



SUBMISSION PAPER

Productivity Commission

FinTech Australia Response to Draft Report on Data Availability and Use

DECEMBER 2016

This Submission Paper was prepared by FinTech Australia working with and on behalf of its Members; over 100 FinTech Startups, VCs, Accelerators and Incubators across Australia.

The following FinTech Australia Members contributed to and endorse this submission:

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About FinTech Australia

FinTech Australia is the peak industry body for the Australian FinTech Industry, representing over 100 FinTech Startups, Hubs, Accelerators and Venture Capital Funds across the nation.

Our vision is to make Australia one of the world’s leading markets for FinTech innovation and investment. This submission has been compiled by FinTech Australia and its members in an effort to drive cultural, policy and regulatory change toward realising this vision.

Table of Contents

- 1. Introduction and Overview 3
- 2. Comprehensive Credit Reporting 4
- 3. Open Government Data..... 5
- 4. Open Financial Data and Competition in Financial Services..... 5
 - 4(a). Data Scope and Implementation to Facilitate Competition and Better Consumer Outcomes..6
 - 4(b). Minimum Data Security Standards and Common Data Formats7
 - 4(c). Development and Regulation of Pricing for Data Access9
 - 4(d). Other Relevant Data-Holding Institutions10
 - 4(e). Next Steps and Timing to Implement Comprehensive Right to Direct Data Sharing to enable Competition in Financial Services.....10
- 5. Shared Digital Identity (KYC)..... 11



1. Introduction and Overview

FinTech Australia is highly supportive of the Productivity Commission's recommendation to undertake consumer-oriented reforms, particularly the proposed right for consumers to direct an institution to share a copy of their data to third parties (referred to in this submission as the "Comprehensive Right to Direct Data Sharing").

The Commission's recommended Comprehensive Right to Direct Data Sharing firmly puts consumers in control of their data - which aligns with the view FinTech Australia expressed in its original submission on Open Financial Data. We believe that this right should be extended to small businesses as well so that small businesses also have the right to direct institutions to share a copy of their data to third parties. When applied to government and financial data, we believe this right will increase competition in the financial sector, provide greater consumer choice, and improve the financial wellbeing of all Australians.

FinTech Australia therefore urges the Productivity Commission to recommend that the government legislates to implement the proposed Comprehensive Right to Direct Data Sharing for consumers (including small business). This legislation should focus not on mandating the particular technology solution required in order to implement such a right, but on the desired outcomes – namely the implementation of means and controls to enable consumer and small business directed data sharing across agreed National Interest Datasets (NIDs) and industry, *in a manner that enables a seamless Customer experience*. Given the subjective nature of a “seamless Customer experience”, a minimum expectation should be established by providing examples, such as through an Application Programming Interface ("API") or better experience.

In this way, each industry player can implement the Comprehensive Right to Direct Data Sharing in a manner appropriate to the nature of their industry and their current technical ability. This approach also allows institutions to make use of current technologies such as APIs, third party providers such as aggregators, or even future technological developments not available today. In the financial sector, this also ensures that inefficient or inadequate implementations, such as the current method of downloading comma separated files, would not satisfy the requirement for a seamless customer experience.

FinTech Australia is also supportive of the Productivity Commission focusing on the rights and obligations of the relevant parties to control, access, use and disclose data (or to direct such activities) as opposed to questions of legal ownership.

However, whilst FinTech Australia strongly supports the Comprehensive Right to Direct Data Sharing, FinTech Australia questions whether some of the other components of the proposed Comprehensive Right are necessary. In particular, FinTech Australia questions the proposed right for consumers to be able to request institutions to delete specific data collected about them, as there are sufficient protections already in place in Australia's existing privacy regime. The existing Privacy Act already contains obligations for agencies and organisations to take



reasonable steps to destroy or de-identify information when no longer needed for a legitimate purpose permitted under the Act. It also gives individuals rights to request access to their personal information, and to request correction of the information to ensure it is accurate, up-to-date, complete, relevant and not misleading.

