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### **ASB submission – Discussion paper on open banking regulations and standards under the Customer and Product Data Bill**

ASB Bank Limited (**ASB**) welcomes the opportunity to provide feedback to the Ministry of Business, Innovation and Employment (**MBIE**) on the discussion paper on open banking regulations and standards (**Paper**) to be introduced under the Customer and Product Data (**Bill**).

ASB has previously provided submissions on the Bill and the prior exposure draft of the Bill. As noted in those submissions, ASB supports the introduction of a Consumer Data Right (**CDR**), and its objective of improving the financial wellbeing of New Zealanders. However, the design of open banking regulations and standards requires careful consideration to ensure that it achieves the overriding objective of the Bill in an efficient way. Well-designed standards that are straightforward to implement and adhere to will help ensure New Zealanders can trust the CDR regime to keep their data safe.

ASB's submission on the Paper is set out in the Schedule to this letter. In many respects ASB agrees with the proposals in the Paper and we have not sought to address each of the 49 specific questions in the appendix to the Paper. We have instead focussed on what we consider to be the key issues for designing a suitable open banking framework, as follows:

1. **Scope of designation:** The Paper proposes that initially the designated persons will only be the four largest banks. Kiwibank would be included at a later date (from 1 June 2026) and other banks would be permitted to “opt in” if they so choose. ASB submits that all registered banks should be subject to the designation. In an ideal situation, all banks, not just the five largest, would be subject to the same implementation date. This would enable customers who multi-bank (i.e. hold accounts with or use services of different banks) and those with relationships with smaller banks to benefit from a CDR that relies on a complete picture of their banking data. We consider it would enhance consumer trust and confidence in the CDR system if all banks are held to the same standards. Fintechs and other businesses seeking to leverage the CDR framework may also face operational challenges and inefficiencies if they receive inconsistent data from different banks. Including all banks within scope would avoid an uneven regulatory landscape, ensuring the activity is regulated consistently across the market, rather than focussing on the entity.

ASB supports MBIE's proposal to require that requests are submitted by Accredited Requestors only, and not to enable requests to be made directly by customers without the involvement of an Accredited Requestor. Any later extension of that right to customers should be carefully considered and only after the CDR has been implemented for a period and assessed in terms of its costs, benefits, and risks to consumers.

2. **Scope of customer data:** The Paper proposes the designation of a broad range of customer data. In most cases ASB sees no issue with the proposed categories. However, some of the proposed

categories of customer data, such as "customer number" and "information about offers available to the customer," raise privacy concerns under the Privacy Act 2020 and could result in breaches of restrictions on reuse of unique identifiers. In addition, including data such as "customer eligibility for services" and "promotional offers" inappropriately extends the scope of customer data beyond factual information provided to the customers in the ordinary course, and may involve derived data that is proprietary to data holders or commercially sensitive. ASB submits that the scope of customer data should be pared back to focus on essential categories like account information, balances, and payment history.

