



23 March 2018

Copy by email: data@treasury.gov.au

The Treasury
Langton Crescent
PARKES ACT 2600

Dear Treasury,

Submission on Open Banking in Australia – Final Report

American Express Australia Limited (***American Express***) fully supports the introduction of an Open Banking scheme in Australia and welcomes the opportunity to comment on the 'Review into Open Banking: Giving Customers Choice, Convenience and Confidence' report dated December 2017 (***Open Banking Report***).

American Express and Payments Innovation

American Express group is one of the largest global payment providers and is headquartered in New York. It has operated in Australia since 1954 as a travel company and has issued Australian currency payment cards for more than 35 years. American Express holds an Australian Financial Services Licence and an Australian Credit Licence.

American Express is committed to innovation in payments and financial services. American Express was the first card issuer in Australia to launch Apple Pay – and the first to offer all three of the major mobile wallets (Apple Pay, Google Pay and Samsung Pay). Through its involvement with a range of 'future payments' events, forums and organisations, American Express supports the growth of the burgeoning Australian fintech scene and considers Open Banking to be critical to its expansion. American Express has developed industry leading data analytics capabilities, which allows it to offer value to its card members whether through tailored lifestyle experiences or 'best in class' fraud protection.

Whilst creating enormous potential for innovation, exposing such large amounts of data does however carry significant challenges. If implemented imperfectly, it could give rise to material competition risks such as inadvertent price signalling, collusion and the exposure of business sensitive confidential information. Such an implementation would be to the detriment of consumers in Australia. With that

in mind, American Express would like to share its observations on the Open Banking Report and seeks further clarity on certain aspects.

Submissions on Open Banking Report

We hope that the recommendations below are helpful to Treasury as it moves ahead in its mission to introduce Open Banking in Australia. We note that much of the detail relating to the proposed Open Banking will be left to the drafting of the relevant rules and standards – however, we think that it is important to ensure clarity on some matters earlier. We make the following observations and submissions:

1. RECIPROCAL PARTICIPATION – RECOMMENDATION 3.9

The Open Banking Report recommends that non-ADI participants, such as American Express, who wish to receive data under the Open Banking framework should be required to participate on a reciprocity basis. Under the current proposal, such non-ADI participants would be required to share ‘equivalent data’.

a) One in, All in?

It is unclear whether the reciprocal obligations will apply at a customer level, or at a portfolio level. For example, if a non-ADI recipient requests data in respect of Customer A, would the recipient then be obliged to make available equivalent data solely in respect of Customer A or in respect of all customers?

If the reciprocity principle is to apply at a portfolio level (i.e. for all customers), then participation should be product specific (see below).

Recommendation: American Express recommends that further clarification be provided on this point.

b) Reciprocity should be Product/Customer Specific

Reciprocal obligations should be limited to the product and/or customer type that is the subject of the data request. For example, where a non-ADI requests transaction data about a consumer credit card customer, the non-ADI should only be obliged to share transaction data or equivalent data in respect of consumer credit card customers only; it should not be subject to an obligation to make available all equivalent transaction data across the full suite of its products or services (for example foreign exchange services, small business cards, corporate cards, acquiring services etc.).

American Express submits that it goes beyond mere ‘reciprocity’ or fair value exchange to require a non-ADI participant to make available all of its transaction data, where it only seeks to receive data on specific products or customer types.

American Express believes that such a flexible approach would encourage greater and earlier participation in the Open Banking scheme by non-ADI’s, as they would be able to start small (i.e. from a single product set) and then have the flexibility to ramp up participation over time. This

approach would also enable participants to tailor their use of Open Banking to suit the size of their business, resources and product mix.

The cost and time involved in exposing data across the entirety of a business would be significant. Setting that as a pre-condition to participation would at best delay, at worst deter participation.

Recommendation: American Express submits that reciprocal obligations should be limited to equivalent data regarding the product and/or customer type that is the subject of the data request only.

2. IMPLEMENTATION TIMELINE FOR NON-ADI PARTICIPATION – RECOMMENDATION 6.2

The proposed implementation timeline only expressly references ADI participants in the scheme. It is unclear at what stage non-ADIs who are accredited to receive data would be subject to obligations under the scheme. It is perhaps implied that non-ADI participants would be subject to a reciprocal obligation immediately upon requesting data in the Open Banking system. American Express seeks clarity on this point.

We think that non-ADI recipients should be subject to implementation timeframes that are at least in line with the non-major banks (i.e. 12 months from the Commencement Date). This would encourage earlier engagement with the Open Banking system across all non-ADI participants. The cost, resource and time involved for non-ADI participants to develop appropriate platforms and systems to ingest data via Open Banking API will be significant. Requiring non-ADIs to also develop APIs to expose their data from the outset, will likely delay non-ADI participation. Having an opportunity to interact with the Open Banking regime on a 'recipient only' basis will provide invaluable insight to non-ADI participants as they develop their APIs, systems and platforms over time.

