

OPEN BANKING REVIEW

RESPONSE TO REPORT

March 2018

EXECUTIVE SUMMARY

1. ANZ thanks Treasury for the opportunity to make a second submission to the Open Banking Review.
2. ANZ continues to support economy-wide open data and has commenced the preparatory work to implement data access and transfer arrangements for its customers.
3. The report of the review (**Report**), together with the Government's commitment to implement the consumer data right (**CDR**), lays a solid foundation for open banking and economy-wide open data.
4. We support important recommendations set out in the Report, and believe that they are consistent with principles we set out in our first submission.



The consumer must be the focus of open banking

It is clear that the consumer sits at the centre of the report's recommendations. For example, accreditation of data recipients and strong oversight of open data by the Australian Competition and Consumer Commission (**ACCC**) will go a long way to building public trust in the data economy.



The data security risks of open banking need to be managed

The theme of security flows through Report's recommendations. We strongly support this focus. We have commented below on some aspects of the intended standards and frameworks for opening banking. Security will be a critical issue as the standards are prepared.



Open banking should not create competitive imbalances

The Report's recommendation on reciprocity is important to ensure open data does not create imbalances between competing data holders and recipients. We have made some comments to ensure this reciprocity works effectively once open data applies beyond banking. We continue to believe that open banking should reflect the economic value of data in a way that recognises consumers' interests.



Economy-wide open data should be the end-state of open banking

The report provides a pathway to economy-wide open data. We continue to believe that open data should apply to all sectors of the economy. The current intent to apply open data to four sectors (banking, energy, telecommunications and internet services) may benefit from reflection to ensure that the Australian economy benefits fully from open data. We would prefer true economy-wide open data rather than an incremental approach.

5. Beyond these points, our primary comment is that an implementation timeframe of 12 months for all data contemplated by the report is ambitious. It may be better to set a period of 12 months after the rules are finalised for the initial implementation of open data. The implementation could be organised in stages. We have proposed a phasing option to address this.
6. Set out below are our comments on selected recommendations. We look forward to contributing to the development of open data as the policy development progresses through law reform and the development of the relevant rules and standards.

RECOMMENDATION 1.1

ALTERNATIVES TO OPEN BANKING

1. Allowing competing ways of consumers to access bank data seems a prudent approach to ensuring open banking does not inhibit innovation. The key challenge with it, however, is that consumers may assume that the data security protections they enjoy under the CDR regime also apply to other methods of data access.
2. If alternative approaches are to be permitted, we would suggest that they be accompanied by certain minimum consumer protection measures such as:
 - Accreditation for data recipients
 - A clear liability regime that, like the regime suggested for open banking, sees legal responsibility for data security shift upon its transfer from one entity to another
 - Measures to ensure consumers understand the risks of data transfers and the differences between the CDR regime and the alternative approaches

RECOMMENDATIONS 2.3 & 3.9

SECTORS TO WHICH THE CDR APPLIES

3. As currently envisaged by Government, open data will apply first to banking and then to telecommunications, energy and internet data.¹
4. Recommendation 3.9 provides that as entities receive data under open banking, they themselves will be obliged to share data at the consumer's request. Such reciprocal data will cover the originally shared data plus any transaction data *or data that is the equivalent of transaction data*. Equivalent data is proposed to cover:
 - Data received from another participant in open banking
 - Any customer-provided data (subject to certain exclusions)
 - Data relating to the lending of money on credit; and
 - Data relating to the payment of monies to which they are either a party or that they are facilitating
5. It is not clear from the report with whom the receiving entity needs to share the equivalent data with. For example, does the non-ADI receiving entity need to share

