

## 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>Retail NZ agrees with the position postulated in the consultation document that voluntary implementation of open banking will continue to be slow, and that it may not progress at all for some use-cases. As banks will incur costs in implementing open banking and it may increase the competition they face, there are currently few incentives for them to progress open banking voluntarily and/or quickly.</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>We believe that MBIE has accurately defined the problem and agree with its analysis that a regulated approach to open banking will be necessary to ensure that open banking is facilitated and with reasonable timeliness for the potential beneficiaries, including merchants and their customers.</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>Objectives should be to:</p> <ul style="list-style-type: none"> <li>• Facilitate greater transparency over the costs of different financial services.</li> <li>• Promote greater competition between financial service providers.</li> <li>• Enable financial service users to make better informed decisions when selecting a service provider and lower the barriers to switching provider.</li> <li>• Generate greater value from financial services and lower their total cost through greater use of common standards.</li> <li>• Prevent providers charging excessive fees for open banking services.</li> <li>• Promote financial service innovation, while safeguarding consumer welfare.</li> <li>• Facilitating new low-cost payment options over and above cash &amp; Eftpos.</li> </ul>
4.	<p>Do you have any comments on the criteria that should be used to assess designation options?</p> <p>Retail NZ supports the criteria outlined on page 17 of the consultation document.</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 agree the four largest banks should be the first to be designated and that Kiwibank should follow shortly after. As we understand it, all these banks have committed to the API Centre Minimum Open Baking Implementation Plan on a voluntary basis so having the regulations align with the timeframes set out in that document imposes no additional cost on banks, but this will ensure that the nominated timeframes are adhered to.</p>

6.	Do you have any views on the costs and benefits of designating a wider range of deposit takers, beyond the five largest banks?
	Ultimately, we believe all market participants should eventually be brought into the regulated system. Universality would ensure standards are applied across the wider sector for the benefit of all customers. This would also ensure a level playing field for all banking service providers.
7.	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?
	Yes, we agree that requests by accredited requestors should be designated first. We note this reflects the way open banking operates in other markets and that the Australian statutory review specifically recommended against direct-to-customer data sharing on the grounds that the limited use-cases were outweighed by the greater risk of consumer harm, and we accept this on face value.
8.	Do you have any comments on the customer data to be designated?
	<p>Noting the intent to set this dataset relatively broadly, based on information currently available through internet banking, bank websites, and bank statements, and that the more specific information requests will be specified by standards, we are generally comfortable that the proposed customer dataset is designated.</p> <p>Notwithstanding, we are concerned that the consultation document does not address how customer data will be kept up to date, noting that some aspects of customer data can change e.g. contact details, new bank accounts etc. Requestors will rely on the information being accurate at the time it is received and there will need to be quality assurance to ensure this is in fact the case, and subsequent notification to a requestor if the requested information has been changed so it can be updated at their end.</p> <p>Over time it would be desirable for payment data, such as merchant service fees (MSF), to be designated, to enhance customer welfare. Designating MSF would ensure that these services are covered by specific standards in due course, including standards for fee reporting to provide greater transparency around the costs of these services.</p> <p>Designation of payment data could simplify the payments eco-system as all participants would be required to meet common standards, increasing interoperability between a larger number of market participants. This would give retailers greater confidence to engage with a wider range of payment providers and foster greater competition in the payments sector.</p>
9.	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>Merchant service fees and their various components.</p> <p>Retail NZ would like to see standardisation of fee reporting, via a standard, so merchants can obtain greater clarity about the fees they are paying and compare the fees they pay their service provider with those of alternate providers. This would lower the barriers to switching and increase competition in payment services which should ultimately lead to lower fees.</p>