3. **Cost-benefit – the importance of timing:** We support the recognition in the Paper that the rollout of the open banking regime should be based on a careful cost-benefit analysis. A key factor that will directly affect these costs is the timing of implementation. Industry has already agreed to the Open Banking Implementation Plan through the API Centre through to the end of 2025. A 1 December 2025 commencement date for regulations and standards that impose requirements beyond the work undertaken or contemplated under the Implementation Plan would likely be unrealistic because of the lead time for the API Centre to develop standards and then the banks to implement.
4. **Fees:** The Paper considers various options for fees within the open banking framework. As noted above, open banking will require banks to invest significantly in infrastructure, security, and ongoing compliance measures. To ensure a fair and sustainable open banking system, ASB submits that banks should be permitted to charge fees to Accredited Requestors (as those most likely to benefit commercially from the open banking system, with relatively minimal costs) and should have flexibility in determining fees to allow at least partial recovery of these costs. That structure would fairly reflect that, given their role in commercialising data flows for the provision of new services, accredited third parties should contribute to the costs of implementing and maintaining the open banking system.
5. **Scope of product data:** ASB generally supports the approach taken in the Paper regarding the scope of product data to be shared under the open banking regime. However, we submit that the inclusion of "terms and conditions" in the categories of product data is onerous and is ultimately unnecessary for the purposes of open banking. Requiring banks to provide full terms and conditions would add little additional value while significantly increasing the complexity of data provision. We therefore recommend that terms and conditions be excluded from the scope of product data.
6. **Designated actions:** ASB supports the proposal to limit designated actions to payment initiation at this stage, with other actions to be considered in due course. ASB is concerned that premature inclusion of the other potential categories of action initiation discussed in the Paper, such as creating automatic payments and direct debits, opening and closing accounts, and amending limits, would exacerbate the risks associated with fraud and scams. Developing secure and reliable APIs for those actions will require extensive effort, testing, and investment and their designation should be deferred until the payment initiation procedures under the CDR framework have been implemented and tested over time. In ASB's view customer security should be prioritised and there is no overriding need for additional designated actions given that customers can already open and close accounts, set up automatic payments, or amend limits, in a very straightforward way via banks' online and digital channels.
7. **Accreditation:** ASB generally agrees with the accreditation criteria proposed for Accredited Requestors. However, we recommend close alignment with the criteria adopted through the banks' existing onboarding processes for API third parties (agreed under bilateral agreements). We consider those existing processes to be fair and balanced and note in particular that ASB has

received positive public feedback on the simplicity of the processes it has adopted.<sup>1</sup> We also recommend alignment with the Open Banking Partnering Framework, when that is developed in due course following the Commerce Commission’s recent authorisation for Payments NZ to work with current and future API providers and third parties to develop and apply a partnering framework.

8. **Consent:** ASB agrees with the comments in the Paper regarding the need for strong consent protections, which are central to the success of the CDR. While ASB is generally comfortable with the approach outlined in the Paper, we believe it is important there are additional requirements in the consent provisions, including clear disclosure of, in particular: (a) the purposes for which a customer's data is being collected and the specific ways it may be used; (b) the categories of customer data that will be collected; and (c) details about any disclosure to third parties. In relation to Accredited Requestors who act as “intermediaries” and who may disclose customer data to third-party recipients, ASB submits that consents should be express and should prominently describe the specific recipients (as an explicit part of the consent process, rather than via a general reference in Accredited Requestors’ terms and conditions).
9. **Joint customers and secondary users:** ASB agrees with the Paper's proposal to apply the “equivalency principle” to joint customers and secondary users (i.e. ensuring that rights and access to information and payments align with existing account operating authorities). ASB submits that that should follow closely the terms expressed in the API Centre’s Equivalency Principle Policy.
10. **Payment limits:** Of the options for payment limits presented in the Paper, ASB strongly supports allowing data holders to set their own limits. This approach aligns with existing practices and offers the flexibility necessary to manage different customer risk profiles effectively, enabling a tailored approach. That is especially important in mitigating potential losses from errors or fraud, as it enables banks to apply appropriate security measures for particular customers.
11. **Dashboards:** ASB agrees with the Paper regarding the use of “dashboards” to provide customer control over authorisations and data usage. However, ASB does not agree that Accredited Requestors should be entitled to continue to use or disclose customer information that it has already received, in accordance with a customer consent, even after a customer has withdrawn their consent. If that is proposed, ASB submits that dashboards should make clear how customers can request that Accredited Requestors stop using information that has already been provided, and how customers can request the removal of that information. This is necessary to prevent ongoing misuse or unintended use of customer data.
12. **Remediation of unauthorised payments:** ASB agrees with the proposal in the Paper that where an Accredited Requestor requests an unauthorised payment from a customer’s account, Accredited Requestors should be directly liable, as the party submitting requests on behalf of customers. However, the Paper suggests a different structure whereby, *if the bank reimburses the customer*, only then is the Accredited Requestor required to reimburse the bank for that amount. ASB submits that Accredited Requestors should be required to compensate the customer *directly* for any unauthorised payments, rather than the bank compensating the customer first and seeking reimbursement from the Accredited Requestor. This approach would fairly allocate responsibility for unauthorised payments to the party best positioned to manage the risk—the Accredited Requestor — rather than imposing an additional administrative burden on the bank to settle the Accredited Requestor’s liability to the customer directly.