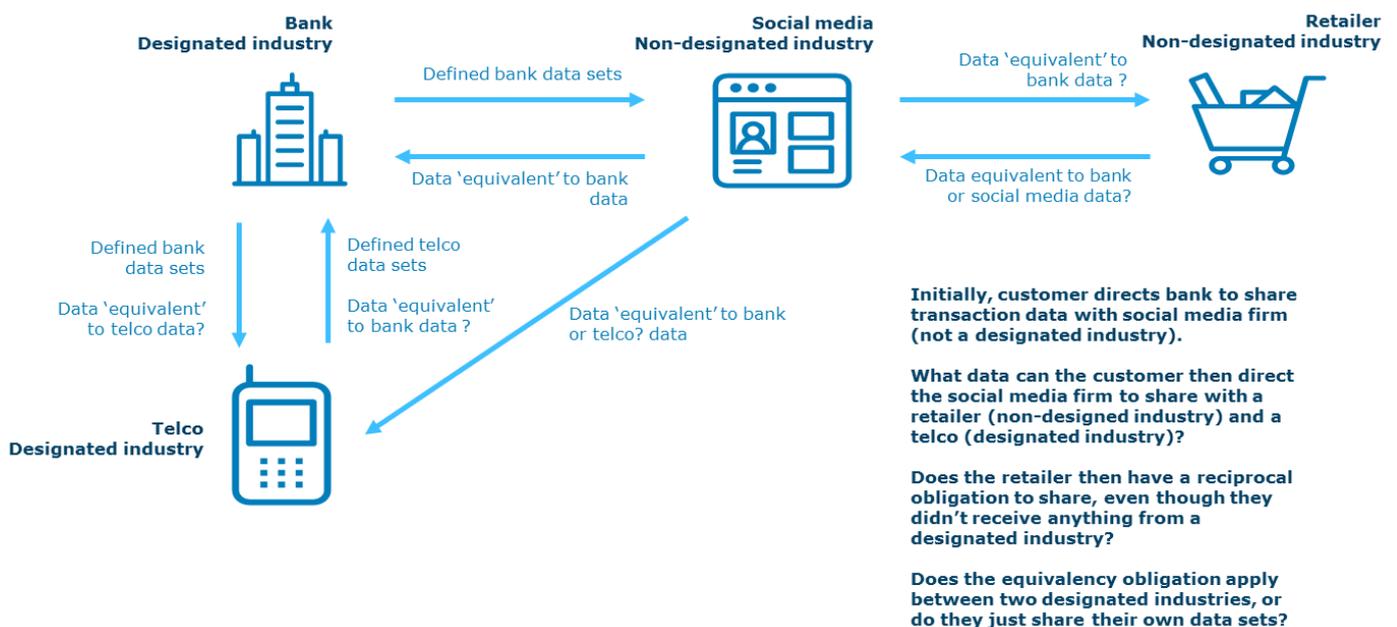
¹ <https://ministers.pmc.gov.au/taylor/2017/australians-own-their-own-banking-energy-phone-and-internet-data>

equivalent data with ADIs only, or with anyone the customer directs the receiving entity to share the data with.

6. The issue of what is equivalent data will become more involved once other industries are designated for open data. Assuming that reciprocal data sharing will be a feature of the CDR when it applies to telecommunications, energy and internet industries, this will mean that there will be a number of defined data sets that are caught across the economy as follows:

- **Industry data sets** – Data sets that are defined for each designated industry and which apply to entities in that industry
- **Equivalent data sets** – Data sets that are 'equivalent' to the data being shared from each of the designated industries
 - It is not clear if the 'equivalent data' definition will apply to entities in designated industries when they receive data from other designated industries or whether they would just need to share their industry-specific data sets
- **Equivalent of equivalent data sets** – Interestingly, when an entity in a non-designated industry is drawn into open data and starts sharing their 'equivalent data', we wondered whether the obligation to share 'equivalent data' will also apply to an entity in a second non-designated industry if it receives data from the entity in the first non-designated industry.

