



19 April 2018

The Treasury  
Langton Crescent  
PARKES ACT 2600

Email: [data@treasury.gov.au](mailto:data@treasury.gov.au)

Dear Sir/Madam,

## **SMSF ASSOCIATION SUBMISSION ON THE REVIEW INTO OPEN BANKING IN AUSTRALIA**

The Self Managed Super Fund Association (SMSFA) welcomes the opportunity to make a submission on the Review into Open Banking in Australia – Final Report. The report is extremely comprehensive and will provide a strong platform for the implementation of Open Banking which will give consumers greater access and control over their banking data.

### **Chapter 2 – Open Banking regulatory framework**

The SMSFA supports the notion that the design for the regulatory framework for the Consumer Data Right (CDR) should minimise the duplication of legislation and provide for simplicity and ease of implementation. It is important that principles based legislation is enacted with CDR in mind and a blank canvas than undertaking significant amendments to current legislation to accompany the regime. This is a rather long term ‘game changing’ piece of legislation which has far reaching potential for the future.

We support use of the *Competition and Consumer Act 2010 (CCA)* in the first instance as it is applicable across all future areas of the CDR and for the regulatory framework as appropriate.

We have no overarching issues with a multiple regulator model led by the Australian Competition and Consumer Commission (ACCC) provided that all other regulators understand their role. Any confusion from regulators may mean certain parts of the Open Banking regime would not be acted upon with urgency or even left unmonitored.

We support the creation of a data standards body which has the relevant expertise for the banking sector. A data standards body should consult with third parties who use banking data, such as SMSF administrators and software providers, to ensure that data generated by banks can be best used in other sector and applications.

The SMSFA strongly supports an accreditation system for data recipients as stated in our earlier submissions. This type of system is used by the Australian Taxation Office as part of its Digital service provider (DSP) Operational Framework, which governs the use of non-publicly available tax data to



enhance tax-related software and other service offerings. We believe the regulator should be responsible for the accreditation criteria.

*Recommendation 2.8 –Accreditation criteria should not create an unnecessary barrier to entry by imposing prohibitive costs or otherwise discouraging parties from participating in Open Banking. Using a tiered risk-based accreditation model and having regard to existing licensing regimes should minimise costs for many participants. Accreditation decisions should be reviewable by the Administrative Appeals Tribunal.*

The SMSFA supports a tiered risk-based accreditation model. This model should be based on the sensitivity of the data held by the accredited party and have regard to existing licensing regimes.

We also believe the risk-based accreditation model should consider the purpose for which the data is to be used. This consideration may need not need to be given a high weighting but if potential uses of data and innovation give rise to a potential of higher risk to consumers then this should be part of the decision making process. When ‘write’ data is introduced, there would be a stronger imperative for such consideration.

In addition, the amount of consumer data being held by an entity should be given weight to as well. Entities that hold very large pools of consumer data will be more attractive targets for cybercriminals to attack and steal sensitive data as the payoff for a breach would be access to a large amount of data.

We believe the ACCC should be responsible for ensuring the process and criteria under which accreditation occurs. This brings integrity and a single approach to accreditation which is necessary given the potential risks and sensitivity of the data.

The SMSFA supports the interaction with existing licensing regimes in the accreditation model as useful for limiting barriers to entry. For example, a majority of our members currently hold an Australian Financial Services Licence (AFSL). An AFSL requires meeting internal dispute resolutions, external dispute resolutions and insurance standards which should provide strong weight to accreditation.

When this is coupled with a good history of data management and client record keeping it provides an extremely strong base accreditation. For our members who are large software accounting and administrative providers that currently receive banking data from Australian banks and have an AFSL, a simple and efficient accreditation process should be available.

These companies which are currently receiving data through paper based client confirmation and with different standards from different banks have an excellent behavioural record managing data and under the AFSL. Interaction with existing licensing regimes can therefore provide valuable efficiencies for accreditation.

*Recommendation 2.9 (Address book) and 2.10 (Complaints)*

We support the creation of an address book which is kept by the ACCC which provides transparency to the regime. The address book should include information on accredited parties that is readily identifiable by customers.



We also believe in a single point of contact for complaints to be directed. This provides a clear understanding and administrative simplicity for problems that occur in the first instance. Customers should not be left confused or unaware how to resolve Open Banking problems.

The Office of the Australian Information Commissioner should expand its role regarding complaints on Open Banking data with regards to privacy, confidentiality and competition.

### **Chapter 3 – The scope of Open Banking**

The SMSFA supports the proposed list of banking products for which data holders will be obliged to share all transaction data. They cover all products which are relevant for the SMSF industry but we also recommend that superannuation products are included so individuals are able to utilise technology that provides consumers and their advisers a full financial overview. This ensures that individuals may be able to better understand and engage with their superannuation. We also support that the obligation to share data should apply to all Authorised Deposit-taking Institutions and should also apply for all customers holding a proposed banking product account. There should be no cost attached to the transfer of consumer data, as banks currently provide data feeds to financial technology companies such as SMSF administration providers at no cost.

Despite this, we believe that data that results from material enhancement by the data holder is not consumer data and such data should not be included in the scope of Open Banking. This is the intellectual property and ‘core’ of many financial technology companies and there should not be a requirement to share such data with competitors.

*Recommendation 3.4 – If directed by the customer to do so, data holders should be obliged to share the outcome of an identity verification assessment performed on the customer, provided the anti-money laundering laws are amended to allow data recipients to rely on that outcome.*

The SMSFA understands the liability concerns regarding the verification of an individual to a third party when a customer has requested data be sent. We would support an obligation to share the result of a verification process and not the supporting documentation if it was supplemented by some further final efficient check by the individual. Amendments to the Anti-Money Laundering laws can reflect this process in determining who bears liability, as we believe it is incumbent on the individual to confirm their identity and not a data sharer. This does not need to be an exhaustive process as per the current methods.