Beyond the draft report, FinTech Australia's members seek to better understand the proposed details regarding the scope and applicability of the proposed Comprehensive Rights and look forward to additional clarity from the Commission on how the Comprehensive Right to Direct Data Sharing might be written, especially as it may relate to small businesses. As highlighted above, FinTech Australia believes that it is important for the Productivity Commission to clearly articulate that small businesses will also be granted the Comprehensive Right to Direct Data Sharing under this proposed framework in the same manner as consumers. Additionally, as many of our member companies serve the needs of the self-employed and small businesses from other sectors who in turn are taking their own steps to implement the proposed Comprehensive Right, it may be challenging for them to comply on the same timeline as those who deal only in Financial Data.

Therefore, we believe it is important for the Productivity Commission to clarify if there will be special considerations for how small businesses comply with the Comprehensive Right to Direct Data Sharing for their users. It is our view that the Comprehensive Right to Direct Data Sharing should be applied equally to businesses of all sectors and sizes to avoid creating inadvertent unfair advantages for some types of businesses over others, though consideration may be made about the details of how smaller organisations comply.

FinTech Australia is also supportive of the proposed creation of the National Data Custodian to oversee the implementation of this important regime. With respect to the financial services sector and drawing on the recommendations from the House of Representatives Standing Committee on Economics' review of the four major banks, **we believe that ASIC is the most appropriate entity to be appointed the Accredited Release Authority ("ARA") to oversee financial data.** It is our view that the creation of additional or new entities may result in agencies with overlapping remits, which would add significant compliance costs and confusion for large and small financial institutions alike.

2. Comprehensive Credit Reporting

FinTech Australia is supportive of the Productivity Commission's recommendation to monitor the progress of Comprehensive Credit Reporting ("CCR"). We would also like to see the Productivity Commission monitor the contribution of business data in addition to consumer data, and that this be specifically referenced in the final report.

However, FinTech Australia would like to see a firmer directive on resultant action that will be taken should the target of 40% not be met within a specific deadline. We believe that the trigger and consequence should be enshrined, for example should the 40% CCR target not be met by



30 June 2017, it should be followed by legislation to impose mandatory reporting by end 2017, with penalties imposed on institutions that do not reach 100% by mid 2018.

3. Open Government Data

FinTech Australia is also fully supportive of the Productivity Commission's recommendations to enable broad access to key government data via National Interest Datasets ("NIDs"). We have already outlined the economic benefits this could deliver to consumers and industry in our prior submission.

We believe the same approach to the implementation of the Comprehensive Right to Direct Data Sharing for businesses should also be applied to the governmental holders of NIDs, i.e. it should be a seamless consumer experience, delivered via the use of technologies such as APIs or better.

Agencies that should be prioritized for evaluation as NIDs include:

- The Australian Tax Office
- The Australian Securities and Investment Commission
- The Australian Bureau of Statistics
- Australian Business Register
- Reserve Bank of Australia
- Centrelink
- Medicare

FinTech Australia would also like the Productivity Commission to provide further detail as to how private sector NIDs might be evaluated, gathered and shared, given the conversion of these data sets into more widely available NIDs may conflict with the existing commercial incentives of the originators of the data sets.

4. Open Financial Data and Competition in Financial Services

In addition to the Productivity Commission's recommendations to implement the new Comprehensive Right to Direct Data Sharing, FinTech Australia is very supportive of Recommendation 5 of the first report from the House of Representatives Standing Committee on Economics' review of the four major banks. We strongly agree that **Deposit Product Providers should be required to open access to specific competition-enabling data sets ("Financial CEDs") to facilitate more competition in financial services, with a specified timeframe within which to provide this access.** Opening access to these Financial CEDs will also enable Consumers to use third parties to make better life and financial decisions. It is FinTech Australia's view that these Financial CEDs could also therefore be a NID within the Financial Services Sector.

We also propose an approach for potential accreditation of companies seeking to obtain access to Financial CEDs, and a similar approach to determine regulation around pricing.



