



# **NATIONAL AUSTRALIA BANK SUBMISSION**

Consultation on draft Rules and PIA  
that allow for intermediaries

26 July 2020

## Introduction

NAB welcomes the opportunity to respond to the Australian Competition and Consumer Commission's (ACCC) consultation on draft Rules and accompanying draft Privacy Impact Assessment (PIA) that authorise third parties who are accredited at the 'unrestricted' level to collect CDR data on behalf of another accredited person. NAB appreciates the extension granted by the ACCC for written submissions. As a member of the Australian Banking Association (ABA), NAB has also contributed to the ABA submission and is supportive of it.

This submission is in addition to past submissions that NAB has made to the ACCC and Treasury and to previous reviews in relation to Open Banking and the Consumer Data Right (CDR) since 2017.

NAB has also been an active participant in the ACCC and Treasury's consultation processes and the Data Standards Body's (Data61) development of the Consumer Data Standards (Standards).

## Overview

The CDR gives consumers greater control over their own data, in order to spark innovation and drive more competition in financial services. NAB is supportive of the proposed extension of the CDR. As more participants join there will be greater scope for innovation and for the development of applications that help consumers. This has positive network effects and can lead to the establishment of a vibrant and creative data industry.

NAB has previously provided feedback to ACCC that intermediaries are a necessary element of the CDR and that strong security measures, together with privacy protections are fundamental to the success of the CDR (see further details in NAB's submission to ACCC dated 3 February 2020). From that perspective, NAB is supportive of the proposed CAP model for intermediaries. NAB notes that the proposal represents a fairly narrow extension of the regime and reiterates its support for a tiered accreditation model, subject to strong security requirements commensurate with the sensitivity of the data the party will receive and the functions the party will perform on behalf of consumers.

The proposed CAP arrangements have the potential to introduce complexity and uncertainty with regard to whether the principal or provider will discharge particular obligations. NAB supports the recommendations in the PIA regarding further clarifying the CAP arrangements. NAB requests further guidance regarding the technical implications of the CAP arrangements and notes it appears that the inclusion of these arrangements will lead to additional build work for Data Holders (DH).

NAB considers that in order to ensure trust and confidence in the system that consumers are aware at the time they consent to the provision of their CDR data that it is to be shared with multiple parties. The process must be transparent and knowledge of the parties who will access their data is crucial for the provision of informed consent. NAB seeks guidance regarding how participants can simply explain the CAP arrangements within the consent flow.

## Complexity and additional build requirements

The CAP arrangement allows either of the principal or the provider to act or discharge obligations, such that the other does not need to. NAB is concerned that this approach

can introduce uncertainty and complexity regarding whether or not all obligations have been complied with. NAB considers that it would be simpler for accountability to sit with a single entity, and logically this would be the principal as they have the relationship with the consumer. NAB supports the recommendations in the PIA regarding CAP arrangements and for the Rules to include more specificity for CAP arrangements around the obligations of provider and principal accredited data recipients (**ADRs**) particularly in relation to withdrawal of consumer consent and the liability framework.

Similarly, NAB requests additional guidance regarding the role of the principal and provider in relation to technical aspects of the CDR framework. In particular, how CAP arrangements work in regard to the registry design and the token exchange between DH & ADR, whether a provider can have multiple revocation end points and how deregistration of a provider or principal would operate in practice. Depending on the approach to these technical matters, DHs may be required to build additional capability in order to comply with the obligations.

It appears that the approach in Recommendation, item 11 of the PIA will create additional build as it requires DHs to check credentials of both the principal and provider ADR prior to disclosure.

## **Customer consents**

NAB supports the principle that the consumer is at the heart of the CDR and that consents given by consumers need to be freely-given and informed. NAB agrees with the risk raised by Maddocks in the PIA that due to the complexity of the CAP arrangements consumers may be unaware who is collecting their data. The proposed draft Rules include requirements for the principal to disclose details about the provider ADR during the consent flow. NAB is concerned that a significant amount of information needs to be disclosed in the consent flow and as a consequence, that consumers may not fully understand who they have consented to share their data with. Any use of a provider must provide for clear disclosure that they are being used and informed consumer consent.

NAB requests that guidance be issued by ACCC and OAIC regarding how the CAP arrangement should be explained to consumers in the consent flow. This would mitigate the risk that consumers may not understand the arrangement and therefore fail to provide informed consent.

## **Recommendation**

While NAB agrees that CAP arrangements are a necessary evolution of the CDR, our experience to date has been that when new elements are introduced to the CDR Regulatory framework additional clarification is required. We would strongly recommend that at the end of this consultation, an updated draft version of the Rules is issued that is then tested against likely use cases to ensure participants can identify areas that require further refinement before the Rules are formalised. In addition, other guidelines or advice regarding intended application of the Rules should be released in draft form. This allows existing members of the ecosystem (banks, NTT, DSB and ACCC) and prospective participants to clearly understand the obligations and provides greater certainty in the application of the Rules.