10.	Do you have any comments on designating payments under the Bill? Should other actions be designated? If so, when?
	<p>MBIE is proposing that, to begin with, the only designated action will be payments initiation, from accounts where customers can transact electronic credit domestic payments in New Zealand dollars, including payment initiated through an enduring consent. This is on the basis that payment initiation is the only action that has a current API standard, and the only action currently supported in the UK's open banking system.</p> <p>Retail NZ would also like to see refunds designated to facilitate the payment of refunds related to a payment initiated by a credit payment authority.</p> <p>As outlined above, Retail NZ would also like to see Merchant Service Fees designated, and relevant standards developed for these services.</p>
<b>The benefits, costs and risks of an open banking designation</b>	
11.	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>Yes. We agree that customers may benefit from new services, more convenient, innovative, and potentially secure services, as well as increased competition for banking services as an outcome of enabling "share and compare" functionality.</p> <p>We are unable to quantify these benefits, and anticipate that individual retailers may provide estimates, however we feel the benefits are likely to be significant.</p>
12.	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.
	We agree that banks will incur additional costs in implementing open banking regulations, however banks are very profitable businesses and have already committed to investing in open banking functionality on a voluntary basis, so the additional cost of regulation should be within their capacity to absorb. We also note that it is intended that banks will be able to recover some costs, and that banks themselves will benefit from having an open banking system i.e. they will be better positioned to compete to win competitors' customers.
13.	Do you agree that the designation will promote the implementation of secure, standardised, and efficient regulated data services?
	Yes
14.	Do you have any comments on the benefits and risks to security, privacy, confidentiality, or other sensitivity of customer data and product data?
	No, other than it is extremely important that bank customers can have a high level of confidence in the security and privacy settings supporting the regime and that the confidentiality of their data will be protected.

15.	Are there any risks from the designation to intellectual property rights in relation to customer data or product data?
	Not that we are aware of.
<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.
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?
	Yes.
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?
	This approach appears reasonable and will lower the cost of obtaining accreditation.
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?
	We agree that accredited parties need to have adequate insurance to cover foreseeable liabilities, and that this should be a pre-requisite for accreditation.
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.
21.	Do you agree that a principles-based approach similar to the Australian CDR rules is an appropriate insurance measure?
	Again, this appears reasonable, but other parties would be better placed to 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?
	Yes.
23.	Do you consider that information security requirements should form part of accreditation?
	Yes. Confidence in the parties’ security settings is pivotal to confidence in the wider open banking system. Customers will not want to engage with the system unless they feel their information is secure. On this basis we believe that information security should form part of the accreditation requirements.

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, however we believe it is important that there are assurance standards around security settings so that the parties are required to obtain independent verification that they are compliant with any regulated security standards that are mandated.
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?
	<p>Yes.</p> <p>Additionally, we encourage MBIE to consider the need for assurance standards. Designated parties may be required to meet certain standards, but there also needs to be independent assurance that the standards they are obligated to meet are being complied with.</p> <p>We are aware that assurance service providers operate in the market however it's unclear whether there are common standards which apply to these services.</p>
26.	Do you consider any additional accreditation criteria are necessary?
	Independent assurance of compliance with mandated security standards.
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?
	This question is targeted at banks, as potentially regulated parties, however, we agree that banks should be able to recover reasonable costs for the services they provide, via fees. Notwithstanding, regulation of fees may be necessary to ensure that banks don't overcharge to discourage data requests or to make excessive profits. On this basis we favour some form of regulation to cap fees.
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?
	<p>As above, we believe fee caps may be beneficial.</p> <p>We note that the Minister of Commerce is currently considering advice from the Commerce Commission recommending that the Interbank payment network is designated under the Retail Systems Act 2022, and, if this occurs, the Commerce Commission could have a role in regulating payment fees under that Act.</p>

