



National Australia Bank Limited

ABN 12 004 044 937

800 Bourke Street
Docklands Victoria 3008
Australia

27 November 2019

Office of the Australian Information Commissioner
GPO Box 5218
Sydney NSW 2001

By email to consultation@oaic.gov.au

To whom it may concern

Draft CDR Privacy Safeguard Guidelines

NAB welcomes the opportunity to respond to the Office of the Australian Information Commissioner's (OAIC) consultation on the Draft Consumer Data Right (CDR) Privacy Safeguard Guidelines. As a member of the Australian Banking Association (ABA), NAB has contributed to and supports its submission.

This submission builds on NAB's extensive contributions to the public policy debate on the CDR and Open Banking. These include:

- NAB's September 2017 submission to the Review into Open Banking (**the Review**);
- NAB's March 2018 submission in response to the Review;
- NAB's September 2018 submission in response to the Treasury Laws Amendment (Consumer Data Right) Bill 2018 (**CDR Bill**);
- NAB's October 2018 submission in response to a further Department of Treasury (Treasury) consultation on the CDR Bill;
- NAB's October 2018 submission in response to the ACCC's consultation on the Consumer Data Right Rules Framework (Rules Framework); and
- NAB's May 2019 submission in response to the ACCC's consultation on the Consumer Data Right Exposure Draft Rules.

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**).

We also note the Privacy Impact Assessment (**PIA**) process which is being currently undertaken by Maddocks. NAB has contributed to and supports the ABA submissions in relation to the PIA. We trust that despite the fact that the legislative design of the CDR Regime is significantly

progressed, adequate opportunity will be built into to the PIA process to allow for thorough consideration of the privacy issues.

1. Privacy protections are fundamental to the success of the CDR

NAB has previously noted that the CDR and Open Banking is a complex and significant change to the Australian financial system. The success of the CDR is dependent on consumers having trust and confidence in the system. Accordingly, we believe that adequate privacy protections are fundamental to the success of the CDR.

Throughout the development of the CDR framework, NAB has emphasised the need for strong security and privacy measures. NAB's key privacy concerns include the following:

- **Privacy Safeguards and Australian Privacy Principles:** NAB considers that the overlapping privacy safeguards and APPs is unduly complex and makes compliance with the regime challenging (see NAB's submission on consultation on draft Rules, May 2019 and response to CDR Bill, September 2018 **attached**). NAB's preferred model for privacy would involve the APPs being 'turned off' and replaced with the Privacy Safeguards. However, given the model has been enshrined in the legislation, NAB welcomes clear direction regarding the transition from the Privacy Safeguards to APPs (see further comments below).
- **Sharing of confidential information and PII:** NAB has concerns regarding the sharing of PII, including payee lists, mobile phone numbers and unique identifiers (see submission on Rules Framework, October 2018 **attached**); and
- **Concurrent development of framework:** NAB is concerned that there has been a lack of privacy by design in the development of the framework and the approach taken in the two PIAs released. We look forward to reviewing the final PIA.

2. Response to the draft Guideline

NAB welcomes the clarity provided by the OAIC on the application of the privacy safeguards. As noted above, the CDR regime is complex and accordingly clear regulatory guidance will assist CDR participants to comply with their obligations. To this end, NAB considers it would be helpful if the OAIC could provide additional, more detailed real world examples regarding the application of the regime.

In particular, NAB welcomes guidance on the following matters:

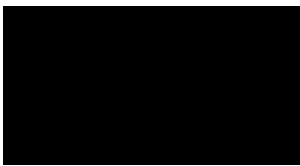
- Examples of what constitutes CDR Data and Derived CDR Data;
- Commentary regarding the overlay of personal information and CDR Data;
- Examples of when a person is a CDR Consumer by virtue of a supply of goods and services to that person's 'associates';
- Guidance on interpretation of the concept 'put beyond use';

- Further guidance on the standards of deletion and destruction, particularly with reference to the OAIC APP Guidance that PII is “destroyed” when it can no longer be retrieved; and
- Further examples of conduct that does not constitute direct marketing.

It would also be helpful to understand how the OAIC intends to approach customer education in relation to privacy protections under the CDR.

NAB looks forward to further and ongoing engagement with the OAIC regarding the implementation of the CDR.

Yours sincerely



Glenda Crisp
Chief Data Officer
National Australia Bank