

P O Box 24054
Christchurch 8140

Email: lisa@lisacowe.co.nz

Ph: 027-6828774

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Consumer Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140

By email - consumerdataright@mbie.govt.nz

Submission in response to MBIE Discussion Paper – Open banking regulations and standards under the Customer and Product Data Bill

Thank you for the opportunity to submit to this discussion paper. I also made two submissions to the Commerce Commission open banking paper.

There is nothing in this submission that is confidential or restricted. You may publish it in its entirety, including my full name and contact information. You may also publish the attachment as I have redacted the parts that should not be made public. The rest is fine.

Rather than answering individual questions, if I can just summarise my two main concerns.

They are:-

1. Customer data rights
2. Protecting customer data from exploitation by banks and their associates including third parties.

These two points probably underpin everything else.

Currently NZ law does not prevent banks from sharing customer data with the likes of debt collectors and credit reporting agencies, private investigators, lawyers, courts, insolvency office and other parties.

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founder of Transparency International.***

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Banks current terms contain privacy waivers and clauses which a customer must agree to when they become a bank customer. ANZ were good enough to provide me their current banking terms. I suspect other banks will be similar. So I will reference their terms to explain my concerns. ANZ's terms include a lot of rights that the bank has, such as the right of set-off. Privacy terms are that the customer agrees that the banks "can collect, use and disclose information about you in accordance with our privacy statement....." that includes sharing our information with credit reporting agencies. The bank does not disclose who they use or what the customers rights are. Credit reporting agencies are not regulated under NZ law. ANZ's terms also state that they can collect information about us including how we interact with the bank. ANZ have shown me the interactions I have had with their bank and they have made me out to be a criminal and refer to me as delinquent. What ANZ and other banks don't disclose is that banks keep all customer histories forever and can make decisions about us and share their opinions about us to anyone they like. ANZ's terms don't allow for the customer to give their permission as to what data can be shared. Bank managers in NZ have also told me directly that they share information that they hear with other banks. This breach of privacy is a huge concern, because the customer is not told about this.

When I rejoined kiwibank when I became bankrupted, I was surprised that they had still kept their history of me going back around 20 Years. ASB bank gives the insolvency office their diary notes. Even when the customer is not in default of debt. None of these actions are governed under current laws or regulations. Because there is no transparency, then the customer has no way of knowing what information is being used by the banks to decide on whether we can even hold a basic bank account.

ANZ does not reveal in their terms that the people who they can give our data to include overseas companies, who don't have to comply with NZ Privacy Laws. ANZ's terms state also that they can collect information about us through public sources. Now I know why I have had so many of ANZ staff looking at my social media profiles. Because no laws regulate such collection of data, ANZ can do anything they like with the information. This is one reason why I have asked the government previously to make banking available to everyone. Banks can refuse a customer any product or service for any reason and they don't have to tell the customer why, this is because no laws or regulations protect our rights.

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My concerns are also that the government refuses to accept that banking is an essential service. If it did formally state correctly that banking is necessary and essential it would have to ensure we are protected from data breaches and exploitation.

This is the terrible fear I have of open banking. Are we just going to be exploited further, once you open up our lives to the world through what you are calling “open banking”.

When I became in default of debt, ANZ bank used multiple debt collectors, and including the Collection House in Australia to contact me. Overseas companies don't have to comply with NZ regulation. If the banks onsell debt to collectors then any terms we had with the bank are no longer valid. Its well known in NZ (and a well established practice) that debt is on-sold by banks to collectors and a debt collector will attempt to get a debtor to agree to the debt and a new contract is created. The customer is unaware that this has taken place. At an Equifax meeting a few years ago it was revealed that banks do indeed sell consumer debt and for a lot less than what is owed by the customer. Nothing in banks terms reveal this legal change over, so the customer is unaware how much they actually owe any party.

What happens with these new debt contracts that come about through open banking. Are they turned into financial products and sold to investors. Are we going to be paying debt back to someone living in the middle east for example that doesn't even speak our language.

We already know that banks onsell some debt products like mortgage contracts and other debt, but what about defaulted debt brought by debt collectors. If open banking is not properly regulated or controlled, its not too far from reality to think we could end up with another “global” financial crisis, but not with property, but this time with consumer debt products and loans.