We consider that the option for 'recipient only' participation for non-ADIs for the first 24 months after Commencement will ensure quicker participation by a greater number of non-ADI participants. This will result in a vibrant Open Banking system sooner.

Recommendation: American Express submits that the reciprocal obligations should only be imposed on non-ADIs from a date 24 months after the Commencement Date or alternatively.

3. UNIQUE TRANSACTION DATA SETS – RECOMMENDATION 3.2

The Open Banking Report recognises and acknowledges that data custodians have a proprietary interest in enhanced data, where through the application of effort, analysis or insight, value has been created. We strongly agree with that proposition and believe the principle also extends to unenhanced raw data in certain circumstances; where that raw data has been obtained as a result of investment in and by a business. For example:

- Data that is unique to a business model;
- Data that has been obtained through value exchange (i.e. obtained from a third party as part of a commercially negotiated arrangement); or
- Data that has been uniquely obtained to provide differentiated services or customer value.

There is a risk with the current proposals that such data may find its way into the Open Banking system on the basis that is deemed to be ‘transaction data’ or ‘equivalent data’. Such data may be considered as such because the data relates to transactions and the consumer was ‘essential to its creation’.

A simple example would be flight information that is included on a credit card statement in relation to a transaction with an airline. That data has been obtained by negotiated agreement with the airline and ensures a differentiated service from competitors. We believe that such data should not be included in Open Banking.

Considerable investment will have been made by ADIs and non-ADIs in sourcing and retaining a range of unique data points, which provide a competitive differentiator. Forcing a business to expose such data would result in an unfair and uncommercial transfer of value to third parties.

Recommendation: American Express submits that the concept of transaction data and equivalent should be limited to a prescribed set of common or usual data elements and should expressly exclude data elements that are unique to an organisation or its business model.

4. MERCHANT & ACQUIRING SERVICES DATA – RECOMMENDATION 3.2

Currently, merchant and acquiring services data do not appear to be included within the scope of the Open Banking proposal. However, a range of business banking transaction, deposit and current account products are included. This could indirectly implicate merchant data relating to acquired card transactions and settlement monies. American Express seeks clarity about the application of Open Banking to merchants and acquired transactions on card networks. If the intent is to include such data, further consideration and consultation is required.

Recommendation: American Express submits that further clarity is required regarding the application of Open Banking to merchants and acquired transactions on card networks.

5. STORAGE OF DATA PROVIDED UNDER OPEN BANKING – RECOMMENDATION 3.9

We note that recipients of data would be required to ‘share any data provided to them under Open Banking’. By implication, this imposes a brand new data retention requirement on organisations outside of the current legal and regulatory framework. Such an obligation would create an unnecessary operational complication and imposes significant storage cost. American Express does not consider that the retention of such data adds any value to the Open Banking system, given any such data will remain available from the original source at any time in the future (i.e. that data will always be available from the original source API).

Whether or not a data recipient must store that data should be determined solely by reference to existing legal and regulatory framework (for example, where the data recipient used the data for responsible lending verification, it may need to be retained under current credit laws). Open Banking should not create a ‘net new’ data retention obligation.

Recommendation: American Express submits that recipients of Open Banking data should not be subject to an obligation to retain and store such data, unless subject to an existing legal or regulatory requirement to retain and store that data.

6. DATA STANDARDS BODY – RECOMMENDATION 2.6

We note the ‘capture risk’ concern raised in the Open Banking Report in respect to the Data Standards Body. We share that concern. We think that it is essential to the successful operation of the Open Banking scheme that a wide range of stakeholders have equal voice within the Data Standards Body. This must include non-ADI participants, representatives from the Fintech sector, consumers and industry bodies.

We consider the point to be sufficiently important to justify a specific recommendation around the composition requirements of the Data Standards Body to ensure the integrity of the body is maintained and capture by ADIs is avoided.

Recommendation: American Express submits that the Open Banking Report should include a specific and express recommendation regarding the composition requirements of the Data Standards Body.

7. TIERED ACCREDITATION MODEL – RECOMMENDATION 2.8

American Express has concerns about a tiered accreditation model. All data subject to Open Banking (with the possible exception of product information) is likely to be considered ‘personal information’ under the Privacy Act. The suggestion that some data poses less of a risk than other sets is perhaps misguided. The value (and risk) of data is highly contextual and depends on the holder of the data. We consider that all data is valuable and ought to be protected to the same standard.

Having a tiered accreditation model also introduces unnecessary operational cost and complexity, requiring entities to ring-fence high risk data from low risk data. It also introduces a breach risk, where entities inadvertently share the incorrect level data with a recipient in the scheme. The suggestion that lower risk accredited parties may work with higher risk parties behind firewalls, compounds that complexity further.