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<sup>1</sup> Istart.co.nz “Open banking: The fintech view”, 24 May 2024: <https://istart.co.nz/nz-news-items/open-banking-the-fintech-view>

13. **Performance standards:** ASB supports the Paper's recognition of the need for performance standards but recommends that any mandatory performance standards be deferred at this stage. These standards should be determined once the CDR framework has been in place for a reasonable period and appropriate performance benchmarks can be evaluated based on real-world use.
14. **Governance and oversight of open banking:** The paper proposes various alternative options for the governance of the Payments NZ API Centre. In our view, those settings should remain unchanged at this time. Altering the structure or introducing new members to the API Council could introduce unnecessary complexity and slow down the ongoing development of API standards. Relatedly, we recommend that Payments NZ is appointed to function as a sub-regulator under the regime, in the interests of ensuring alignment with broader payment system developments.

Finally, the Commerce Commission's recent recommendation to designate the interbank payment network under the Retail Payment System Act 2022<sup>2</sup> (RPSA) includes a proposal that the Commission should have exclusive oversight of the regulation of payments, with MBIE responsible for other aspects of the CDR. The Commission suggests that "*MBIE can focus on the data sharing, account action and accreditation aspects of open banking*", while the Commission oversees payments. ASB is concerned that the suggested approach is impractical and does not recognise that these aspects of the CDR inherently intersect. For example, the ability to initiate payments relies on secure data sharing protocols and identity verification processes. Attempting to split regulatory responsibilities in these overlapping areas would create duplicative oversight, inefficiencies, and complicate compliance for data holders and Accredited Requestors. We believe there is a strong case for regulation of payments to sit under the remit of the Financial Markets Authority (FMA), but delegating rule and standards to Payments NZ as a sub-regulator.

As noted above, ASB is broadly supportive of the proposals in the Paper, and has actively participated in the delivery of open banking through its work with the API Centre and Payments NZ. However, to ensure that the CDR framework is both effective and equitable, the designation regulations and standards for the banking sector should be designed in a way which addresses the issues raised above.

ASB would welcome the opportunity to engage further in relation to the development of the open banking regulations and standards and would be happy to assist MBIE with any questions arising from our submission.

Yours faithfully



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<sup>2</sup> [https://comcom.govt.nz/data/assets/pdf\\_file/0018/362025/Retail-Payment-System-Recommendation-to-the-Minister-to-designate-the-interbank-payment-network-August-2024.pdf](https://comcom.govt.nz/data/assets/pdf_file/0018/362025/Retail-Payment-System-Recommendation-to-the-Minister-to-designate-the-interbank-payment-network-August-2024.pdf)

**Schedule: Submission by ASB Bank Limited  
on the Discussion Paper for Open Banking Regulations and Standards  
under the Customer and Product Data Bill**

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## **Introduction**

ASB is generally supportive of the proposals in the Paper, and MBIE's preference for aligning the framework with the ongoing work of the API Centre.

This submission focusses on a number of key issues that we believe require reconsideration in order to ensure a balanced and effective implementation of the CDR within the banking sector.

### **1. Scope of designation:**

#### *Right to submit requests*

- a. ASB supports MBIE's proposal to limit the ability to submit requests under the CDR to Accredited Requestors only, and not to enable requests to be made directly by customers without the involvement of an Accredited Requestor.
- b. Any extension to customers should only be considered at a later date and following the implementation of the CDR and based on a detailed cost-benefit analysis and assessment of the risks to consumers of enabling direct access.

#### *Designated banks*

- c. The Paper also proposes that designated data holders for the banking sector will be, at least to begin with, the four largest banks, with Kiwibank added from 1 June 2026. Other banks would be permitted to "opt in" but would not be required to participate.
- d. ASB submits that all registered banks should be subject to the designation and that ideally the commencement date for all banks should be aligned. That is because:
  - i. The purpose of the CDR is to establish an economy-wide framework to enable greater access to, and sharing of, customer and product data between businesses. This cannot be achieved if all regulated banks are not included. Open banking depends on providing consumers with a seamless, consistent experience across the financial sector. A broader designation that captures all registered banks, at the same time, would enhance consumer confidence in the system, as all banks would be held to the same standards. Consistency of access across all banks will also reduce operational challenges and confusion for fintechs and other businesses seeking to leverage the CDR framework.
  - ii. Designating only the largest banks creates an uneven regulatory landscape. All registered banks, regardless of size, should be required to participate at the same time to avoid imposing a disproportionate regulatory burden on larger banks. Smaller banks who do not participate in the CDR may also find it harder to compete with larger ones that have already adapted to the new regulatory landscape and customer expectations for data sharing.

