



ASIC

Australian Securities & Investments Commission

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Dear Treasurer,

ASIC welcomes the release of *Review into Open Banking in Australia – Final Report* (Report), and the opportunity to comment on its recommendations before the Government makes a final decision on implementation.

We support the Report's overall approach to implementing open banking, including the development of a new regulatory framework, rules and technical standards to promote consumer protection. We note that the recommendations seek to balance empowering consumers to make better financial decisions through fostering trust and confidence in data sharing and facilitating innovation and competition.

Should the Government accept the recommendations of the Report, we look forward to working closely with the ACCC on developing the accreditation framework and rules, including the criteria and method of accreditation. We also look forward to supporting any new Australian data standards body with the development of the technical standards.

Accreditation of existing licensees

ASIC agrees that to ensure trust and confidence, data holders and data recipients should be required to comply with a common set of standards (including security standards) and only accredited parties should be able to receive data. We also agree that, where appropriate, existing licensing should be taken into consideration to minimise the costs for participants and that the accreditation criteria should not inhibit participation in open banking by increasing the barriers to entry and innovation.

Although the report suggests that existing authorised deposit-taking institutions would simply require registration to participate in open banking under a tiered risk-based accreditation model (on the basis that payment of money is a higher order risk than the transfer of records of those payments), it leaves open the possibility that holders of Australian Financial Service (AFS) licences might also be subject to streamlined accreditation.

To the extent that a streamlined accreditation process is under consideration for AFS licensees, ASIC would like to highlight the following:

- The AFS licensing process under the Corporations Act considers – at the point of entry – whether an entity has the competency to carry on the type of credit or financial services

business they are applying for. This includes, among other things, whether the entity has sufficient financial, human and technological resources and risk management systems to carry on the type of business proposed, and whether it will be able to meet its other general obligations as a licensee.

- The AFS licensing process under the Corporations Act does not involve a periodic review for determining the ongoing suitability of licensees.

It is not part of the AFS licensing process to assess applicants on their capacity to comply with the new rules and standards that will be introduced as part of the open banking regime. In addition, since the AFS licensing process does not involve a periodic review, most AFS licensees' suitability and operations will have likely evolved since their licences were granted.

Accordingly, although ASIC agrees with the general principle that existing licensing should be considered to avoid duplication, we do not consider that, without a legislative amendment referring to other criteria, the AFS licensing regime would be able to provide a direct indication of an entity's suitability to participate in open banking generally, and more specifically, for suitability to handle high risk versus low risk data under the tiered risk-based accreditation model.

Dispute resolution

Consumer complaints about the behaviour of accredited parties

ASIC agrees that open banking should be supported by robust internal dispute resolution (IDR) and external dispute resolution (EDR) processes for resolving complaints from individual and small business consumers.

There is a well-established regime for IDR and EDR in financial services and banking. The establishment of the Australian Financial Complaints Authority (AFCA) will simplify, strengthen and increase access to free external dispute resolution.

The key elements that have made the IDR and EDR processes effective are:

- AFS licensees, unlicensed product issuers and unlicensed secondary sellers are required to have a dispute resolution system that consists of an IDR process that meets standards or requirements made or approved by ASIC.
- AFS licensees, unlicensed product issuers and unlicensed secondary sellers must become a member of an ASIC-approved EDR scheme. This ensures consumers have a forum for pursuing a complaint in the event they suffer a loss.
- Consumers need to lodge their complaints with the entity that is the subject of their complaint in the first instance, and entities are required to resolve all complaints received promptly.
- If a complaint cannot be resolved internally, the entity will need to refer the consumer to a relevant EDR scheme.
- There is an oversight framework in place for ensuring the IDR and EDR processes are working (and continue to work) effectively in dealing with consumer complaints.
- There are clear rules and powers for ensuring complaints are addressed by the entity.

- There is a process for lodging complaints with and reporting misconduct to the regulator.
- EDR schemes have reporting obligations, which act as a mechanism for the regulator to get an understanding of the broader and more serious or systemic issues consumer disputes are raising.

We understand that the OAIC has also adopted a tiered approach to complaints handling and dispute resolution in respect of complaints relating to the Privacy Act. Specifically, the OAIC encourages complainants to contact the entity initially, followed by the use of the services of a recognised EDR scheme, before contacting the OAIC. We understand that AFCA is in the process of seeking OAIC recognition.

We also understand that under UK Open Banking, participating service providers must have in place internal dispute resolution procedures and respond to complaints within 15 business days of receipt.

In light of the above, ASIC considers it would be worthwhile to further explore:

- the advantages and disadvantages of a centralised approach to complaints handling (i.e. for regulators to accept all complaints and redirect them, as proposed in the report), including whether this may lead to delays in dispute resolution. It is possible under a centralised model many consumers may be re-directed to the entity that is the subject of their complaint for internal resolution or the EDR scheme of which the entity is a member; while regulators may receive a large volume of consumer complaints that are most appropriately resolved internally by the entity involved, where possible, or that would be better resolved through EDR schemes; and
- the potential implications from a different definition of 'small business' being adopted under AFCA and the Privacy Act. Any business from both the manufacturing and non-manufacturing sectors with up to 100 employees is covered under AFCA. In contrast, a 'small business' is a business with an annual turnover of \$3 million or less under the Privacy Act.

Accredited parties' complaints against other accredited parties

ASIC agrees that the rules should create a right for accredited parties to seek remedy for breaches of the Consumer Data Right by other accredited parties and that there should also be breach reporting obligations to the ACCC. We also agree that accredited parties should commit to resolving these disputes through EDR where possible. To this end, ASIC's preference is for new EDR schemes to be established for dealing with business-to-business complaints.

Please contact me on (02) 9911 2073 or at greg.kirk@asic.gov.au if you have any questions.

Yours sincerely



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