

Submission

to

Inland Revenue

on the

Discussion Document: Regular
Dataset Collection from Payment
Service Providers

3 September 2021

About NZBA

1. The New Zealand Bankers' Association (**NZBA**) is the voice of the banking industry. We work with our member banks on non-competitive issues to tell the industry's story and develop and promote policy outcomes that deliver for New Zealanders.
2. The following seventeen registered banks in New Zealand are members of NZBA:
 - ANZ Bank New Zealand Limited
 - ASB Bank Limited
 - Bank of China (NZ) Limited
 - Bank of New Zealand
 - China Construction Bank
 - Citibank N.A.
 - The Co-operative Bank Limited
 - Heartland Bank Limited
 - The Hongkong and Shanghai Banking Corporation Limited
 - Industrial and Commercial Bank of China (New Zealand) Limited
 - JPMorgan Chase Bank N.A.
 - Kiwibank Limited
 - MUFG Bank Ltd
 - Rabobank New Zealand Limited
 - SBS Bank
 - TSB Bank Limited
 - Westpac New Zealand Limited

Introduction

NZBA welcomes the opportunity to provide feedback to Inland Revenue (**IR**) on its discussion document: Regular Dataset Collection from Payment Service Providers (**Discussion Document**) and proposed Order in Council (**OIC**).

Contact details

3. If you would like to discuss any aspect of this submission, please contact:

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Summary

NZBA supports IR's proposal to shift to regular data collection from payment service providers, rather than the current ad hoc approach. We think this new approach to data collection has the potential to enhance transparency and efficiency in the data collection process, which will enable our members to reflect these data collection practices more accurately in terms and conditions for customers.

NZBA encourages IR to reach out, consult and collaborate with members where proposals may impact them. In this instance, we would have appreciated engagement prior to the release of the document to provide time for members to prepare for any new obligations and to share our insight to help ensure the proposals achieve their stated aim while minimising compliance costs.

Further, we encourage IR to widely publicise any changes to the data collection process.

The key points of our submission are:

- The OIC should be amended to make it clear that reporting obligations are not automatic and are only triggered by a section 17B request. Additionally, we would welcome recognition in the OIC that IR will consult with payment service providers before issuing such a request.
- In their current form, the proposed changes are likely to significantly increase compliance costs for payment service providers. We suggest mitigating these costs by committing to:
 - only collect information where that information is essential to achieve IR's stated aim
 - partnering with industry to design practical solutions
 - removing the \$30 million turnover threshold in the OIC and removing the OIC's requirement to break down data by transaction category.
- IR should partner with industry to agree appropriate security and encryption safeguards given the sensitivity of the data involved.

Approach to consultation

We have discussed with IR Officials that the proposals have the potential to impose significant obligations on our members and are concerned that despite this, consultation with industry prior to the release of the discussion document appears to have been limited. We see an opportunity for IR to partner with industry so it develops reforms with the benefit of industry insight that deliver on their stated aim and provide sufficient time for affected industry participants to build technical solutions that meet IR's needs.

Scope of the draft Order in Council

The OIC is worded broadly, which (we understand) is intended to reflect IR's desire to provide flexibility in the process without having to continually amend the OIC. We support IR's intention, but are concerned that current drafting does not provide payment service providers with sufficient certainty, and may risk imposing unintended reporting obligations and compliance costs.

In its current form, the OIC would impose a number of reporting obligations on banks in respect of a wide range of payments. However, we understand that IR's intention is that reporting obligations will not arise until IR issues a section 17B request (or similar). We would welcome further clarification on how a section 17B request would fit within the OIC.

We further understand that IR intends to consult extensively with banks on a bilateral basis before issuing such a request, to determine the scope of any required reporting. We note that IR already receives transactional data from network switches, so it would not require this data from banks. Further, we consider that IR should only seek additional information if that information is material to the decision-making that IR is using the information for.

We understand that the use of "may" in clauses 4 and 5 of the OIC is intended to show that reporting obligations are not automatic, and that banks will not have to provide the full list of data in clause 5 (unless this is set out in a section 17B request).

We support IR's intentions here but are concerned that the drafting and messaging does not provide enough certainty for payment service providers. This certainty could be provided by amending the OIC to make clear that these obligations do not commence until 'activated' by a section 17B request (or similar) and that IR must consult with payment service providers extensively and provide appropriate time frames before issuing such a request.

Additionally, certain definitions as currently drafted in the OIC are too wide or unclear due to their specialised nature:

- A "payment" is simply defined as "an electronic payment", which could refer to any type of non-cash payment. The definition could be amended to refer to "an electronic payment for goods or services excluding remuneration received by an employee", and also expressly exclude the payment types noted in paragraph 2.4 of the discussion document, which are not intended to be captured.
- The definition of "payment service provider" refers to participation in a "payment system" which is not itself defined. A definition for "payment system" should be considered, e.g. a network that processes and settles payments.
- The term "acquirer" could be defined as "an entity that receives payments via a payments system on behalf of the merchant".
- The proposed definition of "merchant" should not refer to "business activity", as this will be difficult for payment service providers to determine. We suggest "merchant" is defined as "a person who receives payments relating to their activities via a payments system".

Compliance costs

The proposals will introduce additional compliance costs for payment service providers, particularly at the beginning of this process where significant expenditure will occur to design technology solutions and business processes. We propose some suggestions to mitigate these compliance costs:

- Only seek information from payment service providers where the information is material to the purpose of collection.

- Partnering with industry to design workable solutions that deliver on the intended aim, including agreeing which fields are mandatory based on the information each bank holds.
- Removing the \$30 million turnover threshold in the OIC, as this is difficult to apply to seasonal businesses and merchants who switch acquiring banks.
- Removing the OIC requirement to breakdown data by transaction category and instead allow this to be negotiated. Our preference is net total. We note also that the transaction categories specified in the OIC may not correspond to the standard transaction types used by the payments industry for card-based transactions. Consultation with Payments NZ in this regard may be beneficial.

Method of bulk data collection and security

We suggest IR partner with industry to agree appropriate security and encryption safeguards. These security arrangements will be particularly important given the sensitivity of the data that will likely be collected. Additionally, the reporting should be limited to only information which IR considers strictly necessary for its purposes. There are privacy risks inherent in the transfer of any data, and these risks can be mitigated through transferring more limited datasets. In the event of a privacy breach, it is crucial payment service providers are informed as soon as possible. We suggest IR commits to notify payment service providers of any privacy breach within 24 hours of the breach occurring.

Other comments

We make the following additional comments:

- We would like to see IR only use penalties as a tool of last resort. We think a constructive partnership between IR and industry will be most beneficial to all parties, and our members will work with IR to ensure it receives what it needs. Criminal penalties do not seem appropriate in these circumstances.
- We understand there are likely to be future amendments and proposals in this space. We welcome the opportunity to work with IR on developing any proposals. Industry can provide valuable insight to assist in ensuring these proposals deliver their intended results while also being practical, workable and not unnecessarily increasing compliance costs.
- We would like to emphasise our desire for further and earlier engagement on issues such as this, which are likely to have significant impact on our members.