CUSTOMER OWNED BANKING ASSOCIATION

28 February 2019

Senator Jane Hume
Committee Chair
Senate Economics Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Email: economics.sen@aph.gov.au

Dear Senator Hume

Treasury Laws Amendment (Consumer Data Right) Bill 2019 [Provisions]

The Customer Owned Banking Association (COBA) welcomes the opportunity to make a submission to the Senate Economics Legislation Committee's Inquiry into the Treasury Laws Amendment (Consumer Data Right) Bill 2019 (the Bill).

COBA is the industry association for Australia's customer owned banking institutions (mutual banks, credit unions and building societies). Collectively, our sector has $116 billion in assets, 10 per cent of the household deposits market and 4 million customers. Customer owned banking institutions account for around three quarters of the total number of domestic Authorised Deposit-taking Institutions (ADIs).

COBA supports the Bill.

Open Banking presents an excellent opportunity for our sector to further enhance how we deliver value to our customers. Our view is that ADIs with excellent customer service and highly competitive pricing, like customer owned banking institutions, stand to gain from participating in Open Banking.

However, COBA is concerned that there is a growing risk that the Open Banking system may not commence on 1 July 2019 as announced by the Government, particularly as the potential timing of the next Federal election, among other things, may operate to inadvertently delay the legislative process.

As Senate Committee members would appreciate, this creates a high level of uncertainty for industry, and places at risk the planning and investment by industry for Open Banking, which have been made based on the expectation that Open Banking will commence as announced by the Government. Our preference is for the Bill to be passed at the earliest opportunity.

Some of COBA's members are well advanced in their planning and investment for Open Banking and we understand that other industry participants, through their own preparations for Open Banking, have also made significant investments. In this context, we note that our members and their core banking service providers, where relevant, typically undertake projects to implement proposed legislative reforms with an expectation that there will be minimal changes to the final law.

We consider that this principle also extends to industry's ability to successfully implement the reform.

Some of our members are facing particular challenges with implementing Open Banking by the Government's announced timeframes and would require more time to avoid unnecessarily burdensome costs. In particular, some of our members are in the process of implementing major changes to their information and data systems (software and infrastructure overhauls to replace outdated systems).

Suite 403, Level 4, 151 Castlereagh Street,
Sydney NSW 2000

Customerownedbanking.asn.au

In this respect, COBA appreciates that there would be a mechanism in the ACCC's CDR Rules that would enable the ACCC to grant a data holder a temporary exemption from obligations under the CDR Rules, where the ACCC considers it appropriate to do so.

In parallel to those particular challenges faced by some of our members, the ability to successfully implement the Open Banking system by the Government's announced timeframes also depends on when the final CDR Rules and CDR Data Standards are released for industry implementation.

In this context, should there be a need to revisit the Open Banking implementation timeframe, for whatever reason, any adjustment to the timeframe must not alter the different implementation timelines between major ADIs and non-major ADIs, to provide smaller ADIs a sufficient period of time to make the necessary investments for implementation.

COBA would also like to take this opportunity to share with Senate Committee members its views on aspects of the CDR reform (as it applies to Open Banking) in relation to non-ADI lenders, derived data, and the framework for charges for access and use.

Non-ADI Lenders

COBA is concerned that non-ADI lenders would not be mandated to participate as CDR data holders in Open Banking. We have raised this concern with the ACCC and the Treasury in previous submissions.

As Senate Committee members would appreciate, because non-ADI lenders typically issue credit products and services that are also issued by ADIs (such as home loans, personal loans and small business loans), it is highly likely that non-ADI lenders also hold data that would fall within scope of CDR data for Open Banking – such as 'customer information', 'product use information' and 'information on the product (as specified in the Treasury's Open Banking Designation Instrument[1]).

It is important to understand that non-ADI lenders not only compete in some of the same key credit markets as ADI lenders, but that their share in some of these markets has expanded over recent times.

