

## Responses to questions

The Consumer Policy team welcomes your feedback on as many sections as you wish to respond to, please note you do not need to answer every question.

Status quo and problem definition	
1.	<p>How do you expect the implementation and use of open banking to evolve in the absence of designation under the Bill? What degree of uptake do you expect?</p> <p>We expect continued innovation from those banks with the resources to develop, test and implement new ideas. This will retain the current market state with competition constrained by the larger banks. We do not have visibility of the current uptake and cannot comment on future uptake.</p>
2.	<p>Do you have any comments on the problem definition? How significant are the risks of suboptimal development and uptake under the status quo?</p> <p>No comment</p>
3.	<p>What specific objectives should the government be trying to achieve through a banking designation? What needs to happen to achieve these objectives?</p> <p>We support the stated objectives and agree that it is important that a designation should not inhibit entry or decrease competition in banking and financial services. An additional objective could be to ensure standardised data handling and security.</p>
4.	<p>Do you have any comments on the criteria that should be used to assess designation options?</p> <p>The proposed criteria seem appropriate. We propose adding an additional criterion, providing for data accessibility for a customer's trusted advisers.</p>
The Scope of an open banking designation	
5.	<p>Do you agree that the banks covered and timeframes should be based on the API Centre Minimum Open Banking Implementation Plan? Do you have any concerns about the specific implementation dates suggested?</p> <p>We do not agree with this basis for coverage as it simply replicates existing industry standards. The proposed coverage does not promote competition nor improve the ability of customers to access and use data held about them, key elements of the purpose of the Bill.</p> <p>Equally, this basis will not meet the proposed criteria for designation as capturing the same banks will not widen uptake and will pose a barrier to entry for smaller banks.</p> <p>Limiting coverage to the existing five API Providers will mean customers will not be able to get a full view of their financial position if one or more of their accounts are with a smaller bank. On this basis, smaller banks will not be able to offer the same access to data as the larger banks, in effect, decreasing competition.</p>
6.	<p>Do you have any views on the costs and benefits of designating a wider range of deposit takers, beyond the five largest banks?</p> <p>We support designating all data holders in a sector if open banking is to achieve the purpose of the Bill, which is to promote competition.</p> <p>Lessons from implementation of the Australian regime show the costs are significant and disproportionate to the benefits, particularly for smaller players. In the Consumer Data Right Compliance Costs review in 2023, it was found that data</p>

	<p>holders including small ADIs, have spent over \$1 million in implementation costs. Further, costs to operate as an accredited data recipient, the equivalent of an accredited requestor, were cited as a material constraint on developing use cases for customers. The full report can be found <a href="#">here</a>.</p> <p>Consideration must be given to balancing the costs of participation with the benefit of wider coverage to increase competition.</p>
7.	<p>Do you agree that, in the first instance, only requests by accredited requestors be designated? Do you have any comments on when and how direct requests by banking customers could be designated under the Bill?</p>
	<p>We agree in principle that initially only requests from accredited requestors should be designated. This should be coupled with setting the classes of users, in particular customers' trusted advisers, to whom accredited requestors will be required to disclose data.</p> <p>As the intent is to give customers control over who can access and use their data, it will be critical that from the first instance data can flow through a customer's existing trusted relationship, particularly that with their accountant. Our members (chartered accountants) assist their clients to meet regulatory obligations and rely on data held by banks. Ensuring streamlined transfer of data to accountants will widen participation and improve customer outcomes.</p>
8.	<p>Do you have any comments on the customer data to be designated?</p>
	<p>No comment</p>
9.	<p>Do you have any comments on whether product data should be designated? What product data should be included? When should the product data designation come into force?</p>
	<p>No comment</p>
10.	<p>Do you have any comments on designating payments under the Bill? Should other actions be designated? If so, when?</p>
	<p>Learning from the implementation in Australia, we recommend allowing time to assess the initial data sharing stage before designating any action. Time will be required for banks to adapt to the changes proposed through designation and validate the accuracy of data transferred.</p>
<p><b>The benefits, costs and risks of an open banking designation</b></p>	
11.	<p>Do you agree with our assessment of how the designation will affect the interests of customers (other than in relation to security, privacy and confidentiality of customer data)? Is anything missing? For businesses: What specific applications and benefits are you aware of that are likely to be enabled by the designation? What is the likely scale of these benefits, and over what timeframe will they occur?</p>
	<p>No comment</p>
12.	<p>Do you agree with our assessment of the costs and benefits to banks from designation under the Bill (other than those relating to security, privacy or confidentiality)? Is anything missing? For banks: Would you be able to quantify the potential additional costs to your organisation associated with designation under the Bill? i.e. that would not be borne under the Minimum Open Banking Implementation Plan.</p>

