

Mr. Will Devlin
Acting Senior Adviser
Open Banking Review Secretariat
The Treasury Langton Crescent
PARKES ACT 2600

22 September 2017

By email: OBR@treasury.gov.au

Dear Will

REVIEW INTO OPEN BANKING IN AUSTRALIA

The Australian Finance Industry Association (AFIA) welcomes the opportunity to comment on Treasury's Issues Paper *Review into Open Banking in Australia*. AFIA is uniquely placed to advocate for the finance sector given our broad and diverse membership of over 100 financiers operating in the consumer and commercial markets through the range of distribution channels including digital access. A fact sheet on our association is enclosed.

Open banking will enable consenting bank customers to access their transaction account data and share it with third parties to facilitate access to finance and enhance competition. The Treasurer's press release¹ noted that "*open banking has the potential to transform the way in which Australians interact with the banking system*". We understand that the Government has committed to introduce open banking.

AFIA welcomes the Government's decision to consult with industry before determining the most appropriate implementation model to implement its' open banking policy. We understand that the key to implementation is achieving the Government's broader objectives of best practice regulation and red-tape reduction. AFIA members' operational feedback should be valuable to this process to ensure implementation is designed in a way that appropriately balances consumer benefit with an effective and efficient compliance framework for industry participants providing or receiving the critical business asset of customer data.

AFIA supports new technologies such as open banking, which have the potential to increase competition in financial services for consumers. Open banking by improving data access could also lead to new products and services that transform consumers' experience in financial services. Increased data access will also assist financial institutions to reduce their regulatory compliance costs.

We also acknowledge the need for the critical position of the data providers to be appropriately managed through this process and the need for design implementation to avoid significant consumer harm or adversely affect well-regulated financial institutions.

AFIA has attached detailed comments and recommendations on the Issues Paper. AFIA looks forward to continuing to work with the Government on the development of the future industry standards for Open Banking.

If you have any questions regarding this submission please contact Alex Thrift, Economic & Policy Senior Adviser at alex@afia.asn.au or via 02 9231 5877.

¹ [Treasurer Media Release, 9 August 2017](#).



Australian Finance Industry Association Limited
ABN 13 000 493 907

L11 130 Pitt Street Sydney NSW 2000
02 9231 5877 www.afia.asn.au

Kind regards

A handwritten signature in dark ink, appearing to read 'Helen M. Gordon', with a long horizontal flourish extending to the right.

Helen Gordon
Chief Executive Officer

Attachments:1. AFIA Feedback; 2. AFIA Background

ATTACHMENT 1: AFIA DETAILED COMMENTS – OPEN BANKING IN AUSTRALIA

AFIA would like to provide the following detailed comments in response to the Issues Paper.

Data sharing should not include data not relevant to consumers and transformed data

Designed and implemented appropriately, open banking could improve outcomes for consumers. The Treasurer has previously stated that open banking is a way for consumers to promote good consumer outcomes in banking².

The UK has limited open banking to consumer and small to medium-size enterprises³ (SME) transaction data. The Consumer and Markets Authority (CMA) identified that this was necessary due to a lack of competition in these markets. As part of a suite of measures the CMA mandated open banking and limited it to consumer and SME customers in respect of their transaction account data to address these concerns⁴.

AFIA understands that transaction account data is data that captures a transaction on a customer's account. This data is already collected to form a customer's statement. Open banking makes this data accessible by the consumer in a digital form that can be sent to a third party if the customer consents. AFIA notes that the definition of 'transaction data', which accounts should be captured and the necessary data standards could be further developed as part of an industry working group (see below).

AFIA recommends that Open Banking should only apply to consumers' transaction data. This achieves the Government's underlying policy objective. This approach will mean that the initiative will potentially have the greatest impact for consumers and their ability to finance key assets including homes and motor vehicles. Improving consumers' access to their transaction account data will help them to make more informed decisions and enable alternate avenues of finance to be sourced.

Requiring data holders to share transaction data sets that relate to other customer types (like commercial or business customers) will not improve consumer outcomes. If this data was subject to Open Banking it would place undue costs on their bank. Commercial and business customers already collect their banking and financial data using their own systems (eg through Xero or MYOB) and are readily able to share this with their financiers.