4(a). Data Scope and Implementation to Facilitate Competition and Better Consumer Outcomes

FinTech Australia agrees with the Standing Committee's recommendation that the scope of data provided to facilitate competition in financial services (i.e. the Financial CEDs) should include standardised product terms and conditions, transaction history, account balances, credit card usage, and mortgage repayments. Beyond this, we would also like to see account name, account nickname, BSB, account number, interest rate, and information about which accounts are offset against other accounts as a minimum. The above customer data should be available for both consumer and business accounts, and should also be dynamic i.e. the customer should have the right to direct a third party be given authority for ongoing daily, weekly or monthly feeds without needing to provide permission each time, and should also have the right to turn off the feed.

It is vitally important that these data sets be made available for customers to access and share with third parties, at no cost to the third party if they meet agreed-upon industry standards (potentially through accreditation as outlined below). Not only will these data sets be useful for promoting switching and facilitating more competition in financial services markets, they also allow consumers and small businesses to use technology tools to better understand their financial position, simplify their compliance and empower them to make better financial decisions.

In order to ensure that Financial CEDs are accessible only to third parties who are acting in the best interests of the consumer, or on behalf of other third parties doing so (such as data aggregators), **FinTech Australia proposes that there be a simple approval or accreditation process for companies that are to be provided with access to this data.** This accreditation should be undertaken by ASIC in its capacity as ARA for financial data, following checks that the company complies with agreed-upon minimum data security standards (see below) and is in fact undertaking to provide a financial service that benefits the customer. This group of accredited companies would effectively become the group of "trusted users" for financial CEDs as proposed in the Productivity Commission's report.

A register or "whitelist" of approved companies could also be maintained by ASIC and made publicly available on its website. However, it is important to ensure that this accreditation process does not result in excessive additional compliance costs and barriers to innovation. It is with this in mind that FinTech Australia recommends there be no application cost for a company to become an accredited entity.

As with the Comprehensive Right to Direct Data Sharing, FinTech Australia believes the relevant legislation should reference, but not specify, the use of APIs to set the minimum benchmark for a seamless Customer experience with respect to sharing of the data. APIs provide real-time information to consumers, and are current best practice for data sharing in the technology industry. They also open the door for new innovations that can benefit consumers



because of their reliability and ease of use. Alternately, basic machine-readable data can be static, which can impact its usability and long-term value to the consumer.

4(b). Minimum Data Security Standards and Common Data Formats

There is plenty to be done to ensure the successful execution of this transformational change in a manner that protects the privacy and security of Australian consumers. However, FinTech Australia holds concerns that certain institutions may try to use data security as a means to selectively block certain third parties, such as competitors, if they do not want those third parties to gain access to their customer data. If this occurred, consumers would become restricted in their choice (in the same way they are now) due to large institutions protecting their own interests.

To this end, clear "Minimum Data Security Standards" need to be established to ensure there are adequate levels of consumer protection. These need to be applied uniformly across the industry. Doing this will also help to ensure consumers are safeguarded against rogue entities operating from unregulated jurisdictions, and will also ensure that competitors and new entrants have a level and publicly agreed playing field within which to operate.

Furthermore, it is also important that a common set of "Data Formats" be agreed to ensure that Financial CEDs can be shared in an interoperable manner between institutions. A proliferation of different data formats would result in a lot of time and effort being required to modify or transform data, resulting in additional costs for businesses (and ultimately consumers) working with the data, and ultimately lower productivity and efficiency overall.