The detailed rules for open banking	
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?
	It is important that requestors can demonstrate “express and informed consent” to request customer data and payment actions before initiating requests. We are comfortable with the proposals outlined in paragraphs 137-140 of the consultation document.
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?
	Yes. However, depending on the circumstances, the accredited parties may need to provide information to the customer on the uses that are discretionary so they can exercise an informed choice.
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?
	There is a need to balance customer interests and administrative costs for accredited parties which will impact fees for all customers. We support an approach where ongoing authorisations do not automatically expire but must be reconfirmed at least every 12 months to continue, with the opportunity for customers to terminate their authority “at any time” by providing a minimum period of notice.
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?
	The proposals outlined appear reasonable on face value.
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?
	The proposals outlined appear reasonable on face value.
34.	Do you agree with the proposals in this paper for customer dashboards for viewing or withdrawing consent?
	The concept of a regulated bank providing a customer dashboard via its website and mobile app for each active authorisation is appealing as it will provide the information in a readily digestible format for its customers. The idea that customers could withdraw consent for an authorisation via a dashboard also has merit, making the action of withdrawing consent quick and easy to execute. The banks are better placed to comment on the feasibility, cost, and other potential issues with providing these solutions. There also needs to be consideration as to how an accredited requestor will be advised of the customer’s decision to withdraw an authorisation that they are a party to?

Joint customers	
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?
	We anticipate there will be situations where joint customers who “fall into dispute” may wish to protect their individual privacy. Other parties are better placed to comment on the necessary protections.
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?
	Unsure.
Secondary users	
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?
	It is proposed that authorised signatories on a customer’s account are designated as secondary users, providing equivalency between what authorised signatories can do under the draft legislation and outside of it. This appears to be a pragmatic approach.
Payment limits	
38.	How should payment limits be set?
	<p>We note that the Bill does not limit the size of payments that may be made and by default payment limits will be set at the discretion of the bank and may be the same as, or different from, the limits imposed on internet or mobile banking.</p> <p>Our preference is option C – linking payment limits to those imposed for the transactions the customers can initiate through internet or mobile banking.</p>
Remediation of unauthorised payment	
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?
	Yes, on the proviso the bank reimburses the customer.

Content of the register and on-boarding of accredited requestors	
40.	What functionality should the register have? Is certain functionality critical on commencement of the designation, or could functionality be added later?
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?
42.	Is it necessary for regulations to include express obligations relating to on-boarding of accredited requestors? If so, what should these obligations be?
Content of policies relating to customer data and action initiation	
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?
Standards for open banking	
44.	Do you agree with the proposed standards? Should any additional standards be prescribed
	Assurance standards. Designated parties should be required to obtain 3 <sup>rd</sup> party assurance that they are meeting the standards set for them, and assurance providers themselves need to meet minimum standards of performance.
45.	When should version 3.0 of the API Centre standards become mandatory?



46.	If product data were included in the designation, what standards should be adopted or developed for product data?
	Retail NZ supports the development of a standard regulating the content and format of customer statements for merchant service fees (MSF). Standardisation of approach could improve the clarity of fee statements for merchants and therefore enable them to more accurately determine a surcharge rate if electing to impose a customer surcharge. It would also enable merchants to more effectively negotiate fees with their bank, and/or compare fees paid against other alternate payment service providers, reducing the barriers to switching, and facilitating greater competition among payment service providers.
47.	Do you have any comments on performance standards that should apply?
48.	How can MBIE most effectively monitor performance?
	Independent assurance (auditing) would assist with this.
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?
	Retail NZ supports Option a. – altering the governance of the API Centre to give it greater independence or widening the representation on the API Council e.g. to include customers. While the banks need to be heavily involved in the operation of the API Centre it seems sensible to broaden representation to ensure wider interests are involved in the governance function to provide a greater degree of independence from the banking sector.
<b>General Comments:</b>	
<p>Retail NZ also urges MBIE to consider how the regime will interface with Anti-money-laundering and Know-Your-Customer requirements.</p> <p>Current arrangements, whereby retailers need to complete significant documentation for each, and every, new payment type accepted, including director details with proof of identity and addresses, bank account details etc, impose a high compliance cost and this creates a barrier to retailers adopting new payment types e.g. Amex, WePay etc. Lowering these costs would result in retailers facilitating more payment options for their customers, providing customers with greater choice. It would also facilitate greater competition between payment service providers.</p> <p>Ideally, merchants would be able to complete the necessary documentation once and then give consent for the information to be shared with other trusted parties.</p>	

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