



Australian Government



Australian  
**Small Business and  
Family Enterprise**  
Ombudsman

20 April 2018

COAG Energy Council – Secretariat  
Department of the Environment and Energy  
GPO Box 787  
CANBERRA ACT 2601

By email: [info@esb.org.au](mailto:info@esb.org.au)

**PUBLIC CONSULTATION PAPER: ENERGY SECURITY BOARD NATIONAL ELECTRICITY**

Thank you for the opportunity for the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) to comment on the above. We agree with the proposed objectives, in particular, that consumer access to data is paramount to enabling effective competition.

We would note that the term consumer, in context of the Consumer Data Right, captures small businesses. It is critical, when setting in place the principles on how data is managed, the needs of small businesses are explicitly considered. A key principle to assist small business will be keeping the data and process as simple as possible. Currently small businesses cannot compare offerings from energy providers due to the complexity and lack of consistency in billing. Introducing standardised and simplified data will allow offerings to be compared which in turn will increase competition.

We support the intent to allow the industry to voluntarily implement the objectives. Yet recent experience has shown, if it will result in increased competition, incumbent players will drag the chain for as long as possible. It has taken direct government intervention for energy retailers to alert consumers to when their contracts will expire. Rather than wait for a lack of action by industry consideration should be given to regulating data sharing from the outset.

This is reflected in the implementation of the Consumer Data Right in banking where it will be mandatory for the four major banks to participate from the outset. For your reference we also provide a copy of our submission on Open Banking which highlights key areas to be considered on behalf of small businesses. I hope these comments assist you and I would be happy to discuss these matters further. Please feel free to contact either myself or Mrs Jill Lawrence on 02 6263 1558 or at [jill.lawrence@asbfeo.gov.au](mailto:jill.lawrence@asbfeo.gov.au).

Yours sincerely

**Anne Scott**  
**Principal Adviser**

Australian Small Business and Family Enterprise Ombudsman

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22 March 2018

Mr Daniel McAuliffe  
Manager, Structural Reform Group  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [data@treasury.gov.au](mailto:data@treasury.gov.au)

Dear Mr McAuliffe

## **REVIEW INTO OPEN BANKING**

Thank you for the opportunity to comment on the above. We support the majority of recommendations for the implementation of Open Banking. Open Banking will begin to address the key barrier for small business to grow, the lack of access to finance. By allowing data to be shared with third parties competition in the banking sector will increase which will diminish the current imbalance of power held by the major banks.

Key to the security of open banking is the accreditation of the parties to a data transfer. We support recommendation 2.7 that the Australian Competition and Consumer Commission (ACCC) should be responsible for ensuring the process and criteria by which accreditation occurs.

We have concerns with recommendation 2.8 - a tiered risk-based model. This will add a layer of complexity for the customer and create an imbalance of power. If a major bank is accredited for high risk data sets but a fintech for low risk, data held by the major bank will not be able to be transferred to the fintech.

Similarly, we do not support automatic accreditation for financial services providers with a current license. A tiered system that automatically rewards accreditation to receive high risk data to current banking licensees retains the imbalance of power. The intent of open banking is to provide the customer the choice to transfer data to an accredited third party. A tier system will mitigate the intent of the CDR by limiting what data can be transferred to different accredited participants.

In addition to the transfer of transaction data we recommend the addition of the rationale behind changes to the status of an account. We are aware some of our major banks, such as NAB, have taken a moral stance and withdrawn financial services from certain sectors. These include the adult industry, payday lenders and money remitters. When seeking another financial provider, such customers must not be disadvantaged due to a bank closing an account on grounds unrelated to the financial worthiness of the customer.

We acknowledge that recommendation 2.10 – customer complaints and remedies may be undertaken by different bodies for different industry sectors. In the scope of Open Banking we recommend that the Australian Financial Complaints Authority (AFCA) to be the body to manage customer complaints and remedies. AFCA will have the expertise to consider, and processes to resolve, customer complaints where financial loss is suffered. We further propose that the definition of a small business be raised to an annual turnover of less than \$5 million in line with AFCA's monetary limit. In addition, we strongly support recommendation 4.4 for small businesses to be captured under the protection of the Privacy Act to seek remedy for disputes arising from a breach of confidentiality.

We commend recommendation 3.11 – no charge for customer data transfers. For licenced ADI's the costs should be minimal and easy to absorb. As past inquiries and reviews have found, Australian banks already use a vast array of fees far in excess of the costs of doing business to generate revenue. We acknowledge that costs to participate will be higher for non-ADI's as they may have additional changes to implement. This should be offset with the access to data opening up the market for non-ADI's to compete for customers.

I hope these comments assist you and would be happy to discuss these matters further. Please feel free to contact either myself or Ms Jill Lawrence, by telephone 02 6263 1558 or email [jill.lawrence@asbfeo.gov.au](mailto:jill.lawrence@asbfeo.gov.au)

Yours sincerely,



**Kate Carnell AO**  
Australian Small Business and Family Enterprise Ombudsman