

# The API Centre’s proposed recognition model for CPD standards management

## **Introduction**

The “recognition model” refers to our recommended operating model for ongoing development and management of industry standards – including technical, operational, and customer standards – necessary to underpin a thriving open data ecosystem, founded on the customer right to access, and benefit, from sharing their data with organisations they choose (aka the Customer and Product Data Bill/CDR regime).

The model creates a pathway for organisations, public or private, across multiple sectors, to develop and manage industry standards that are recognised and incorporated by regulators under the Customer and Product Data Bill (CPD). The model utilises the comparative strengths of both regulation and industry to complement and reinforce the delivery of a customer data right in designated sectors. This model is particularly compelling when CPD aims to harness the resources and expertise of an existing industry standards body, and leverage current and future industry standards.

This model crystallised in October 2023 when CFPB (USA) proposed their Financial Data Rights rule. We have monitored the progress of rule development in the States and evaluated it in the context of Aotearoa New Zealand, allowing us to produce the recommendations in this paper.

It’s worth noting that the rationale for this approach, provided by CFPB, resonates here in Aotearoa. Their proposal included the following statement:

*“Industry standard-setting bodies that operate in a fair, open, and inclusive manner have a critical role to play in ensuring a safe, secure, reliable, and competitive data access framework.”*

*“Comprehensive and detailed technical standards mandated by ... regulation could not address the full range of technical issues in the open banking system in a manner that keeps pace with changes in the market and technology. A rule with very granular coding and data requirements risks becoming obsolete almost immediately, ... or worse, the rule would lock in 2023 technology, and associated business practices, potentially for decades.*

*To help support and maintain a data access framework that enables consumer access in a consistently safe, reliable, and secure manner across the market, industry standards must be widely adopted. To meaningfully scale, standards must reflect a diverse set of interests, increasing the likelihood that market participants will adopt the standards and maintain their integrity. Conversely, if standards are controlled by dominant incumbents or intermediaries, they may enable rent-extraction and cost increases for smaller participants. Fair, open, and inclusive standard-setting bodies are vital to promote standards that can support a data access system that works for consumers, rather than the interests of dominant firms.”*

## **Glossary**

- Recognised Standards Body means an organisation, public or private, who applied and has been granted recognition status by the Chief Executive for the purposes of standards management.
- Qualifying Technical Standards are standards that enable the provision of designated data or actions and have been published by a recognised standards body.
- Compliance schedule defines the minimum technical standards that must be implemented by designated persons, by a given date.
- Operational minimums are the minimum non-technical standards, i.e. customer and/or operational standards, that must be implemented alongside any provision of, or access to, a given technical standard.

## Summary of the recognition model

- Like accreditation, but for standards organisations.
- Allows MBIE's Chief Executive to grant recognition status to an applicant if they meet prescribed criteria / requirements.
- Recognition might be granted to public or private organisations, with or without conditions, for a period of time, for a given sector(s).
- Regulation should set out governance attributes, process and scope requirements in the context of CDR related activities.
- Regulations should determine the process for an organisation to apply for recognition status, the Chief Executive decision making criteria, the process for renewing its status, and termination, withdrawal and suspension.
- A recognised body may deliver anything that the Bill says may be delivered in standards.
- Such standards would qualify so that designated data holders are compliant with CPD Bill so long as they are conforming to qualifying technical standards.
- Regulations should require Accredited Requestors to become a registered member of a recognised standards management body in the sector they are accredited for.

## Design of the recognition model

### ***Designation instrument***

The designation instrument sets out:

- Classes of designated data (and/or actions)
- Designated data holders
- Classes of accreditation
- [recommended addition to the Bill] Classes of customers (i.e. personal, joint and non-personal customers - see paragraph 58 of MBIE's discussion paper).

### ***Designation regulations***

Data holders' electronic systems **must** make designated data (or actions) available in a format that is set out in a qualifying technical standard by the dates set in the compliance schedule.

Data holders **must** comply with operational minimums specified by the recognised standards body for use with the minimum qualifying technical standard.

Noting that classes of data (and actions) in the designation may be broader than the data provided for in qualifying technical standards, regulations will set out a compliance schedule, including:

- the minimum qualifying technical standard version, as offered by a recognised standards body
- the date for designated data holders to be compliant, and
- the accreditation classes

### ***Recognition of standards bodies***

A person may apply to the Chief Executive to be recognised as a recognised standards body.