	If New Zealand’s Customer and Product Data Bill is to increase competition, it is important that implementation costs are appropriate and proportionate to enable data holders of all sizes, including smaller entities, to participate in the regime.
13.	Do you agree that the designation will promote the implementation of secure, standardised, and efficient regulated data services?
	While designation has the potential to promote the noted outcomes, they will not be valued unless they are greater than those already being achieved under the Payment Initiation API Standard.
14.	Do you have any comments on the benefits and risks to security, privacy, confidentiality, or other sensitivity of customer data and product data?
	It is important that concerns regarding security, privacy, and confidentiality do not inadvertently become barriers to entry or stifle accessibility of data. While such risks must be mitigated, the processes to do so must balance the cost of mitigation actions with streamlining the request process and flow of data.
15.	Are there any risks from the designation to intellectual property rights in relation to customer data or product data?
	No comment
<b>Accreditation criteria – what specific criteria should business need to meet before they can become accredited to make requests on behalf of consumers?</b>	
16.	Do you have any insights into how many businesses would wish to seek accreditation, as opposed to using an accredited intermediary to request banking data? For businesses: How likely are you to seek accreditation? What would make you more or less likely to apply?
	No comment
17.	Do you agree that directors and senior managers of accredited requestors should be subject to a fit and proper person test? Do you have any comments on the advantages or disadvantages of this test, or other options?
	No. This appears to unnecessarily duplicate the responsibilities of directors under the <i>Companies Act 1993</i> and the fit and proper person requirements in the licensing and certification noted in Question 18.
18.	Do you agree that requestors whose directors and senior managers have already met the ‘fit and proper’ licensing or certification test by the Reserve Bank, Financial Markets Authority or Commerce Commission should be deemed to meet this requirement without further assessment?
	Refer response to question 17. We consider there is no need to duplicate existing requirements.
19.	Do you consider that, in the absence of insurance or guarantee requirements, there is a significant risk of banks or customers not being fully compensated for any loss that might reasonably be expected to arise from an accredited requestor breaching its obligations?
	On the understanding that the liability to ensure the requests are valid and approved by a customer rests with the data holder, we consider the penalties proposed in the Bill for an accredited requestor breaching its obligations are sufficient. Setting insurance or guarantee requirements appears to be an unnecessary additional compliance cost.

20.	Do you have any comments on the availability and cost of professional indemnity insurance and/or cyber insurance, and how this may impact on the ability of prospective requestors to participate in this regime?
	No comment
21.	Do you agree that a principles-based approach similar to the Australian CDR rules is an appropriate insurance measure?
	No comment
22.	Do you agree that accredited requestors in open banking should be required to be a member of a financial services disputes resolution scheme?
	We refer to our response in question 19 and consider requiring membership of a financial disputes resolution scheme an unnecessary compliance burden. It rests with the regulator of open banking to monitor and enforce compliance with the regime to detect and deter misuse by any and all participants.
23.	Do you consider that information security requirements should form part of accreditation?
	Yes, where they are proportionate to the risks and facilitate, not hinder, the flow of data across a customer's trusted relationships.
24.	Do you have any comments on the level of prescription or specific requirements that should apply to information security? For businesses: What information security standards and certifications are available to firms in New Zealand, and what is the approximate cost of obtaining them?
	No comment
25.	Do you agree that additional criteria of accreditation be the applicant demonstrate compliance with its policies around customer data, product data and action initiation and with the Act?
	Broadly, it appears reasonable that accreditation would include demonstrating compliance with relevant policies.
26.	Do you consider any additional accreditation criteria are necessary?
	It is difficult to comment without visibility of the intended elements of accreditation.
Fees – what restrictions should there be on fees for providing customer data or initiating payments?	
27.	What would be the impact of requests under the Bill being free, for banking?
	To widen participation in open banking, customers will need to be able to direct sharing their own data with their preferred party free of charge. Therefore, the costs of participating must be borne by the designated data holders and accredited requestors.