- e. In the alternative, if MBIE continues to consider that a phased designation is appropriate for the banking sector, then:
  - iii. Kiwibank should be included in the first phase of designation (rather than having a later commencement date). Designating the five banks with significant market share at the same time will improve take up and trust in the CDR from inception, both of which are essential to customers realising benefits.
  - iv. This should be followed by a “roadmap” with specified timings for designation of other registered banks (rather than an “opt in” regime). This will ensure that, even if temporarily deferred, the open banking regime will eventually encompass all banking customers and also reduces the risk of consolidation of customers within a smaller number of designated banks.

## **2. Scope of customer data**

- a. The Paper proposes the designation of a broad range of customer data. That includes categories such as "information about the customer’s eligibility for services and offers," "payment obligations," and "authorisations for transactions given in respect of accounts, such as automatic payments and direct debits."
- b. The scope of designated customer data should be more narrowly defined to avoid potential privacy and regulatory challenges. In particular:
  - i. Mandating the disclosure of customer account numbers raises privacy concerns under the Privacy Act 2020, including under Information Privacy Principle (IPP) 13, which restricts the reuse of unique identifiers. Including that detail in the CDR is also unnecessary – it is not required for services provided by Accredited Requestors and can in any event be easily obtained by customers directly should they require.
  - ii. Customer numbers are useful only within the direct relationship between the bank and the customer by enabling a bank to ensure secure identification and management of individual customer accounts across its services and systems. There is no benefit in sharing that information with third parties which creates material and unnecessary risk. After all, Accredited Requestors can establish their own numerical identifiers to facilitate interactions with customers and can match relevant information by using customers’ names without needing bank-specific identifiers.
  - iii. Including data such as "customer eligibility for services" and "promotional offers" in the scope of customer data involves disclosure of derived data that is proprietary to data holders and commercially sensitive. We suggest that the scope of designated customer data be pared back to focus on essential categories like account information, balances, and payment history.
  - iv. The Paper also refers to “payment obligations” and “authorisation for transactions” within the scope of designated Customer Data. There is a lack of clarity around precisely what these terms are intended to capture. However, they are likely to create heightened security and fraud risks as well as real challenges in relation to external disclosure through CDR electronic systems. These aspects involve significant operational complexity, particularly for large organisations where authorised roles and responsibilities on behalf of the business are dispersed across various stakeholders.
- c. By limiting the scope of customer data to core transactional and factual data directly relevant to customers, the framework would better align with privacy principles and

reduce over-exposure and related security risks. It is also more proportionate: expanding the scope of customer data too broadly will not only add operational burden and costs for data holders but will also extend the timeframes for implementation, potentially outweighing the practical benefits to consumers and businesses. A cost-benefit analysis should be carefully applied to any further inclusion of additional categories of customer data.

- d. The importance of clarifying the scope of customer data is also relevant to the ongoing design of the Bill, which should clearly define the point at which a data holder's liability ends. ASB submits that the Bill should make clear that once customer data has been securely transferred to a third party under the CDR, data holders should no longer be liable for any misuse or breach of that data by the third party. This limitation is crucial to avoid discouraging data holders from participating fully and confidently in the CDR due to concerns about ongoing liability risks.

