers in making an informed choice. Indeed, mandating the format of such information may aid in the continuing</p>

¹⁰ Note for example there may be an analogy with the approach of the New Zealand Telecommunications Forum, which mandates an offer summary *Code for Broadband Product Disclosure Information*, 7 April 2022, cl 8, Appendix A.

	<p>maturation of these new industries as each takes its place in the electricity market.</p> <p>However, the way product data is described and how fees are set in such new technologies often differs from traditional retailing e.g. fees and savings in solar products are often set or calculated over a longer time than traditional products. Therefore, some work in this area will be required to ensure a consumer can make meaningful comparisons between traditional and new technologies.</p>
11.	<p>Do you agree with our initial framework for how to identify/designate data holders? Why or why not?</p>
	<p>UDL agrees with the framework (please also see answer to q5 & q10 above).</p> <p>However, in terms of access to data the initial focus should likely be retailers. Retailers are the first point of contact for the consumer, and most have: well developed policies; consumer product and complaints teams; and a number of contact points for the consumer. Retailers also have access to consumption data through MEP contracts.</p> <p>Focusing on the retailer initially would also align with the Consumer Guarantees Act 1993 (CGA) which places the guarantee for quality of supply with the retailer, although most supply issues lie with the distributor. However, the retailer was chosen legislatively due to their being the first point of contact for the consumer (see 7A, 46A of the CGA).</p>
12. 13. 15.	<p>What actions could be designated for electricity under a CDR? And why? What are the potential benefits from these? Please provide examples.</p> <p>What are your thoughts on the potential impacts of a designation on the interests of consumers? Are there any specific benefits that are likely to be enabled with designation? What is the likely scale of the benefits, and over what timeframe would they occur?</p> <p>What are your views on the nature and scale of costs/benefits? Who would these costs/benefits apply to and when?</p>
	<p>One of the first designated actions should be allowing an account to move to a different retailer to enjoy the benefit of a better plan. This single designated action would go some way to achieving the purposes of CPD Bill in terms of promoting competition and unlocking the value of customer data (cl 3).</p>

We also note studies that show that consumer knowledge of the correct plan does not always lead to a change of plan.¹¹ Therefore there appears an important role for accredited requestors who with the proper authorisation, may change a plan for a consumer.

However, any authorisation would have to clearly set out its basis as the bundling of utilities such as fibre with electricity will likely make this analysis more complicated. Yet it may be a matter of data holder alerting a customer to a range of options, and the customer then renewing their authorisation, when they choose an option.

UDL agrees with the observations of the *MBIE Summary* that the consumer data right may also help in energy management, and budgeting advice. When the data right comes of age there is the possibility of accredited requestors performing a range of services across utilities. And utilities companies creating a range of products with grouped utilities. However, in this preliminary stage of inquiry it is difficult to predict how the CDR will develop in New Zealand/Aotearoa.

Potential benefits and risks

13. 21.

Do you have any comments on the specific interests of different types of consumers, such as, residential, business, industrial, rural, Māori, or other groups of consumers?

Are there any particular considerations for electricity that should be taken into account for a consumer consenting process?

In our *CPD Submissions*, we highlighted these concerns:

- a) That we support the CPD Bills consideration of joint accounts (cl 21) as these 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).
- b) That the issue of authorised persons may need further reflection as these persons are not account holders or joint account holders, but often have access to account information and assist account holders.
- c) That we support the clause enabling a data holder to refuse an action request for reasons such as harassment or where there is a serious threat to the life safety and health (see cls 16, 20). However, since the

¹¹ See Energy, Efficiency & Conservation Authority, *Understanding Consumers' Knowledge, Uptake and Use of Off-peak Electricity Plans*, April 24, 3, 5.