28.	If requests under the Bill were not free, what limits or restrictions should be placed on charging fees? Do you have any comments on the costs and benefits of the various options?
	We consider it fundamental that a customer cannot be charged to request sharing their own data with their choice of recipient.  If requests under the Bill were not free, we would expect little to no participation by customers and continued use of existing methods to share their data with whoever they trust to receive that data.
<b>The detailed rules for open banking</b>	
29.	Do you agree with the proposals to ensure that consents given to accredited requestors are sufficiently informed? Are there any other obligations that should apply to ensure that consents are express and informed?
	No comment
30.	Should customers be able to opt out of specific uses of their data that are not necessary to provide the service? Do you have any comments on the advantages and disadvantages of this?
	The Bill only permits requests for data that is necessary to deliver a service. Therefore, to request data not necessary to deliver a service or to use data received for purposes other than the service a customer has requested would be a breach of the regime. On this understanding, we do not foresee a need to enable customers to opt out of specific uses.
31.	Should customers have the ability to set an expiry on ongoing consents? Do you have any comments on the advantages and disadvantages of this?
	Yes. We consider there should be at least an annual confirmation that a request remains valid.
32.	Do you agree with the proposals in this paper to help ensure that consents given to accredited requestors acting as intermediaries are sufficiently informed? Are there any other obligations that should apply to ensure that consents given to intermediaries are express and informed?
	No comment
33.	Do you agree with the proposals to ensure that payment authorisations given to accredited requestors are sufficiently informed? Are there any other obligations that should apply to ensure that payment consents are express and informed? Should there be any other limitations on merchants or other unaccredited persons collecting authorisations, or instructing payments?
	No comment
34.	Do you agree with the proposals in this paper for customer dashboards for viewing or withdrawing consent?

	<p>There should be one dashboard for a customer accessible by their data holders and accredited requestors.</p> <p>The experience in Australia indicates that multiple dashboards quickly leads to consent fatigue and increases the potential for human error with managing different platforms that present similar information in different ways.</p>
<b>Joint customers</b>	
35.	Should there be any exceptions to joint customers being able to access account information, other than those provided by clause 16 of the Bill? What would the practical impact of additional exceptions be on the operation of open banking?
	No comment
36.	Are regulations needed to deal with joint customers making payments, or are the default provisions of the Bill sufficient? What would the practical impact of the default provisions of the Bill on the operation of open banking?
	No comment
<b>Secondary users</b>	
37.	Are there any issues with designating authorised signatories on a customer's account as secondary users? What else should regulations provide for secondary users?
	No comment
<b>Payment limits</b>	
38.	How should payment limits be set?
	No comment.
<b>Remediation of unauthorised payment</b>	
39.	Do you agree that accredited requestors should remediate banks for unauthorised payments that they request? Are there any other steps that should be required to be taken where unauthorised payments occur?
	No comment
<b>Content of the register and on-boarding of accredited requestors</b>	

40.	What functionality should the register have? Is certain functionality critical on commencement of the designation, or could functionality be added later?
	No comment
41.	What additional information needs to be held by the register to support this functionality? Should this information be publicly available, or only available to participants?
	No comment
42.	Is it necessary for regulations to include express obligations relating to on-boarding of accredited requestors? If so, what should these obligations be?
	No comment
<b>Content of policies relating to customer data and action initiation</b>	
43.	Do you agree with the proposed content of accredited requestor customer data policies? Is there anything else that should be required to be included?
	No comment
<b>Standards for open banking</b>	
44.	Do you agree with the proposed standards? Should any additional standards be prescribed?
	No comment
45.	When should version 3.0 of the API Centre standards become mandatory?
	No comment
46.	If product data were included in the designation, what standards should be adopted or developed for product data?
	No comment
47.	Do you have any comments on performance standards that should apply?
	No comment
48.	How can MBIE most effectively monitor performance?
	No comment

49.	Are existing institutional arrangements with the API Centre fit for purpose, to achieve desired outcomes? If not, what changes should be considered? How should the approach change over time as other sectors are designated?
	No comment

**General Comments:**

We would like to reiterate our comments on the Customer and Product Data Bill, in particular that the Bill does not clearly define who is captured by the regime. It is not clear where accountants are captured by the regime which makes it hard to assess the impact of the proposed designation on our members.

Our experience in Australia is that this lack of clarity during the initial design has resulted in accountants being inadvertently captured. Trusted adviser access, which was subsequently incorporated into the Australian regime, makes it optional for the equivalent of an accredited requestor to facilitate sharing data with a customer’s trusted adviser. This has the potential to disrupt the existing relationship between accountants and their clients or result in customers choosing to continue with business as usual and not participate in open banking.

We consider it fundamental that key terms and participants involved in the regime are clearly defined within the primary legislation. We do not consider it appropriate to use subordinate legislation, such as Rules and Regulations, to provide clarity of this nature.

**Thank you**

We appreciate you sharing your thoughts with us. Please find all instructions for how to return this form to us on the first page.