### **3. Cost-benefit and the importance of timing**

- a. The Paper appropriately recommends that the rollout of the open banking regime should be based on a careful cost-benefit analysis (section 5 of the Paper). As the Paper acknowledges, the costs incurred by banks – including significant investment in open banking APIs to date – are substantial.
- b. A key factor that will directly affect these costs is the timing of implementation. The timeframes proposed in the Paper are for designation and other regulations and standards to commence on 1 December 2025. We understand that is intended to reflect the minimum time required for the government to enact regulations and establish a regulator. However, it also assumes that banks can complete all necessary adjustments within this period.
- c. Industry has already agreed to the Open Banking Implementation Plan through the API Centre through to the end of 2025. It is not yet clear what the final scope of the regulations and standards will be. Without this clarity, including a clear assessment of the additional value for customers of these requirements, industry will not be able to comment on the appropriateness of the implementation deadline.
- d. The experience in overseas jurisdictions has demonstrated the value in avoiding a rushed implementation of open banking. Any rushed implementation could lead to operational inefficiencies and increase the risk of errors.
- e. We therefore recommend further engagement on implementation timelines in light of what industry has agreed under the Open Banking Implementation Plan and the final regulations and standards.

### **4. Fees**

- a. The Paper outlines various options for the charging of fees within the open banking framework.
- b. In ASB's view, to ensure a fair and sustainable open banking system, banks should be permitted to charge fees to Accredited Requestors and should have flexibility in determining the value of those fees. Open banking will require banks to invest significantly in infrastructure, security, and ongoing compliance measures, and flexibility to charge accredited third-party requestors for access to data is essential to allow (at least partial) recovery of these costs. Such flexibility would allow banks to align fee structures

with the complexity and volume of data requests, ensuring that they can manage the financial burden of supporting the open banking ecosystem. If considered necessary, that could be subject to appropriate principles to ensure fees are not excessive, but are focussed generally on cost recovery.

- c. Accredited Requestors are well-positioned to bear part of the costs of accessing customer data. They are also the parties most likely to benefit commercially from the open banking system, with relatively minimal costs. Given their role in commercialising data flows for the provision of new services, it is appropriate that they contribute to costs of implementing and maintaining the open banking system. Fees charged to Accredited Requestors would also likely encourage responsible and efficient data requests, helping to manage the overall demand on bank systems.

## **5. Scope of product data – excluding terms and conditions**

- a. ASB generally supports the approach taken in the Paper regarding the scope of product data to be shared under the open banking regime.
- b. Most of the categories proposed (such as "information identifying or describing the product," "charges or rates associated with the product," "features or benefits of the product," and "eligibility criteria") appear generally reasonable.
- c. However, ASB considers that the inclusion of the "terms and conditions of the product" as a category of product data is onerous, duplicative, and ultimately unnecessary for the purposes of open banking. In particular:
  - i. That additional category seems redundant, as the most relevant aspects of the terms and conditions are already covered by other categories, such as "charges or rates," "features or benefits," and "eligibility criteria." These categories encompass the core commercial elements of a product that are most relevant to consumers and third-party providers under open banking.
  - ii. Requiring banks to provide full terms and conditions would add little additional value while significantly increasing the complexity of data provision. Terms and conditions often contain highly detailed, product-specific, and sometimes variable provisions. Different products may have varied clauses depending on specific circumstances, and providing these terms in a way that is consistently clear and useful across all products and requestors would be challenging.
- d. ASB therefore recommends that terms and conditions be excluded from the scope of product data under open banking.

## **6. Designated actions**

- a. ASB agrees with the Paper's proposal to begin with payment initiation as the only designated action. Focusing on payment initiation aligns well with the existing API standards in New Zealand and reflects what is currently supported in other jurisdictions, such as the UK.
- b. ASB is concerned about the further potential categories of action initiation discussed in paragraph 71, such as creating automatic payments and direct debits, opening and closing accounts, and amending limits. In particular, we are concerned that:



- i. Expanding the range of designated actions prematurely would increase the risk of customer harm and operational errors. For instance, permitting third parties to open or close accounts, amend limits, or modify automatic payment settings introduces a greater risk of fraud, unauthorised transactions, misuse, or accidental errors, potentially causing significant harm to customers. In contrast, a cautious phased approach will allow for the establishment of robust security measures based on payment initiation, before introducing additional designated actions.
  - ii. Integrating APIs for additional functions, particularly actions like opening and closing accounts, will introduce complexity far beyond what payment initiation entails. API standards do not currently exist for these additional functionalities and the development of secure and reliable APIs for these actions is likely to require extensive time and investment. In addition, these functions likely involve cross-system interactions with services like digital identity verification, AML/KYC requirements, and other regulatory frameworks.
- c. We also consider that mandating these other functions under the CDR would be unnecessary in circumstances where customers can already easily undertake the relevant steps (e.g. opening and closing accounts, or setting up automatic payments) through straightforward processes via banks' digital channels and in branch.