7. These data definition issues are set out in the diagram below.



8. The report provides a definition of 'equivalent data' that is banking specific (eg data relating to the lending of money on credit). However, if open data is to start applying in

as set out in the diagram, industry-specific definitions of equivalent data will quickly reach their limit of utility and may become confusing in application.

9. Thus, while a telco company may have similar customer-provided data as a bank (name, address etc), a social media company will collect substantially more customer-provided data that is of a different character to the data provided to a bank. This would include the customer's browser history, uploads of descriptions of activities, photos and messages sent and received.
10. Further, data from other industries that provide a core service quite different from one of the designated industries will hold data that could be valuable to customers. For example, social media platforms may not lend much money on credit but they would hold substantial data on customers that the customer may find valuable to transfer to another entity. Thus, those customers may be able to shift, for example, between social media platforms just as transaction data may ease switching between banks.
11. We note that the report's recommendation is that the ACCC define equivalent data for each accredited data receiving entity under open banking. It is not clear how this process would work once multiple industries are designated for open data.
12. As such, there may be problems with the proposed processes of both industry designation and capturing 'equivalent data'. We would suggest three options for dealing with this.

Apply CDR across the economy as recommended by Productivity Commission

13. First, as we have stated before, we believe the CDR should be enforceable as envisaged by the Productivity Commission against all corporates that hold consumer data. Consumers will gain the most out of their data when they can access data from multiple sources. Such economy-wide open data also offers the most opportunity for economic benefit to Australia.
14. If open data were to apply across the economy without an industry designation process, then the 'equivalent of equivalent' data problem described above would fall away. A generalised definition of 'consumer data' (with industry-specific articulations) could be used by consumers to transfer their data across industries.
15. We'd also note that the process of industry designation necessarily involves an ex ante attempt to assess which sector's data is valuable. If done properly, this would involve a cost-benefit analysis that modelled the costs associated with open data, the potential uses of the sector's data, the economic benefits and costs that may flow from such uses and, critically, consumer propensity to share their data. This is a significant undertaking that does not appear to have been done before.
16. Because of the work involved in determining which industries would benefit from open data, it may be better to apply the CDR across the economy and allow uses of open data to be discovered through innovation.

Define industry data sets upfront

17. If the process of industry designation is retained, a second option for allowing open data to daisy chain through the economy via reciprocity with clarity would be to define, upfront, the data that will be shared by each industry. Thus, instead of attempting to define what is data that is equivalent to banking or telco data, the Government could define the stand-alone data sets for each industry. Once an entity within the industry starts sharing because it receives data from another entity, then the industry-specific definition would apply (rather than a definition that is based on what is equivalent to the originally received data).

Capture data relating to the 'core service' of the receiving entity

18. The second option would require some degree of upfront work although we can see merit in it from a certainty perspective. The third option would be to define 'equivalent data' in a way that is not contingent on the data fields of the sharing industry but is, instead, sufficiently protean to be industry-agnostic.
19. Thus, instead of equivalent data being dependent on the sharing industry, it could be something like 'data which relates to the core service provided by the industry of the recipient entity'. The ACCC could then define the core service that is provided by the industry of the recipient entity. This would allow for customers that share data with entities in non-designated industry to gain full access to the data concerning held by those entities. However, this option could be harder from a drafting and implementation perspective.

RECOMMENDATION 2.8

ACCREDITATION CRITERIA

20. In considering the risks that drive accreditation tiers, we would ask Treasury to consider that risks associated with payments data which, in some circumstances, can be as high as the risks associated with the payment of money or write functionality over accounts. This is because such data can be used to effect identity theft or fraudulently establish proof of income. In this way, data can be the key that allows access to payments and money.

RECOMMENDATION 3.2

TRANSACTION DATA

21. The obligation to share transaction data appears reasonable (subject to appropriate phasing and our comments on the economic model below).
22. We would, however, note two aspects with transaction data that will need consideration.
23. First, it will be important to give consideration to customer privacy in establishing the standards that prescribe the transaction data. Including consumer groups in the process of articulating the standards will be important.