BNZ on their website states “Imagine being able to make online purchases directly from your bank account” I ask – and what happens if someone steals your banking information, now all your money is at risk. What about insecure websites that don't use robust security measures or strong enough authentication. Are people really comfortable with sharing information everywhere when banks require their customers to sign privacy waivers. They already do this.

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Until the NZ government can put right the issues around banking, I have placed what Equifax call a statement of correction, upon my credit report. I have attached the page. This at least gives me some (albeit small) protection from having my personal and financial data exploited by the banks and their agencies. Unless I have no choice but to use an essential service you will see the report is devoid of any entries. And that is the way I want it. Because to some extent I control who sees it. The report is pin protected. There is no way that I can prevent banks from placing entries on it. But at least I can stop some companies from accessing it.

Banks are not custodians of customer data, they have the right to sell it, use it and make decisions with it, all without our input or knowledge. This means banks have the right of use and control of the data that is supposed to be mine. What will this mean for open banking.

Today I set my own standards because I cannot trust the banks or their associates. If I do business with any party I know enough now to ask if they use the services of credit reporting companies and if they use the ones on my black list, then I simply won't do business with them. Banks in New Zealand have not kept my data safe. Over time I suspect we will be forced to use "open banking". Just like we were forced to stop using cheques. And some businesses make it difficult to even purchase items with cash.

What about the people who don't want to use open banking. What alternatives are there for us.

Regarding fit and proper persons. All well and good but not if we cannot know who they are or if we cannot bring complaints if such people have acted illegally or unlawfully. There needs to be an independent banking resolution service who will investigate all complaints and who will make sure that all parties get a fair outcome. There is no such service today. The courts don't provide that service, nor does the banking ombudsman and they confirmed that to me in writing. Under current banking laws we have no protection whatsoever. I hope the government seriously considers this but they won't get the full story until they speak directly to the customers involved.

Regarding accredited requestors. Yes directors and including managers, and all parties for that matter who can access our financial data should be required to pass some testing to show they are credible and including tests of fit and proper person. Otherwise why should we trust them, when time and time again they continue to exploit us.

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The public should be allowed to object to people or businesses applying to be a fit and proper person, or applying to become an accredited requestor. Because banks can appoint any party to collect debt, without any scrutiny, we customers need to protect ourselves from potential harm.

I want to be assured that any bank or agency is not going to use my data against me and I want to know that they have to come to me first and ask if they can use it, what for and who they will give my data to, and only then will I give them a reply in writing. I should not have to waive the rights of data protection and privacy in order to be able to bank in New Zealand. But that is how it is today. How will open banking change that. The decision has already been made for open banking in NZ. The government along with other industries have already put the steps in place. They are just waiting for the governments final stamp of approval.

Says WynnWilliams – “For businesses and consumers, once implemented, open banking will result in increased control over which financial service providers have access to important data....” But whose control, I say.

The exploitation of my privacy and my rights has been made using data that is held by banks and including the insolvency office, is so serious that I have been in contact with the Citizenship office and am looking seriously at relinquishing my NZ citizenship entirely and I have started the process.

Too many privacy breaches and violations of privacy have been made against me by banks in NZ and their associates and including the insolvency office, that such can never be put right the harm they have caused. The government has continued to ignore requests for changes to the current banking regimes that I have asked of them. And the Privacy commissioner powerless to do anything. I have seen no evidence that things will be better for us through the open banking regimes. Sure, there’s a lot of talk and promotion, but that’s all it is – talk. Where is any proof or evidence.

I fear there will be further privacy violations if open banking can operate in NZ without any restrictions. Providers will always be looking for ways to circumvent current laws and regulations.

I do have documents and evidence of how my financial data has been used by banks and their associates, along with the insolvency office against me to exploit and violate my rights. If the MBIE or the Commerce Commission is actually interested in it, then I can provide it later.

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If the government cannot assure the NZ people that our rights to our own information and data will be protected and only be used for our benefit then no amount of any sort of “open banking” will be fully trusted by the NZ people.

I wish to thank all the people, businesses and organisations who have made submissions to government over the years and who have stood up for their rights and the rights of their loved ones and communities, against financial harms in NZ. I thank you.

Regards

A handwritten signature in cursive script that reads "Lisa Cowe". The signature is written in black ink and is underlined with a single horizontal line.

Lisa Cowe