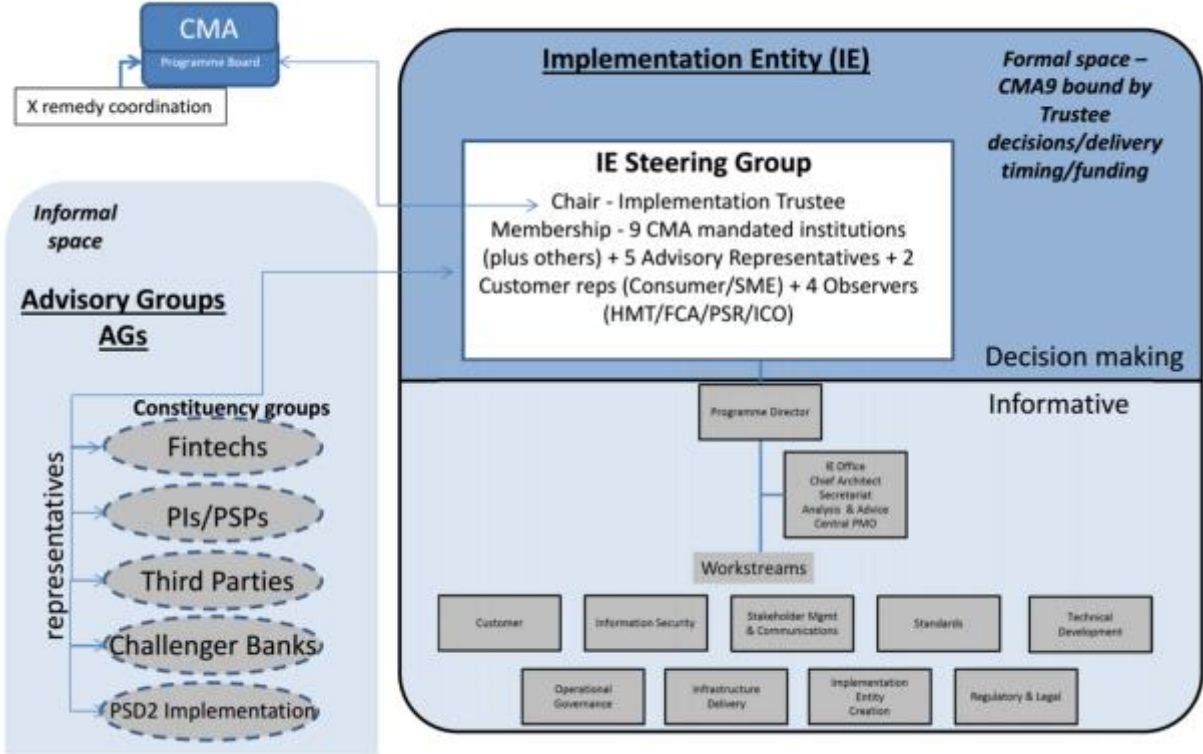
FinTech Australia therefore proposes that the creation of Minimum Data Security Standards and Common Data Formats for financial data be undertaken by a "Cross-Industry Working Group" under the supervision of ASIC in their capacity as ARA for financial services data, in line with the Productivity Commission report's recommendations. Ongoing governance of these standards should also remain with ASIC, with regular reviews of these standards by the Cross-Industry Working Group to ensure they are consistently maintaining best practice.

A similar approach has already been undertaken in the UK with the establishment of an "Implementation Entity", whose structure and composition may be represented as per Figure 1 (see following page).

In localising this to the Australian market, FinTech Australia proposes a slightly amended structure for the Australian Cross-Industry Working Group to ensure a more balanced representation from a wider set of institutions, including smaller financial institutions, FinTech companies and consumer groups. We also believe it is important for a neutral government entity such as Federal Treasury to help guide and moderate the group's outputs, and ensure the process delivers the required outcomes in terms of increased competition to the benefit of Consumers (see Figure 2 following page).

