

To: The Ministry of Business, Innovation and Employment

On: Consultation on exposure draft of open banking
regulations under the Customer and Product Data Act

2/09/2025

Introduction

This submission is from Chapman Tripp, Lawyers, PO Box 2206, Auckland 1140.

About Chapman Tripp

- 1 Chapman Tripp is a leading law firm with offices in Auckland, Wellington and Christchurch. Our firm acts for a range of banks, fintechs and market participants across our financial services regulation and funds management, equity capital markets, debt capital markets, finance, corporate governance, litigation specialist practice groups.
- 2 Our submission does not purport to represent the views of our clients.

Our submission

- 3 Thank you for the opportunity to submit on the Ministry of Business, Innovation and Employment's (MBIE) consultation on the exposure draft of Customer and Product Data (Banking and other Deposit Taking) Regulations 2025 (the *Banking Regulations*) and the exposure draft of Customer and Product Data (General Requirements) Regulations 2025 (the *General Regulations*) (collectively, the *Regulations*).
- 4 We support MBIE's work in developing these Regulations and we look forward to the commencement of a legislated regime as the Customer and Product Data Act 2025 (the *Act*) comes into effect on 1 December 2025.
- 5 We welcome the expansion of the open banking regime in New Zealand and look forward to individuals having greater access to and control of their data.
- 6 We are concerned that the Regulations are inconsistent with current industry standards, and contain other elements which would benefit from further clarification as we describe below.
- 7 The success of open banking, and CDR regimes generally, relies on trust and confident participation. Addressing the points raised in our submission is vital to building such trust, minimising risk, and ensuring that any roadblocks to confident participation are minimised.

Required data is inconsistent with industry standards

- 8 We are concerned that the Regulations do not align with version 2.3 of the Payments NZ API standards (the *API Standards*). In particular, we note that the designated data at regulation 7 of the Banking Regulations sets out data requirements that are not in the API Standards.
- 9 We submit that direct alignment with the API Standards is essential to ensure that the Regulations are implemented successfully and are fit for purpose by 1 December. Given the very short time remaining until that date, substantive deviations (particularly where the Regulations include additional requirements beyond the API Standards) will introduce unnecessary risk into the system and create confusion amongst participants.
- 10 It is critical that there is certainty on what data is required to be provided in all cases (and what additional data may be required in relevant circumstances, but is otherwise not required) – both for data holders providing such data and for accredited requestors and users to receive consistent and comparable information.
- 11 Further, given the potential complexity of appropriately addressing all such circumstances, we consider that this would be best addressed within technical

standards (and by cross-referring to, or otherwise incorporating, the API Standards). We consider this a crucial change to ensure that the Act and the Regulations get off to a strong, successful start.

Accounts from which payments initiation must be available

- 12 We note that the relevant accounts for “designated data” in regulation 7 of the Banking Regulations are limited to those for which appropriate digital access is available, as set out at regulation 7(3)(c) (and consistent with the Government’s announcement and fact sheet from 1 May 2025¹).
- 13 However, we are concerned that this limitation does not extend to the accounts for which “designated action” may be initiated in regulation 8 of the Banking Regulations.
- 14 The lack of such a clear limitation in regulation 8 may require data holders to perform “designated actions” for accounts that their systems are not equipped to support (and, in such cases, we expect it may be difficult or impossible to implement the necessary technological change before 1 December 2025).
- 15 We also note that the relevant accounts for “designated data” and “designated actions” are likely to be an obvious starting point for assessment where fintechs are considering availing themselves of the legislated open banking regime, making clarity in this area particularly important for the growth of open banking.

Liability

- 16 We recommend that further consultation with the industry is undertaken in the months following launch of the regime on 1 December, with a view to developing more detailed regulations or guidance regarding data holder and accredited requestor liability and other related matters. In our view, this would help ensure greater clarity and certainty as the regime matures.
- 17 While the Act provides for regulations to be developed in respect of these points, the Act does not address them. While we consider that the high-level provisions of the Act are adequate for the period immediately following the launch of the regime on 1 December, in our view they should be addressed in subsequent regulations.

Onboarding process for accredited requestors

- 18 We note that regulation 6(2) of the General Regulations requires data holders to provide new accredited requestors with ‘system access’ within five working days. The scope of this requirement is not clear, and we are concerned that data holders may struggle to meet this in practice (particularly in periods of high volume). In particular, we consider it would benefit both data holders and accredited requestors for the Regulations to provide greater clarity on:
 - (a) What information and documentation an accredited requestor must provide (such as certificates);
 - (b) When any required time period for compliance commences; and
 - (c) What must be achieved by the end of that time period (for instance, access to a testing environment within a relatively shorter time period; or full

¹ <https://www.beehive.govt.nz/release/better-banking-competition-one-step-closer-kiwis>

implementation within a relatively longer time period (subject to reasonable allowances if issues arise in the testing environment phase)).

- 19 We consider that such an approach would provide a clearer, smoother process for both data holders and accredited requestors. In particular, it would help ensure that any difficulties or other issues at commencement in December are minimised – such initial issues can be particularly problematic as they can significantly dent confidence and slow uptake on a long-term basis.

Intermediaries

- 20 Regulation 9(2) of the Banking Regulations sets out when an accredited requestor is “acting as an intermediary”. We query whether this is intended to exclude intermediaries who provide services to fourth parties who arrange for payment services to fifth parties.

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