## **7. Accreditation criteria**

- a. ASB generally agrees with the accreditation criteria proposed for Accredited Requestors. In particular, ASB agrees with the proposal in the Paper that Accredited Requestors should be required to be a member of an approved financial services dispute resolution scheme.
- b. In relation to security settings, we recommend close alignment with existing standards. As set out under Option 3 at paragraph 114 of the Paper, requirements should be based on specific industry-standard security protocols (such as ISO 27001) in addition to criteria already adopted through banks' existing onboarding processes for third parties agreed under bilateral agreements.
- c. In our view those existing processes are appropriate, balanced and create manageable criteria for third parties.<sup>3</sup> We also recommend alignment with the Open Banking Partnering Framework, when that is developed in due course following the Commerce Commission's recent authorisation.

## **8. Consent**

### *General consent requirements*

- a. ASB agrees with the comments in the Paper regarding the need for strong consent protections, which are central to the success of the CDR. While ASB is generally comfortable with the approach outlined in the Paper, we believe it is important that the consent provisions include further requirements in line with the consent requirements adopted under existing onboarding requirements.
- b. In particular, the following elements should be clearly addressed in the consents which Accredited Requestors must obtain from customers:

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<sup>3</sup> In particular we note that ASB has received positive feedback on the simplicity of its process, as noted in public commentary. (See Istart.co.nz "Open banking: The fintech view", 24 May 2024: <https://istart.co.nz/nz-news-items/open-banking-the-fintech-view> )

- i. *Clear disclosure of purpose:* Customers should receive clear and transparent disclosure of the purposes for which their data is being collected and the specific ways it may be used.
  - ii. *Defined categories of Customer Data:* The consent process should clearly disclose the categories of customer data that will be collected (consistent with definitions published in the API Standards and the API Centre Customer Experience Guidelines).
  - iii. *Frequency of reminders:* Accredited requestor should include a clear indication of the duration of the customer’s consent and the frequency of reminders they will receive in relation to their consent.
  - iv. *Disclosure:* Customers should be informed by Accredited Requestors of the nature of the information that will be disclosed to any third parties, as well as details about who will receive the customer’s data (discussed further below). They should also be informed of the purposes for which data may be used by third parties to whom it is disclosed.
  - v. *Contact details and privacy policy:* Accredited Requestors should provide their contact details prominently with an explanation of how customers can raise concerns or questions in relation to how their data is used by the Accredited Requestor, and how to request the deletion or amendment of their data. The consent should also include a clear link to the Accredited Requestor’s privacy policy.
- c. These additional requirements will bolster the integrity of the consent process, ensuring that it remains comprehensive, transparent, and aligned with customer expectations.

#### *Intermediaries*

- d. ASB agrees that robust consent mechanisms should also apply to Accredited Requestors who act as intermediaries and who may disclose customer data to third-party recipients.<sup>4</sup> In particular, ASB agrees with the proposed requirement to disclose “the specific persons” who will receive data from the accredited requestor, and the purpose for which each of those persons will hold and use that data.
- e. ASB further submits that the consent should be clear and explicit and should be prominently presented as an express part of the consent process (rather than a general reference in Accredited Requestors’ terms and conditions) so that customers can make informed decisions regarding their data. Without explicit consent mechanisms, customers may unknowingly have their data used in ways they did not anticipate.
- f. This recommended approach is consistent with the practices banks already follow in bilateral agreements with third parties, where data sharing is subject to clear contractual terms that define the purpose and scope of use. These agreements provide certainty and ensure that data is not misused. The same principles should apply when intermediaries disclose customer data to third parties.
- g. ASB’s position also aligns with the broader legislative changes under New Zealand’s Privacy Act 2020, specifically the new requirements in IPP 3A which are expected to take effect in June 2025.<sup>5</sup> This reflects a growing recognition of the need for transparency

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<sup>4</sup> Paragraphs 141-146 of the Paper.