	<p>data right is electronic, a data holder may have limited information on such matters. Therefore, UDL recommends that the CPD Bill allow for regulations to allow a residential consumer, who may or may not be an account holder to make the data holder aware of their circumstances and this information be recorded appropriately (see cl 45).</p> <p>d) 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).</p> <p>e) UDL also has some concerns for vulnerable communities and ensuring consumers are giving informed consent to accredited requestors to act on their behalf. Therefore, we are of the view some regulation defining the modes of selling and advertising for accredited requestors is needed, e.g. if door knocking for clients is appropriate, and when there is reasonable notice the consumer is having language difficulties in understanding any product offers.</p>
<p>17. 18.</p>	<p>Do you have any comments on the benefits and risks to security, privacy, confidentiality, or other sensitivity or customer data and product data?</p> <p>Are there any risks from the designation to intellectual property rights in relation to customer data or product data?</p>
	<p>UDL at this stage sees that the CPD Bill has a number of controls to safeguard data. It also notes the Office of the Privacy Commissioner’s general support for the CDR (albeit requesting more definition in the Bill in terms of regulatory standards).¹²</p> <p>As with any new system there may gaps, however the Bill’s regulatory framework may allow these to be quickly closed. A structured roll out will also allow ongoing reflection on the how the delivery of the CDR can be improved.</p>

¹² Office of the Privacy Commissioner, *Privacy Commissioner’s submission to the Economic Development Science and Innovation Committee on the Customer and Product and Data Bill (44-1)*, 5 September 2024, para 43.

Other aspects of a potential designation

19.	What do you consider to be important if designing an accreditation regime for the sector?
	<p>UDL agrees with elements identified in the <i>MBIE Summary</i> of (para 100):</p> <ul style="list-style-type: none">a) Persons must be fit and properb) Insurancec) Information security requirementsd) Demonstration of compliance with Regulations and Bill. <p>Please also note our concerns regarding advertising q13 and q21. MBIE may also wish to consider if accredited requestors should have facility for language translation, as new Kiwis, who might most benefit from the data right, can sometimes have difficulty in understanding the technical aspects of electricity consumption.</p>
20.	What are your views on fees for requests for customer electricity data under the Bill? If fees are charged, what limits or restrictions should be placed on fees? Do you have any comments on the costs and benefits of the various options?
	<p>The experience of Australia suggests some robust economic modelling may be required to ensure the promise of the CDR is realised (see q7 & q6).</p> <p>However, UDL suggests MBIE may wish to reflect on if Medically Dependent Customers and other vulnerable consumers may have lower charges due to their circumstances.</p>
21.	Do you think that standards should be led by industry, by government or co-led? What is the role of industry in developing standards? And why?
	<p>Electricity, as with all utilities is a complex area and a co-led model appears best with input from the main industry actors. We note in this regard the generally supportive submissions of the Electricity Retailers' Association of New Zealand (ERANZ).¹³</p> <p>UDL also joins Consumer NZ in highlighting the importance of consumer testing of the proposed CDR electronic system. This will ensure it responds to the needs of a variety of consumers.¹⁴</p>

¹³ See ERANZ, *ERANZ Submission on the Customer and Product Data Bill*, 3 September 2024.

¹⁴ See Consumer NZ, *Submission on Customer and Product Data Bill*, 5 September 2024, para 3.14.

General Comments on UDL Role (inclusive of q 16):

Our *CPD Submissions*, set out that UDL is ready to take up a role as a dispute resolution provider for the CDR (see cl 50). Our submissions on these issues are summarized as follows:

- a) UDL, under the current Energy Complaints Scheme (ECS), 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.¹⁵
- b) The ECS already considers complaints about the goods or services provided by electricity retailers and lines companies.¹⁶ Some changes to the rules may be required to expressly include data right actions however UDL at this stage does not see great difficulties with this.
- c) However, to include accredited requestors within the ECS would require significant changes as accredited requestors would not be one of the defined industry participants as set out in s 95 of the Electricity Industry Act 2010. Therefore, UDL would likely require the full powers set out in cl 51 of the CPD Bill, concerning disapplying any restrictions and amending the ECS.
- d) The definition of person responsible for any changes to a dispute resolution scheme (see cl 51) may require further definition, to ensure the process of amendment is clear e.g. is the person the Minister responsible for the ECS?
- e) UDL would seek to compile a new set of rules for accredited requestors, which would form an appendix to the ECS rules.
- f) Retailers and distributors presently fund the free ECS through yearly fees charged according to the size of their market share, and additional fees which are charged as a particular complaint moves through the Scheme.¹⁷ A fee model for accredited requestors would have to be determined, and the CPD Bill may need to be amended to allow for that (see cl 129).

¹⁵ Under the current CPD 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.

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

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