*Recommendation 3.9 – Open Banking Entities participating in Open Banking as data recipients should be obliged to comply with a customer’s direction to share any data provided to them under Open Banking, plus any data held by them that is transaction data or that is the equivalent of transaction data.*

We support the reciprocal obligations in Open Banking but it is important to ensure that data recipients are capable of reciprocal obligations when they are accredited. This may provide a barrier to entry in the initial implementation of Open Banking.



## Chapter 4 – Safeguards to inspire confidence

We support the use of the Privacy Act as an effective form of policing data recipients. Open Banking should be no different to other forms of data sharing.

*Recommendation 4.2 The privacy protections applicable to Open Banking should be modified as suggested in Table 4.1.*

We support the modifications in Table 4.1. Consent and communication is the necessary key to all amendments. Consumers must give consent for actions to occur and actions must be communicated to all relevant parties. If these factors are missing it is incumbent on the individual who has breached a privacy principle to determine why consent and communication was not given.

*Recommendation 4.3 – right to delete Given the many complexities involved in legislating for a right to deletion (including the range of legal obligations to retain records) and the fact that individuals currently have no right to instruct deletion of their personal information under the Privacy Act, it is beyond the scope of Open Banking to mandate a special right to deletion of information.*

We also believe it is beyond the scope of Open Banking to mandate a right to delete information. Data held whilst under consent should still be useable for information purposes by the third party. However, as customers should be given the right to retract their consent any time, from that point onwards, no 'new data' should be received and all received data should no longer be used in the context that consent was given.

*Recommendation 4.5 (Customer control) and 4.6 (Single screen notification)*

We strongly agree customer consent must be explicit, fully informed and able to be restrained according to the customer's wishes. We also support reducing consent to a single screen notification in order to allow customers to understand the process that is occurring.

The open banking review should give consideration to a standardised framework that all data requesters must adhere to. This would mean that whenever an individual uses a third party provider to request data from an original source, the consent authorisation design is similar across all providers. We understand that the existing requirements for SMSF trustees to provide authorisation for their banks to provide data feeds to SMSF administrators and software providers is problematic due to each institution having different and complex authorisation processes. A more standardised authorisation approach as part of the implementation of an open banking policy would avoid these problems.

We believe that standardised authorisation can be implemented with common sense solutions. For example, to elicit trust there should be clear 'on/off' check boxes regarding what data third party firms have access to. Transparency on the use and terms of data must be in plain English and the outcomes from the use of data should be clearly stated. This would be similar to the setup of applications on modern mobile devices.

It should also not be an all in or out design, allowing for individuals to choose what aspects of data categories they will share. Within that, we stress that any design should only allow for providers to ask and request relevant permissions. For example, a third party provider who is just amalgamating



bank accounts into one centralised application should not ask for or need to request life insurance data. Adequate controls need to be in place for this behaviour.

The SMSFA strongly believes that clear, concise permissions are essential to open banking. Detailed and lengthy terms and conditions should not be acceptable in any regime due to the fact individuals will not understand what they are signing up for. SMSF trustees, will also want confidence and clarity that their personal data will not be made available to others in ways they did not agree to. This is consistent with feedback from SMSF administrators who state that some trustees have an unwillingness to pass banking data on through the current methods to increase the efficiency of preparing financial accounts.

### **Chapter 5 – The data transfer mechanism**

We strongly support the use of application programming interfaces (API) to allow customers to share information with third parties. We agree that authorisation should be consistent so as to not cause a burden on the data holder. Consistent authorisation processes would also benefit existing users of bank data, such as SMSF administrators, which are outside the current remit of open banking. Accordingly, we believe that designing the authorisation for data transfer under Open Banking offers an opportunity to deliver a broader efficiency outcome throughout the financial technology sector.

It is extremely important data requesters are notified periodically that they are still sharing information with third parties and be able to request a record of their data usage history and sharing records.

We also believe that users who do not use online banking should still get access to Open Banking, typically this may affect older individuals.

### **Chapter 6 – Implementation and beyond**

The SMSFA supports the timeframes in the report if this is supported by those institutions who need to implement this in the first instance. We would encourage the opportunity for the remaining Authorised Deposit-taking Institutions to implement Open Banking sooner than their prescribed time frame.

We also agree a post-implementation assessment is essential to review how Open Banking has been implemented. Information regarding costs, participants, and benefits will be important not only for Open Banking but for the remaining consumer data regimes.

Engagement and education is also a crucial step towards the implementation of Open Banking. There needs to be a coordinated plan to ensure individuals understand how open banking can benefit their lives. There is also a duty on incumbents of the Open Banking regime to ensure that individuals are not ‘flooded’ with choice and complex offerings. This should be a strong essence of the post-implementation review. Lessons should be taken from the implementation and cut through of the National Payments Platform and ‘MySuper’ offerings.

If you have any questions about our submission please do not hesitate in contacting us.



Yours sincerely,

A handwritten signature in black ink that reads "John L. Maroney".

John Maroney  
CEO  
SMSF Association

### **ABOUT THE SMSF ASSOCIATION**

The SMSF Association is the peak professional body representing SMSF sector which is comprised of over 1.1 million SMSF members who have \$720 billion of funds under management and a diverse range of financial professionals servicing SMSFs. The SMSF Association continues to build integrity through professional and education standards for advisors and education standards for trustees. The SMSF Association consists of professional members, principally accountants, auditors, lawyers, financial planners and other professionals such as tax professionals and actuaries. Additionally, the SMSF Association represents SMSF trustee members and provides them access to independent education materials to assist them in the running of their SMSF.