<sup>5</sup> IPP 3A will require that if an agency collects personal information about an individual other than from the individual concerned, the agency must take any steps that are, in the circumstances, reasonable to ensure that

around how customer data is collected, shared, and used by third parties. Requiring intermediaries to disclose the specific recipients of data and their intended use (as an express and prominent part of the consent obtained by Accredited Requestors) is consistent with these evolving data protection standards.

- h. Taking the example in the Paper (an accredited requestor who aggregates transaction data from multiple banks on behalf of a customer, uses this data to calculate a customer's loan serviceability, and shares that calculation with unaccredited lenders) an explicit and clear consent enables the customer to know who is receiving their information and therefore to make an informed decision as to whether or not to proceed with sharing their data or to limit its use to certain parties.

## 9. Joint customers and secondary users

- a. ASB strongly agrees with the Paper's proposal to apply the "equivalency principle" to joint customers and secondary users (i.e. ensuring that rights and access to information and payments align with existing account operating authorities). This approach maintains consistency with the way joint accounts are currently managed by banks outside the open banking framework, and avoids unnecessary complexity by introducing new parallel requirements.
- b. The regulations and standards should ensure that banks have flexibility in this regard, and should follow closely the how the equivalency principle is expressed in the API Centre's "Equivalency Principle Policy".<sup>6</sup> That will ensure that banks retain the ability to use their existing processes for managing joint accounts and secondary users.

## 10. Payment limits

- a. The Paper outlines several options for setting payment limits in open banking. Of the listed options, the Bank strongly supports Option A (allowing banks to set their own limits). This approach aligns with existing practices and offers the flexibility necessary to manage different customer risk profiles effectively. This will enable a risk-based approach with tailored limits reflecting the specific risks associated with individual customers and transactions.
- b. For example, business customers may require higher limits than individual consumers, and some individuals may be considered at higher risk of frauds or scams (justifying lower limits). Banks are best placed to assess these needs which are context-specific and often highly variable. The flexibility created under Option A is especially important in mitigating potential losses from errors or fraud, as it enables banks to apply appropriate security measures for particular customers. In contrast, prescribing a universal or minimum limit, as suggested in other options, could lead to operational inefficiencies and greater risks to customers.
- c. Flexibility in setting payment limits is also consistent with banks' current practices, which already apply context-specific payment limits across different channels, such as internet banking, mobile banking, and in-branch transactions. These limits are typically tailored to the specific needs and risk profiles of customers, with higher limits often applied to business accounts or long-standing customers with established histories. Allowing banks

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the individual concerned is aware of various specified matters including "the purpose for which the information has been collected" and "the intended recipients of the information".

<sup>6</sup> [paymentsnz.atlassian.net/wiki/spaces/PaymentsNZAPIStandards/pages/1578467379/](https://paymentsnz.atlassian.net/wiki/spaces/PaymentsNZAPIStandards/pages/1578467379/)

to continue setting payment limits under open banking therefore ensures consistency and alignment with existing risk management practices.

## 11. Dashboards

- a. The Bank agrees with paragraphs 150 to 152 of the Paper regarding the use of “dashboards” to provide customer control over authorisations and data usage. However, the Bank does not agree with the proposal at paragraph 153 of the Paper that Accredited Requestors may be entitled to continue to use or disclose customer information that it has already received, in accordance with a customer consent, even after a customer has withdrawn their consent.
- b. If that proposal is adopted, ASB submits that dashboards should make clear how customers can (1) request that Accredited Requestors stop using information that has already been provided, and (2) request the removal of that information. This is necessary to prevent ongoing misuse or unintended use of customer data. Providing customers with a clear and accessible way to control the post-collection use of their information aligns with existing obligations under IPP 9 of the Privacy Act, which limits retention of personal information beyond its necessary purpose.

