

21 May 2020

Mr Scott Farrell
Inquiry into Future Directions for the Consumer Data Right
The Treasury
PARKES ACT 2600

Email: data@treasury.gov.au.

Dear Mr Farrell

Inquiry into Future Directions for the Consumer Data Right

The Customer Owned Banking Association (COBA) appreciates the opportunity to contribute to this inquiry into future directions for the Consumer Data Right (CDR).

COBA is the industry association for Australia's customer owned banking institutions (mutual banks, credit unions and building societies). Collectively, our sector has more than \$129 billion in assets, 10 per cent of the household deposits market and more than 4 million customers. Customer owned banking institutions account for around three quarters of domestic Authorised Deposit-taking Institutions (ADIs). Customer-owned banking institutions embrace innovation as demonstrated by their record as early adopters of the New Payments Platform and digital wallet solutions (e.g. Apple Pay).

We see the CDR as having huge potential to benefit consumers and drive competition in banking, particularly if complemented by other measures to empower consumers to take advantage of CDR. We encourage the Government to invest in raising consumer awareness about the CDR.

COBA members and other non-major ADIs are currently awaiting an announcement about the revised timetable for commencement of their consumer data obligations as data holders under the CDR. Commencement of obligations in relation to product reference data has been postponed by three months to 1 October 2020 due to the impact of COVID-19.

COBA welcomes debate about the future directions for the CDR. We look forward to the views of all stakeholders about expanding the functionality of the CDR, ensuring the CDR regime accommodates vulnerable consumers and leveraging the CDR infrastructure to support development of a safe and efficient digital economy.

Key considerations for an effective examination of how the CDR regime can be built upon to support a thriving digital economy with consumers at its centre are *timing* and *evidence*.

The Issues Paper notes that now is an opportune time to look at the future of the CDR because consumers will "soon" be able to share their banking data. This underlines the point that the CDR regime has not actually commenced. Consumer data sharing obligations for major banks start on 1 July.

The December 2017 Review into Open Banking¹, which was a key policy input into the CDR regime, recommended a post-implementation assessment of Open Banking should be conducted approximately 12 months after the Commencement Date and report to the Minister with recommendations.

¹ Review into Open Banking, December 2017

“While it is expected that Open Banking will deliver major benefits, all regulatory reforms are essentially propositions to be tested and should therefore be evaluated for their effectiveness,” the Review said.

Given its timing, the current inquiry cannot provide this evaluation. While this inquiry is a useful forward-looking exercise, it would be prudent for any firm recommendations about extending CDR regulatory requirements to be based on an effective post-implementation assessment of the CDR regime.

Complexity of CDR regime

The CDR regime is complex and elaborate. It has three regulators: ACCC, OAIC and a Data Standards Body. Key elements of the regime include:

- 110 pages of legislation, with a 92-page explanatory memorandum
- 127 pages of CDR rules, with a 69-page explanatory statement
- 203 pages of OAIC privacy safeguard guidelines
- data standards and customer experience standards and associated guidelines, and
- Conformance Test Suite (under development).

As the ACCC and OAIC noted in their May 2020 CDR Compliance and Enforcement Policy: “The CDR is a significant economy wide reform and we recognise that there may be a period of transition for CDR participants to ensure their systems and processes fully meet their obligations under the CDR regulatory framework.”

Banking institutions also have to manage the interplay of their CDR obligations with their obligations under APRA’s prudential standards, as AFSL and ACL holders, as reporting entities under AML/CTF, as subscribers to the ePayments Code and as trusted providers of essential services to their customers.

Any proposal to add further complexity and compulsion to the CDR regime should be considered against the following principles:

- first allow the market to meet consumer needs
- protect consumer confidence in the safety and security of their data and funds
- regulatory costs affect competition and are ultimately borne by consumers
- avoid a one-size-fits-all approach to regulation
- ensure regulation is tightly targeted at a clearly defined problem or regulatory objective and seek to minimise regulatory costs, and
- recognise the impact of the cumulative regulatory cost burden, particularly on smaller banking institutions.

Regulatory interventions divert scarce resources away from other priorities, such as investment in product innovation, better service and better pricing. Every dollar that a customer-owned banking institution has to spend on regulatory compliance is a dollar lost to product development or better customer service. The regulatory compliance cost burden reduces our members’ capacity to grow, promote the customer-owned model and apply competitive pressure in the retail banking market.

Empowering consumers

COBA has proposed the establishment of a Consumer Mortgage Taskforce² to tackle consumer inertia in the home loan market by recommending and piloting specific measures to empower consumers to get better deals. Injecting a new demand-side dynamic into the home loan market will magnify the effect of related pro-competitive developments, such as Open Banking.

The proposed Taskforce would look at the behaviours, perceptions and other factors that create friction in the consumer journey to get a better deal. The Taskforce would be able to draw on an extensive body of existing Australian and international evidence to design measures to address these factors. These measures could be temporary or permanent and could be trialled as pilot programs (as ‘actionable research’) to test their effectiveness. These pilots should be ready to go within 12 months to create momentum. Measures do not need to be permanent to have a permanent impact on the market.

² COBA submission to Treasury, 2020-21 Pre-Budget process

While developments such as Open Banking and ASIC's mortgage comparison calculator will decrease the information deficit (i.e. consumers' ability to access information), there may still be a 'behavioural deficit' where the consumer does not undertake the ideal 'shopping around' behaviours despite the presence of this information. Addressing consumer behavioural biases will turbocharge the impact of reforms such as Open Banking.

Write access

The Inquiry is to examine how the CDR could be expanded to include 'write' access, i.e. enabling a trusted third party to change or add to data about a customer at the customer's direction or to initiate payments on behalf of customers, with the customers' consent.

COBA supports the position of the December 2017 Review into Open Banking that an assessment of the success of the 'read access' Open Banking reforms should be undertaken before any consideration of moving to write access reforms is made.

The December 2017 Review noted stakeholder concerns about risks of implementing write access, including major security risks for customers: "If a customer's account was illegally accessed, the malicious party could impersonate the customer in addition to being able to transfer money to steal it or to enhance the creation of a false identity. Write access could give malicious actors a greater incentive to make cyber-attacks because the party with write access would be a more lucrative target."³

Protecting consumer confidence and trust in banking and payments systems should be a paramount concern in this policy debate.

As noted above, COBA members are participants in the New Payments Platform. NPP Australia recently published a paper⁴ on the capacity of its Mandated Payments Service (MPS) to enable third party payment initiation on the New Payments Platform.

The paper notes that the NPP currently supports credit payments or "push" payments whereby customers themselves initiate a payment from their account via their banking channel: "Third party payment initiation can be supported in a safe and secure manner using the MPS because the customer provides explicit authorisation for payments to be processed from their bank account. This authorisation is captured in the creation of a digital payment arrangement or a 'mandate' which serves as a record of the customer's authorisation (or consent) for payments to be initiated from their account by a specified third party, in advance of any payments being processed," the paper says. "NPP Australia is developing customer experience requirements and guidelines for the relevant customer related MPS processes, and in particular the mandate authorisation (or consent) process. As far as possible, the intention (where relevant) is to align this guidance with the standards and requirements developed for customer consent for data sharing under the initial implementation of the Consumer Data Right."

Thanks again for the opportunity to contribute to this inquiry. I can be contacted on 02 8035 8441 to discuss any aspect of this submission.

Yours sincerely



MICHAEL LAWRENCE

Chief Executive Officer

³ Review into Open Banking, December 2017

⁴ April 2020 [Paper by NPP](#)