Data holders invest heavily in processes to analyse, understand and utilise data that they have collected and hold, transforming it to generate a competitive advantage over their competitors and to create new business opportunities. This proprietary data is a vital asset for businesses. Requiring a business to share this asset would adversely impact a business and unfairly benefit its competitors that have not invested in this data transformation. The flow on consequence may be that data holders will be likely to reduce their investment in data assets to the detriment of their customer base.

² [Treasurer Media Release, 9 May 2017](#)

³ The Competition and Markets Authority defines a small business that has an annual turn-over not exceeding 25 million pounds.

⁴ Competition and Markets Authority, [Retail Banking Investigation Final Report](#), page 442

Recommendation:

1. Open banking should exclude the sharing of data sets that:
 - a. do not relate to consumers
 - b. has been transformed and are a proprietary business asset.

Access to shared data should be defined broadly

AFIA notes that the UK has mandated only their nine largest banks to be subject to open banking due to the high costs that would be incurred by other players without the off-setting upside to consumer benefit. We encourage the Government to ensure a policy design that balances consumer benefits with the need for a competitive market with a range of participants.

The benefit of not statutorily obliging participation for all has the advantage of allowing differentiation in the market. Participants may see voluntary compliance as an opportunity to build relationships with their customer base. In turn, this may influence the decision of the customer in determining a product provider going forwards. This outcome facilitates a competitive market.

As the process matures, the benefits of open banking will flow to consumers as they share their data with other financial institutions to seek out better deals. Participation in open banking is likely to grow over time as other financial institutions seek to maximise their competitiveness.

Consumer transactional account data can be used by a broad range of financial institutions for many different purposes, including for consumer credit providers to meet their regulatory obligations like responsible lending under the *National Consumer Credit Protection Act 2009*. For example, open banking will more easily allow non-ADI lenders to obtain and analyse a consumer's transaction account data to determine income and expenses. A financial institution can then make a decision on whether the product being offered is not unsuitable for the consumer with greater certainty.

Currently, the ability to directly access source transaction account data is limited and potentially creates compliance difficulties because of the interplay between different regulations (eg NCCPA responsible lending obligations vs. ePayments Code obligations).

While service providers to the consumer credit market have developed regtech tools to facilitate a credit provider that holds an Australian Credit Licence (ACL) being able to obtain transactional banking information it may require the customer to share their internet banking credentials with a third party. This may invalidate the customer's protection against liability for unauthorised transactions under the ePayments Code⁵ and creates regulatory uncertainty. This issue should be addressed as part of this review by ensuring that a data transfer mechanism protects the integrity of a consumer's credential

⁵ ASIC, [ePayments Code](#), Section 12.2

Recommendation:

2. A policy to mandate participation in open banking should appropriately reflect a balance taking into account the costs and benefits both to the consumer and the market more broadly.
3. Financial institutions regulated under the AFSL and ACL regimes and ADIs should be able to participate in open banking to access a customer's data if the customer consents.
4. Open Banking should operate in a way that does not create consumer risk when the data is shared with a third party.

Industry should determine data sharing standards

The Government should allow industry to develop the data sharing standards to be implemented. A process similar to the development of the data standard to support comprehensive credit reporting under the Privacy Act (Part IIIA credit reporting provisions) could be followed. This will allow industry to come together to determine effective, implementable and cost-effective standards that achieve the Government's underlying objective.

A principles based approach focused on the objective rather than dictating the process to achieve it should also be adopted so to allow for technological innovation in data sharing.

Industry standards could be achieved by industry forming a working group to determine the relevant standards and implementation timetable. In part, the UK allowed industry to determine their data sharing standard. An implementation entity was formed and made up of industry representatives from the mandated entities, HM Treasury, Financial Conduct Authority and other stakeholders⁶. AFIA would support a similar process though noting the need for the industry position in implementation design to be appropriately weighted in the overall discussion given it is best placed taking into account current processes and emerging technologies.

We would not however, support a position similar to the UK in mandating one technology, application programming interfaces (APIs) as the data sharing mechanism for open banking⁷.