### ***Scope of services***

Recognised standards bodies must provide for everything the Bill says must be provided for by standards and may provide for anything the Bill says may be provided for by standards.

For the avoidance of doubt, secondary regulation may not provide for anything that a recognised standards body must or may provide for.

### ***How an application is made***

The application must:

- provide key contact information
- provide the applicant's New Zealand Business Number;
- provide the sector(s) for which the applicant is applying to be recognised,
- explain how the applicant meets the criteria and required operational capabilities prescribed in regulations,
- otherwise be made in the manner prescribed by the regulations (if any).

***Decision made by Chief Executive***

The Chief Executive must:

1. have regard to the matters specified in the regulations before making a decision; and
2. otherwise make the decision in the manner prescribed in the regulations (if any).

The Chief Executive may grant recognition status to an applicant if the applicant meets the criteria or other requirements prescribed by the regulations.

The Chief Executive may grant recognition status:

1. with, or without, conditions relating to the matters, criteria, and requirements specified in regulations
2. for a specified period that is not less than 5 years, and
3. for a specified sector(s)

Recognised standards bodies may apply to extend their period of recognition, in a manner prescribed in regulation.

The Chief Executive may suspend or cancel recognition status for a standards body if:

1. the recognised standards body, by written notice, requests the Chief Executive to do so,
2. the Chief Executive is satisfied that the recognised standards body is incapacitated, has ceased to exist, or has become subject to an insolvency event within the meaning of section 6(4) of the Financial Markets Conduct Act 2013, or
3. the Chief Executive is satisfied that the recognised standards body has materially contravened criteria, requirements or conditions imposed on it.

For the avoidance of doubt, suspension or cancellation of a recognised standards bodies recognition status does not impact the compliance of designated data holders who have implemented qualifying technical standards, the status of qualified standards that were published by such recognised standards body while it was recognised, or the statutory rights for accredited requestors to access the electronic systems for the class(s) which they are accredited.

The Chief Executive must publish a public register of recognised standards bodies, including, but not limited to:

1. the name of the organisation
2. contact details for the organisation
3. the conditions (if applicable)
4. the specified period, and
5. the specified sector(s).

## Discussion: criteria (attributes) to consider for a recognised standards body

To promote a competitive data access framework, recognised standards bodies must not inappropriately use their position to benefit a single set of interests. Development and management of qualifying technical standards should reflect the needs of a full range of relevant interests—customers (both personal and non-personal), incumbent banks and challengers, and large and small actors.

A qualified standard, by definition, would be developed and maintained by a fair, open, and inclusive standard-setting body, a body that reflects the full range of relevant interests and expertise.

This list of attributes is for **discussion purposes** and should not be considered a recommendation.

1. **Openness:** The sources, procedures, and processes used are open to all interested parties. Parties can meaningfully participate in standards development on a non-discriminatory basis.
2. **Inclusion:** Public interest groups and consumer voices are meaningfully sought, including, but not limited to, actively seeking the view of Te Ao Māori, digital inclusion, consumer protections, and equity specialists.
3. **Balance:** The decision-making power is balanced across all interested parties, at all levels of the recognised standards body. There is meaningful representation for large and small commercial entities within these categories. No single interest or set of interests dominates decision-making. Achieving balance requires recognition that some participants may play multiple roles, such as being both a data holder and an accredited requestor.
4. **Meaningful engagement:** The recognised standards body uses documented and publicly available policies and procedures, and it provides adequate notice of meetings and standards development, sufficient time to review drafts and prepare views and objections, access to views and objections of other participants, and a fair and impartial process for resolving conflicting views.
5. **Appeals:** An appeals process is available for the impartial handling of appeals.
6. **Meaningful majority:** Standards development process is ideally progressed by consensus, which is defined as general agreement, but not unanimity. During the development of consensus, comments and objections are considered using fair, impartial, open, and transparent processes. However, for standards development decisions to move forward, a meaningful majority (not consensus) of stakeholders should agree.
7. **Transparency:** Procedures or processes for participating in standards development and for developing standards are transparent to participants and publicly available.
8. **Operational capability:** A standards development lifecycle policy is published, for technical standards.