24. Second, we note that transaction data can disclose commercial insights into a bank's operations and strategy. Thus, pricing for loans will be evident in the interest rate that a customer pays. Aggregated through multiple individual transfers, these would provide competitors with information about how competitor organisations price their products. This would both give competitors confidential information as well as reduce some of the current supplier price uncertainty in the market that can work to consumer benefit.
25. Considering this issue could be important when the level of detail that is included in transaction data comes to be considered in the data standards.

RECOMMENDATIONS 3.3, 3.5 AND 3.11

ECONOMIC MODEL

26. Recommendation 3.11 is that data should be provided free of charge. Respectfully, the reasoning for this recommendation could be more persuasive. It does not recognise the significant implementation costs associated with open data. The counterfactual reasoning provided (that open data could 'conceivably' be a saving compared with current data sharing activities eg paper) is not backed by any disclosed quantification. We would also suggest that the provision of data on paper is declining and is not a robust baseline for comparison.
27. We continue to believe that the economic value of open data should be appropriately reflected in a way that recognises consumers' interests.
28. While consumers should be able to benefit from data concerning them, it also seems reasonable that the open data framework recognise the value that commercial recipients of the data can derive from it. It is inevitable that data that is transferred under open data, like data collected today, will be commercialised by recipient companies (with customer consent).
29. A number of different models that allow the economic value of data to be reflected in the open data framework are available. These include:
 - Allowing data holders to bilaterally charge corporate data recipients (but not customers) for the transfer with the ACCC monitoring this to ensure that customers do not directly pay the data holder for the transfer
 - Building on this first model, allowing data holders to bilaterally charge recipients according to an ACCC approved rate card or access regime
 - Centralising the data transfer process through a utility and having data recipients subscribe to that utility for access to the data
30. Recognising the economic value of data could be done in tiers. Thus, there may be public policy arguments for certain use cases to be free (such as comparisons) but other data sets and uses could be subject to the economic model.

- Low frequency transfers of product level data and basic transaction data could be provided free of charge to allow comparison services to operate and consumers to shop around
- Higher frequency transfers of transaction data could be charged for, as could richer data sets such as timestamps or merchant codes for transactions

31. Recognising the value in data would have multiple benefits:

- It would encourage data holders to invest in data capture and storage, potentially leading to the sharing of data beyond the minimum fields designated for open data
- It would allow entities that have already developed significant data infrastructure and holdings to benefit from that investment
- It would help develop the data market within the economy, again potentially beyond data caught by open data
- It would impose commercial discipline on businesses that are based on data and discourage business ventures that have few prospects for success

32. We agree that value-added customer data and aggregated data should be excluded from the scope of the open banking CDR.

33. We note the comments on page 39 of the Report that competitors should be able to replicate aggregations of data through the transfers of data at the direction of consumers. The report notes that question of aggregated data could be revisited after the broader CDR becomes operational. This type of proposal would benefit from careful consideration, particularly if the aggregated data is the intellectual property of data holders.

RECOMMENDATION 3.2 & 3.6

DATA SCOPE

34. Recommendation 3.2 indicates that transaction data should be made available if it concerns one of the listed products. Recommendation 3.6 states that where banks are under an obligation to publicly disclose information on their products and services, that information should be made publicly available under open banking.

35. On this basis, product level data has a potentially much greater scope than transaction data. Banks are under an obligation to disclose information about many more products than are listed in Recommendation 3.2. For example, banks may issue insurance products that require product disclosure statements, or offer financial advice services that need financial service guides. These products are not proposed to be caught by the transaction data limb.

36. It's not clear why such a broad set of products should be caught by recommendation 3.2. If transaction data from those products is not also available, it's unlikely that comparison services will be able to provide personalised comparisons.
37. We note that bank products that require disclosure are also offered by non-bank providers, such as insurers and superannuation funds. This raises the issue of differing regulatory burdens across firms competing in the same market.
38. We would prefer if there were consistency between the two recommendations.
39. We note that the definition of product data should only capture those products that are currently offered by banks (i.e. no discontinued products).