The UK's Competition and Markets Authority (CMA) settled on APIs in part because they can be standardised across industry so that all players use the same standard. However, the drawback of this approach is APIs may not be suitable for all types of data sharing or allow innovation.

In contrast, the European Union's Payment Services Directive 2 (PSD2) gives mandated banks a greater flexibility in determining the most appropriate data sharing mechanism. PSD2 takes a principles based approach that allows a mandated bank to select and implement the most appropriate mechanism so long as it meets certain conditions⁸.

⁶ Competition and Markets Authority (CMA), [The Retail Banking Market Investigation Order](#), pg 64.

⁷ CMA, [Retail Banking Market Investigation Order](#), pg 19.

⁸ European Banking Authority, [Draft RTS on SCA and CSC \(PSD2\)](#), pg 32.

Banks, under a principles based mechanism, will be able to adapt to changes in technology to provide a better and possibly safer customer experience. Another advantage of a flexible approach is that data sharing could occur using different technologies depending on requirements (e.g. an API could be used so that a consumer can directly share their data with a third party, a DLT solution could be used to build digital ID system).

Recommendation:

5. The Government should allow industry to determine the data sharing industry standards and inform the Government's decision around implementation and a commencement date.
6. A principles based data transfer mechanism should be adopted rather than mandating a particular technology.

A proactive approach to security and privacy is needed

Data security and privacy is critical to ensuring the effectiveness of open banking. A lack of consumer trust will result in little data sharing and the benefits of open banking will not be realised. Data sharing should only occur after a consumer gives their consent. This needs to be in a way that participants are able to have certainty in acting in reliance on that consent.

Breaches in security result in significant harm for affected businesses. For example, the recent Yahoo breach (2016) or the Sony PSN hack (2011) significantly harmed these institutions reputations. Trust for a well-functioning financial services industry is paramount.

All parties should have in place appropriate data handling protections before they can access, collect and use customer transaction data in open banking. The Government should consult further with industry to determine the relevant standards and protections.

Recommendation:

7. Consumers should only be able to share their data after they have given their consent in a way that provides certainty and can be relied on for the benefit of all participants.
8. All parties should have in place appropriate data handling protections before they can access, collect and use customer transaction data in open banking.

International experience shows the need for appropriate implementation timetable

The Treasurer, in his Budget speech, identified that open banking will be implemented in 2018⁹. Given international experience we suggest this may be challenging. We also submit that it is critical for the policy to be correctly implemented to achieve the consumer benefit sought by the Government. To clarify, we are not suggesting significant or unreasonable timeframes. Rather a timeframe that enables full consideration to minimise the risk of implementation that might create an environment for consumer harm and unintended consequences for the industry.

International developments in data sharing and open banking provide valuable lessons for how open banking can be implemented in Australia. The UK is near the end of its progressive roll-out of open banking and the European Union is now implementing their second Payment Services Directive (PSD2), which mandates open banking. Open banking in the UK and EU will start at the same time on 13 January 2018.

Experience in the UK demonstrates the need for a long implementation period. Open banking has been considered by the UK Government since at least 2015 with the creation of a working group to develop an open banking model¹⁰. However, mandated banks in the UK have been given less than a year to develop and implement industry standards. AFIA understands that some mandated banks in the UK have had to reduce functionality of their APIs to meet this deadline. We also understand that the short implementation has significantly increased costs of implementation for the mandated banks.

PSD2 took effect on 12 January 2016 but has an implementation period of 2 years and will only take effect from 13 January 2018. Additionally, work started on PSD2 in 2013¹¹. This long implementation and policy consideration period has meant that some European banks already comply with PSD2 data sharing requirements and are providing additional functionality that has not been mandated (e.g. BBVA and Deutsche Bank).

Recommendation:

9. AFIA recommends an implementation timeline for Open Banking that can achieve the Government's underlying policy objective whilst minimising the risk of consumer detriment or market risk given the outcomes of international experience.

⁹ Treasurer, [Second Reading of the Appropriation Bill \(No. 1\) 2017-18](#).

¹⁰ Open Data Institute, [The Open Banking Standard](#).

¹¹ European Commission, [Impact assessment accompanying the original proposal for Directive 2015/2366](#), pg 40.