Notably, the Reserve Bank of Australia (RBA) estimated last year[2] that growth in residential mortgage lending by non-ADI lenders in Australia picked up materially over 2017 and that this growth was significantly higher than compared to banks.

- The RBA estimated that non-ADI lenders accounted for around 4 per cent of outstanding residential mortgages at the end of 2017, and that the non-ADI lending sector's growth in residential mortgage lending was aided by developments in both mortgage and residential mortgage-backed security markets.

COBA also notes that the ACCC clearly recognised in its September 2018 CDR Rules Framework consultation paper that the "Open Banking review recommended a broad definition of 'consumer' within the CDR regime, with the obligation to share data to apply in relation to **all customers holding a relevant bank account in Australia**"[3]. [Emphasis added].

It is not clear why non-ADI lenders would be provided a choice about whether to participate as data holders in Open Banking.

- Any customer of a non-ADI lender holding a relevant account should be provided the same opportunity to participate in Open Banking, as would be provided to customers of ADI lenders.
- There does not appear to be any valid reason as to why customers of non-ADI lenders should be denied the same opportunity to participate.

COBA considers that non-ADI lenders should also be mandated as data holders, because the objectives of enhancing competition and innovation through Open Banking would unnecessarily be made harder if only ADI lenders were mandated to participate.

[1] Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2018.

[2] Reserve Bank of Australia, Financial Stability Review April 2018. Pages 40-41, refer.

[3] ACCC Consumer Data Right Rules Framework consultation paper of 12 September 2018. Page 14, refers.

Derived Data

COBA recognises from the Bill[4] that CDR data is "data outlined in the instrument designating a sector and any information **that is subsequently derived from that data**". [Emphasis added].

COBA considers that it is important to place clear boundaries around the scope of derived data, chiefly given the need to retain commercial incentives for data analysis that help support product and service innovation and positive consumer outcomes. COBA would be concerned if the Designation Instrument for Open Banking inadvertently interfered with an ADI's existing commercial arrangements.

COBA emphasises that the December 2017 Report of the Review into Open Banking strongly cautioned against including value-added customer data within scope of Open Banking and recommended that "data results from material enhancement by the application of insights, analysis or transformation by the data holder **should not be included** in the scope of Open Banking". [Emphasis added].

Chargeable CDR Data Framework

COBA supports the framework set out in the Bill for charges for access to and/or use of CDR data, noting in particular the following elements of the framework:

- If data is not listed as *chargeable data* in the Designation Instrument, a fee cannot be charged for the data. Similarly, a fee cannot be charged for the use or disclosure of data where the circumstances specified in the Designation Instrument have not been met.
- For fee-free data sets, data holders would be able to incorporate the cost of disclosing these data into the provision of the original good or service (although there must not be arrangements that would require a person who uses the system to pay more than persons who do not).
- Where authorised (but not required) disclosures are made (i.e. voluntarily provided beyond what is required), data holders would be able to determine an appropriate charge.
- Generally, where a fee can be charged for CDR data, the Government expects the data holder, for example, to determine and set their own reasonable fee (i.e. market fee-setting).
- The ACCC can determine that a fee is unreasonable and set a fee amount for a particular data holder or an accredited data recipient or a class of data holders or accredited data recipients.

COBA agrees that it would be more sensible to allow the market to set any charges, where relevant, and have the ACCC intervene in this process only if market participants do not act in good faith.

Finally, COBA recognises the scale and significance of the CDR reform and that it is intended to be applied across a range of different industry sectors.

In this context, COBA has greatly appreciated the transparent approach to consultation adopted by the ACCC, Data 61 and the Treasury. In particular, we have appreciated the numerous stakeholder update sessions provided by these agencies and their collective willingness to engage with COBA.

If you have any questions or comments in relation to our submission, please contact Tommy Kiang, Senior Policy Manager

Yours sincerely

MICHAEL LAWRENCE
Chief Executive Officer

[4] Treasury Laws Amendment (Consumer Data Right) Bill 2019, Explanatory Memorandum. Page 23, refers.