To ensure absolute confidence and trust in the system, and to ensure reciprocity of effort, all participants should be held to the same standards and requirements. Having all accredited participants meeting the same high standards provides a ‘safety net’ mechanism in the event that incorrect data is inadvertently shared. In those circumstances, there would be some confidence that the recipient has appropriate systems and controls in place to protect that data.

We also consider it appropriate to build into the scheme an obligation on the part of a data recipient to immediately destroy, delete or purge data which it has received unintentionally, inadvertently or by mistake. This obligation ought to mirror similar requirements under the Australian Privacy Principles.

Recommendation: American Express recommends a single level of accreditation only with sufficiently robust rules and requirements to cover all data contemplated by Open Banking. Further, we recommend imposing an obligation on all participants to immediately destroy, delete or purge data which it has received unintentionally, inadvertently or by mistake through the system.

8. A RIGHT OF REFUSAL

Under the proposed scheme, there is currently no right on the part of a Data Custodian to refuse a request for data. The framework should include a right to refuse data in certain limited circumstances where there is a reasonable risk to a customer or their data. For example, where

- the third party recipient does not hold appropriate consents;
- the third party recipient is in breach or is likely to breach of legal/regulatory requirements;
- there is a known vulnerability in the data custodians systems/platforms (i.e. a temporary issue which requires it to shut down its API);
- there is periodic maintenance/testing to systems.

Evidently, the right of refusal should only be invoked in exceptional circumstances to ensure that the Open Banking systems remains open and 'always on'. But we consider that it's far preferable for data custodians to have a pre-emptive right to refuse data, rather than an obligation to share data and a subsequent right to complain about a breach by a recipient. Empowering data custodians in this way, will also remove some of the burden from regulators as it allows them to 'police' the system in part.

Recommendation: American Express submit that participants should have a pre-emptive right to refuse a request for data in exceptional circumstances.

9. LIABILITY FOR INACCURATE/MISLEADING DATA – RECOMMENDATION 4.9

American Express supports the 'liability follows conduct' framework. However, the principle needs much closer consideration in relation to liability for inaccurate, incomplete or misleading data – particularly in relation to AML output.

In situations where a data custodian has shared inaccurate or incomplete information that results in loss for a data recipient, in principle, the relevant conduct giving rise to the loss falls on the data custodian for failing to maintain the data. Particularly in circumstances where there has been deliberate or negligent conduct on the part of that data custodian, there ought to be some consequence for that conduct.

Trust and confidence are key to the success of Open Banking. Where there is no confidence in a 'single source of truth' for data, then that data risks becoming valueless. As such, it may be necessary to build into the system additional incentives or penalties to ensure that data is maintained properly. If a data custodian is completely indifferent as to the accuracy of the data it shares, it does not inspire great confidence in the system. Further, in an extreme scenario, it opens up the possibility for a data custodian to deliberately share inaccurate or misleading data without fear of consequence.

American Express is not proposing that strict liability for financial loss be imposed in these circumstances, rather we simply propose that the matter be looked at carefully to ensure that there are appropriate disincentives for sharing inaccurate/incomplete data. One option to consider may be to use the complaints process and licensing/accreditation framework to penalise entities who put inaccurate, incomplete or misleading information in the system (for example, serial offences could lead to exclusion from participation in the Open Banking system as a recipient for a certain period of time).

Recommendation: American Express recommends that Treasury impose appropriate incentives or disincentives on data custodians to ensure the integrity of data being shared in the Open Banking system.

10. IDENTITY VERIFICATION ASSESSMENTS – RECOMMENDATION 3.4

We think that it is too early for Treasury or Industry to make any kind of recommendation regarding the inclusion of identity verification assessments within Open Banking and that it should be dealt with as part of industry and government initiatives looking at Digital ID.

Some organisations invest significant money in their AML/KYC processes to ensure robust verification outcomes. Others may not have the same culture or approach to compliance. Under an Open Banking framework that includes the output of identity verification assessments, those participants that have invested in robust AML/KYC processes risk simply becoming a ‘free’ outsourced ID verification service to other participants in the market. This constitutes an unfair and uncommercial exchange of value.

There are also clear risks with companies pushing out non-compliant or sub-standard verification assessments into the Open Banking System as has been raised previously.

We consider that the current recommendation would require not just changes to AML/KYC requirements but firm evidence of consistent and uniform industry compliance with such requirements. Recent experience suggests that practices vary considerably amongst organisations.

We think that Identity Verification Assessments should be excluded from the Open Banking framework and dealt with as part of the various Digital ID initiatives. The creation of a universal Australian digital ID would totally obviate the need for the sharing of Identity Verification Assessments.

Recommendation: American Express recommends that Identity Verification Assessments should be excluded from the Open Banking framework at this stage.

We are happy to discuss any part of our submission in more detail, if you wish. Please contact Julian Charters at julian.d.charters@aexp.com for further information.

Yours sincerely,



Julian Charters
Vice President & Senior Counsel
General Counsel's Office
American Express Australia