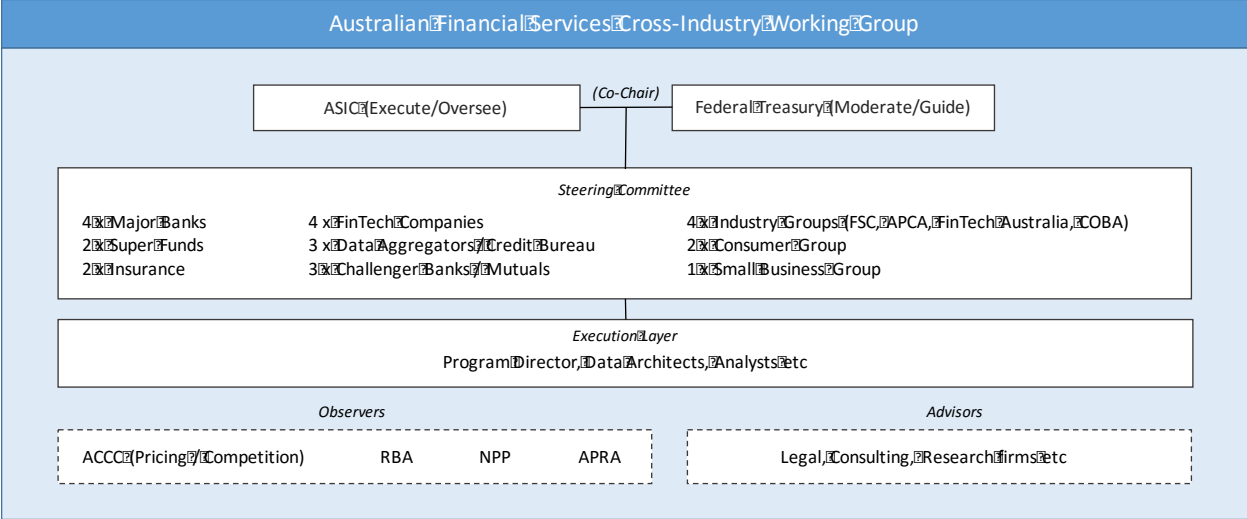


Figure 1 – Structure of “Implementation Entity” in U.K.



N.B. – The 5 Advisory Groups have equal voting powers to the 9 CMA Mandated Institutions in the IE steering group. The Trustee of the IE was selected by the 9 CMA Mandated Institutions.

Figure 2 – Proposed Structure of Australian Cross-Industry Working Group



N.B. – All Steering Committee members have equal voting powers including over selection of Execution Layer resources.



Given the completion of Minimum Data Security Standards will likely take more than six months, **FinTech Australia also seeks urgent action from ASIC to amend the ePayments code to permit consumers to disclose their passcodes to relevant third party service providers** such as fintech companies and data aggregators who are acting on their behalf. We would like to see this initiative completed before July 2017, noting that this could be done in conjunction with the establishment of the accreditation or whitelisting process described in section 4(a) of this submission.

This important issue requires urgent resolution as Australia's emerging fintech industry is currently highly dependent on this technique to access and use financial data on behalf of customers. It is important that fintech companies, in carrying out the customer's wishes and working to improve their financial wellbeing, are not putting the customer unknowingly in breach of their banking terms and conditions, and entirely at the discretion of an institution operating in its own best interest rather than the customer's.

4(c). Development and Regulation of Pricing for Data Access

As stated earlier, FinTech Australia believes that Financial CEDs should also be made available **at no cost to the third party** if they are white-listed entities. This is because the action is being undertaken on behalf of the customer, who is already paying the data holder and the data holder is required to allow the customer to access and use the data in accordance with the new Comprehensive Right to Direct Data Sharing. Customers can also already obtain this data for free through other channels (e.g. online banking, call centres or from an ATM). The cost of building infrastructure such as APIs to facilitate the sharing of Financial CEDs should be borne by the data holding institution, or recouped as part of the fees they already charge customers for generating and holding their data.

Beyond the delivery of Financial CEDs, this same infrastructure could also be used to allow customers to share other value-added data sets the institution has created in conjunction with or on behalf of the consumer, i.e. they are not Financial CEDs but are still subject to the Comprehensive Right to Direct Data Sharing. FinTech Australia sees that it is entirely reasonable for the institution to charge for these data sets, particularly if the data holder has undertaken significant work on the data to improve its utility to the consumer or third party. An example of this is data provided by data aggregators, which is usually substantially cleaned, categorised and transformed for ease of use in third party applications.