RECOMMENDATION 3.7

LARGE BUSINESSES

40. Recommendation 3.7 is that the CDR should be enjoyed by all customers holding a relevant account in Australia.
41. It is not entirely clear what a 'relevant account' would be when considering large business customers.
42. If the proposal is that, when large businesses use the exact same product as a retail customer, they should have the right to obtain transaction data in respect of that account, this may make sense.
43. If, however, the proposal is that the CDR applies to large businesses whenever they use products that are similar to the retail products subject to the CDR, then significant implementation issues may arise. Thus, if a corporate is using a wholesale only transaction account (over which no legal disclosure is required but which is similar to the transaction account used by retail clients), it may be questionable whether the system will gain any additional benefit from the availability of that data.

RECOMMENDATION 3.4

KYC ASSESSMENTS

44. The recommendation to provide KYC assessments is an understandable attempt to reduce barriers to entry to the banking market and help customers switch, thus placing demand-side pressure on banks.
45. However, we continue to believe that digital identity solutions are superior to transferring the results of KYC assessments. Not only are digital identities potentially more robust and enduring, providing more security to the banking system, they would not involve the acquisition by one competitor of the commercial efforts of another.
46. The Government and bank resources that will be absorbed changing the law and establishing technical mechanisms to allow KYC assessments to be transferred and relied

upon without placing an unreasonable legal and commercial burden on the initial assessors may be better allocated to establishing economy-wide digital identity solutions.

RECOMMENDATION 4.9

LIABILITY

47. We generally support the model proposed for liability.
48. We note, however, that the liability model needs to be based on a degree of culpability, not strict liability. Thus, the example given of the bank being liable for a malicious actor that intercepts a data transfer appears to allocate liability irrespective of whether the bank took reasonable steps to protect the data.
49. We would prefer if any statutory liability regime were based on a requirement to take reasonable steps to prevent the relevant harm (or similar mechanism that recognises culpability).

RECOMMENDATION 5.2

STARTING POINT FOR STANDARDS

50. Using the UK standards in the development of Australian standards seems sensible. However, we would encourage Treasury to allow for the development of standards that are appropriately adapted for Australia. We would suggest that the bias is not towards the UK standards (with dissenters needing to prove the case for deviation) but towards a set of standards that will allow Australia to have the best form of open data possible.

RECOMMENDATION 5.4

AUTHENTICATION AND AUTHORISATION MODEL

51. We support an authentication and authorisation model that prioritises customer security. The model employed could be risk-sensitive so that higher risk data sets require stronger authentication and authorisation steps. Thus, multi-factor authentication could be used for transaction data. We note that the Australian Prudential Regulation Authority recommends multifactor authentication for remote access to IT assets (see CPG 234 page 13).

RECOMMENDATION 5.8

INTERMEDIARIES

52. We have three suggestions for the Treasury on intermediaries:
 - It seems reasonable that intermediaries will need accreditation in the same way that ultimate data recipients need accreditation
 - The reciprocity requirement should extend to both the intermediary and the end recipient of the data

- Careful legal drafting is needed to ensure that Part IIIA of the Privacy Act 1988 (Cth) does not designate open data intermediaries as credit reporting bodies

RECOMMENDATION 5.9

ACCESS WITHOUT ONLINE BANKING

53. We appreciate the intent of this recommendation. Customers who choose to access bank services through non-digital means should not be disadvantaged because of this.
54. However, we would ask that the proposed policy to provide customers who are not digitally active with digitised data be subject to research as to how many customers would benefit from this feature.
55. Customers who are not digitally active can already access their transaction data through statements. If they wish to access open banking data, the quickest path may be through internet banking. This would avoid the need for an alternative authentication and authorisation mechanism that may not be heavily used. Further research on customer preferences could be helpful here.