## 12. Remediation of unauthorised payments

- a. The Paper proposes that where an Accredited Requestor requests an unauthorised payment from a customer’s account, liability should rest with the accredited requestor, as they are generally better equipped to manage this risk than the bank. Specifically, the Paper suggests that the Accredited Requestor must notify the bank of the unauthorised payment as soon as practicable, and, if the bank reimburses the customer, the Accredited Requestor should reimburse the bank for that amount.
- b. ASB agrees that Accredited Requestors should bear liability for unauthorised payments requested from a customer's account. However, we submit that the Accredited Requestor should be required to compensate the customer *directly* for any unauthorised payments, rather than the bank compensating the customer first and seeking reimbursement from the Accredited Requestor. This approach would fairly allocate responsibility for unauthorised payments to the party best positioned to manage the risk — the Accredited Requestor — rather than imposing an additional administrative burden on the bank.
- c. Requiring banks to reimburse customers and seek recourse from Accredited Requestors is inappropriate and inconsistent with the accountability framework outlined in the Bill, where Accredited Requestors are responsible for complying with any prescribed standards in relation to authorisation.

## 13. Performance standards

- a. ASB supports the Paper's recognition of the need for performance standards but recommends that any mandatory performance standards should not be fixed at this early stage. Rather, these standards should be determined once the CDR framework has been in place for a reasonable period so that appropriate performance benchmarks can be based on real-world use.
- b. In addition, we recommend that any performance standards provide for appropriate exceptions including for higher-value transactions, where additional security processes

may be necessary. These transactions might require longer processing times due to enhanced due diligence, extra layers of approval, or anti-fraud measures.

- c. Separately, ASB believes that that implementing a live reporting system for performance and availability, as suggested in paragraph 197 of the Paper, is unnecessary and could delay the open banking implementation process. The existing framework under clause 54 of the Bill already empowers the Chief Executive of MBIE to require the supply of information or documents as needed. This mechanism provides adequate oversight without the need for the design and implementation of an additional, real-time monitoring system.

#### **14. Governance and oversight of open banking**

##### *API Council*

- a. The paper proposes various alternative options for the governance of the Payments NZ API Centre. In our view, those settings should remain unchanged at this time. Altering the structure or introducing new members to the API Council could introduce unnecessary complexity and slow down the ongoing development of API standards. Expanding representation may also complicate decision-making processes and hinder the efficiency of meetings, ultimately delaying critical work already in progress.
- b. More generally, ASB submits that focusing on governance adjustments is premature. We recommend first allowing the new CDR framework to operate for a period and observing its effectiveness before considering governance amendments.

##### *Payments oversight*

- c. Relatedly, we also recommend that Payments NZ is appointed to function as a sub-regulator under the regime, ensuring alignment with broader payment system developments while maintaining a focus on the practical implementation of standards.
- d. We consider that, where possible, regulation of the financial services sector should adhere to the twin peaks model. We believe there is a strong case for regulation of payments to sit under the remit of the Financial Markets Authority (FMA), but delegating rule and standards to Payments NZ as a sub-regulator, similar to the approach taken in the UK with the Payment Services Regulator which sits under the Financial Conduct Authority.
- e. Relatedly, we consider that a repurposed Council for Financial Regulators (**CoFR**) would enable effective collaboration with the Commerce Commission and the RBNZ to ensure competition, efficiency and financial stability are appropriately considered by the FMA and Payments NZ in setting and enforcing retail payments regulation.
- f. In that regard, we note that the Commerce Commission's recommendation to designate the interbank payment network under the RPSA proposes that the Commission should have exclusive oversight of the regulation of payments, while "*MBIE can focus on the data sharing, account action and accreditation aspects of open banking*".
- g. In our view that approach is impractical and overlooks the fact that the aspects of the CDR relating to payments are inherently interconnected with other aspects of the CDR. For example, the ability to initiate payments relies on secure data sharing protocols and identity verification processes. Attempting to split regulatory responsibilities in these

overlapping areas would create duplicative oversight, inefficiencies, and complicate compliance for data holders and Accredited Requestors.

ASB appreciates the opportunity to participate in this consultation and to engage in important discussions about the future of open banking and the design of an appropriate framework that meets the needs of all stakeholders effectively. ASB would welcome the opportunity to discuss any aspects of our submission further with MBIE, and to share insights that may enhance the ongoing development of these proposals.