Given that multiple whitelisted data aggregators may be able to access Financial CEDs from institutional data holders in order to create value-added data sets, regulation of price for these data sets is not required as it will naturally be determined by the competitive market. However, it is critical that the proposed changes to the ePayments code are implemented quickly so that data aggregators can continue operating during the transition to enable seamless sharing of Financial CEDs. This is a very important step to ensure that innovation in financial services and fintech can continue, and that the millions of Australian consumers already benefiting from



products that use data aggregation technologies are not subject to interrupted service or sudden adverse fees.

However, there are also likely to be data sets outside of Financial CEDs that are uniquely available to that institution. In the instance that an institution has a monopoly over a particular data set that is subject to the Comprehensive Right to Direct Data Sharing, it is important that the price to access these types of data be regulated by the ACCC to ensure a realistic price ceiling can be established. The Cross-Industry Working Group should also be consulted by the ACCC during this process to ensure the data sets' value can be determined appropriately by a diverse group of stakeholders with varying interests and perspectives. ASIC should also regularly review these data sets as they may determine that some of them should be added to the list of CEDs over time.

4(d). Other Relevant Data-Holding Institutions

The need to increase competition in financial services is not limited only to deposit products. Deposit Products, and indeed providing open access to these CEDs will unlock significant benefits to consumers in helping them to make better decisions about how to optimise their lives and finances. As such, FinTech Australia believes that the same requirement to implement seamless data sharing controls for consumers to share Financial CEDs should also apply to other financial institutions that hold data that is needed to provide holistic financial advice, such as super funds, retail fund managers, stockbrokers, share registries, life insurers, general insurers and health insurers.

Beyond financial institutions, other relevant data-holding institutions that should be required to fast-track the implementation of the Comprehensive Right to Direct Data Sharing to improve consumer financial welfare include telecommunications companies, energy companies and loyalty schemes.

4(e). Next Steps and Timing to Implement Comprehensive Right to Direct Data Sharing to enable Competition in Financial Services

FinTech Australia proposes the following next steps and timelines to facilitate increased competition in financial services and improved outcomes for consumers:

Now – April 2017

- Changes to ePayments code to legitimise data aggregators
- Appointment of Cross-Industry Working Group
- Establishment of ASIC accreditation process and whitelist

June 2017

- Drafting of legislation to mandate CCR should 40% target not be met
- Full agreement of scope for Financial CEDs and of monopolised Non CEDs to be considered for ACCC pricing regulation



December 2017

- Mandate for 100% CCR by mid 2018 should 40% target not be met
- Completion of Minimum Data Security Standards and Common Data Formats for Financial CEDs

June 2018

- Deposit product providers with assets over \$200m complete implementation of seamless controls for customer-directed sharing of Financial CEDs
- Completion of price ceilings for access to monopolised Non CEDs

December 2018

- Complete implementation for smaller deposit product providers and other relevant data-holding institutions

5. Shared Digital Identity (KYC)

Whilst the current set of recommendations set forth by the Productivity Commission will help facilitate more competition in financial services and give more power to the consumer to direct access and use of their data, there is also an opportunity to address the considerable challenges currently associated with Know Your Customer (KYC) and Anti-Money Laundering (AML) obligations. Compliance with these regulations is mandatory for many financial institutions, and is currently a burdensome process for consumers and companies alike.

A trusted digital identity platform would provide significant productivity benefits to consumers and institutions alike, as outlined in Recommendation 15 of the 2014 Financial System Inquiry. For example, if a customer has already recently met KYC and AML obligations for one institution, this information can be shared with other institutions who can also consider them to have met their KYC and AML obligations, i.e. any other institution can rely on another institution's identification.

The key objectives of a shared digital identify platform are below:

1. Improve the efficiency of the identification process throughout the financial system, which would reduce cost and increase regulatory compliance;
2. Create a better customer experience and facilitate increased competition by reducing the friction associated with changing financial institutions; and
3. Improve identity management processes which in turn improves data security.

A trusted digital identity platform cannot be created without close collaboration between large and small banks, regulators/government, the fintech industry and consumer groups. It is FinTech Australia's view that the Cross-Industry Working Group proposed in this submission has the right constituency to establish a framework, and should also be tasked with the creation of such a platform to deliver on the productivity gains and improved consumer outcomes described above.