RECOMMENDATION 6.3

PHASING

56. The report recommends that open banking should apply to both product data and transaction data from the 'commencement date' (12 months after a Government announcement to proceed) as follows:
 - Large ADIs would report on the commencement date with smaller ADIs commencing 12 months following (although they would be able to start earlier if they wished).
 - No phasing by customer type
 - Transaction data back to 1 January 2017 should be made available, with data being available until the data holder is no longer required to hold it
 - Customer provided data (and presumably the results of any identity verification) would not be required to be reported until amendments to the anti-money laundering laws have been passed
57. We would argue that there are good reasons to consider further phasing beyond that contemplated by the report. The 12 month implementation time frame is ambitious, with significant legal, technical and regulatory work that needs to occur to implement open data for banks safely.
58. We note the report's argument that 12 months is appropriate in light of the implementation timeframe from the United Kingdom and the ability of the Australian implementation work to rely on the UK work.

59. The UK work:

- Benefited from substantial work before the 2016 report of the Competition and Markets Authority (**CMA**) including the UK government's midata policy (2011), the 2014 *Fingleton Report* and the 2016 report of the Open Banking Working Group (established in September 2015)
- Phased the implementation between product data (March 2017) and transaction data (testing in January 2018, with implementation in March 2018, approximately 18 months after the publication of the CMA report)
- Involves fewer products (product data concerns deposit accounts and SME lending products; transaction data concerns deposit accounts) and fewer data holders (nine providers are designated), even if it does involve write access

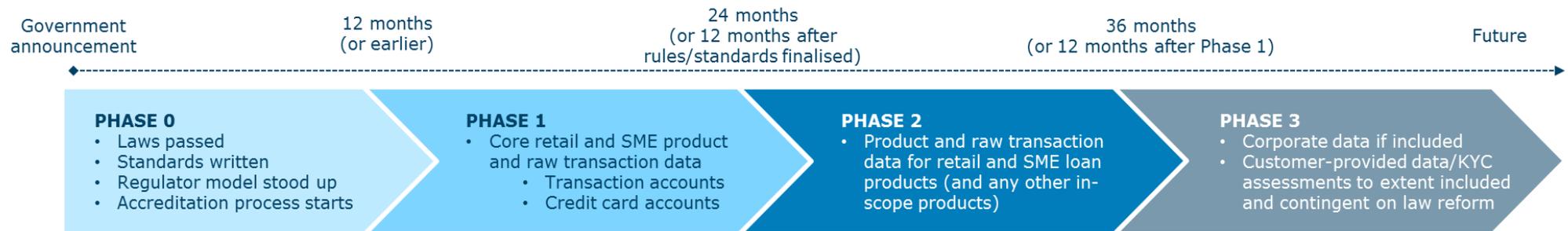
60. The second Payment Services Directive has also had a substantial implementation timeframe, with the initiation of that work in 2013 and implementation ongoing today.

61. On this basis, we would submit both that the 'start date' for the UK work is significantly earlier than the 2016 CMA report and that the work is distinguishable from what is contemplated from Australia.

62. As such, we believe there is good reason to develop an implementation timeframe that is sensitive to the domestic context. In particular, we believe that open banking could be implemented smoothly and safely if implementation is phased. We note, and agree with, the phased implementation by data holder (large ADIs, then smaller ADIs).

63. We have proposed below a phasing model that would deliver the majority of open data within 24 months of the Government announcement (as defined in the Report). This model is based on the premise that establishing the laws and rules will take 12 months (although we recognise it may take less). Our estimate is that industry will need 12 months after the finalisation of laws and standards to design and implement open data solutions. This includes preparing the data for release in accordance with the standards, as well as building the necessary authentication and authorisation frameworks.

Phasing proposal for large ADIs



ENDS