

EXPOSURE DRAFT

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Inserts for

Treasury Laws Amendment (Consumer Data Right) Bill 2018: Provisions for further consultation

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Schedule 1—Consumer data right

Part 1—Main amendments

Competition and Consumer Act 2010

1 After Part IVC

Insert:

Part IVD—Consumer data right

Division 1—Preliminary

[Some provisions located here have not been included in this draft.]

56AC Designated sectors subject to the consumer data right

- (1) A *designated sector* means a sector of the Australian economy designated under subsection (2).
- (2) After complying with section 56AD, the Minister may, by legislative instrument, designate a sector of the Australian economy by specifying:
- (a) classes of information; and
 - (b) persons who hold such information (or on whose behalf such information is held); and
 - (c) the earliest day (the *earliest holding day*) applicable to the sector for beginning to hold such information.

Note 1: The persons specified under paragraph (b):

- (a) may be specified by class, see subsection 13(3) of the *Legislation Act 2003*; and
- (b) will be holders of the information, rather than the consumers to whom the information relates; and
- (c) may not be the only holders of the information who can be required to disclose it under the consumer data rules (see section 56AG (about the meaning of *data holder*)).

Note 2: For variation and repeal, see subsection 33(3) of the *Acts Interpretation Act 1901*.

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- 1 (3) The earliest holding day may be a day happening before the
2 designation is made (including a day happening before this Part
3 commences).

4 Note: The earliest holding day helps to work out if a person is a data holder
5 of information specified under paragraph (2)(a), and so whether that
6 information is subject to the consumer data right.

7 **56AD Minister's tasks before designating a sector etc.**

- 8 (1) Before making an instrument under subsection 56AC(2), the
9 Minister must consider:

10 (a) the likely effect of making the instrument on:

11 (i) consumers; and

12 (ii) the efficiency of relevant markets; and

13 (iii) the privacy or confidentiality of consumers'
14 information; and

15 (iv) promoting competition; and

16 (v) promoting data-driven innovation; and

17 (vi) any intellectual property in the information to be
18 covered by the instrument; and

19 (b) the likely regulatory impact of allowing the consumer data
20 rules to impose requirements relating to the information to be
21 covered by the instrument; and

22 (c) any other matters the Minister considers relevant.

23 Note: The consumers could be individuals or other persons such as
24 businesses.

- 25 (2) Before making an instrument under subsection 56AC(2), the
26 Minister must consult:

27 (a) the Commission; and

28 (b) any person or body prescribed by the regulations for the
29 purposes of this paragraph;

30 about the matters in paragraphs (1)(a) to (c) of this section.

- 31 (3) Before making an instrument under subsection 56AC(2), the
32 Minister must consult the Information Commissioner about the
33 likely effect of making the instrument on the privacy or
34 confidentiality of consumers' information.

35 *[Some provisions located here have not been included in this draft.]*

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1 56AF Meaning of CDR data, directly or indirectly derived and CDR 2 consumer

3 (1) **CDR data** is information that:

- 4 (a) is within a class of information specified in an instrument
5 designating a sector under subsection 56AC(2); or
6 (b) is wholly or partly derived from information covered by:
7 (i) paragraph (a); or
8 (ii) a previous application of this paragraph.

9 Note 1: Information covered by paragraph (b) includes information derived
10 from information covered by paragraph (a), information derived from
11 that derived information, and so on.

12 Note 2: Information covered by paragraph (b), for which there is a CDR
13 consumer, cannot be required to be disclosed under the consumer data
14 rules (see subsection 56BC(3)).

15 Note 3: Only certain kinds of CDR data for which there are no CDR
16 consumers (sometimes known as product data) can be required to be
17 disclosed under the consumer data rules (see subsection 56BD(2)).

18 (2) CDR data is **directly or indirectly derived** from other CDR data if
19 the first-mentioned CDR data is wholly or partly derived from the
20 other CDR data after one or more applications of paragraph (1)(b).

21 (3) A **CDR consumer**, for CDR data, is a person to whom the CDR
22 data relates if:

- 23 (a) the person is identifiable, or reasonably identifiable, from the
24 CDR data; and
25 (b) the CDR data relates to the person because:
26 (i) of the supply of a good or service to the person or to one
27 or more of the person's associates (within the meaning
28 of section 318 of the *Income Tax Assessment Act 1936*);
29 or
30 (ii) of circumstances of a kind prescribed by the regulations
31 for the purposes of this subparagraph; and
32 (c) the CDR data is held by another person who:
33 (i) is a data holder of the CDR data; or
34 (ii) is an accredited data recipient of the CDR data; or
35 (iii) is holding the CDR data on behalf of a person
36 mentioned in subparagraph (i) or (ii); and
37 (d) none of the conditions (if any) prescribed by the regulations
38 for the purposes of this paragraph apply to the
39 first-mentioned person in relation to the CDR data.
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1 (4) Section 4B(1) (about consumers) does not apply to this Part.

2 **56AG Meaning of *data holder***

3 (1) A person is a ***data holder***, of CDR data, if:

4 (a) the CDR data:

5 (i) is information within a class of information specified in
6 an instrument designating a sector under
7 subsection 56AC(2) (the ***designation instrument***); or

8 (ii) is directly or indirectly derived from information
9 covered by subparagraph (i); and

10 (b) the CDR data is held by (or on behalf of) the person, and
11 began to be so held on or after the earliest holding day
12 specified in the designation instrument; and

13 (c) subsection (2), (3) or (4) applies to the person and the CDR
14 data.

15 Note: If the person begins holding the CDR data before the earliest holding
16 day, the person:

17 (a) will not be a data holder of the CDR data; and

18 (b) will not be required to disclose it under the consumer data rules.

19 *First case—person is also specified in the designation instrument*

20 (2) This subsection applies to a person and CDR data if:

21 (a) the person, or a class of persons to which the person belongs,
22 is specified in the designation instrument; and

23 (b) neither the CDR data, nor any other CDR data from which it
24 was directly or indirectly derived, was disclosed to the person
25 under the consumer data rules.

26 *Second case—reciprocity arising from the person being disclosed
27 other CDR data under the consumer data rules*

28 (3) This subsection applies to a person and CDR data if:

29 (a) neither the CDR data, nor any other CDR data from which it
30 was directly or indirectly derived, was disclosed to the person
31 under the consumer data rules; and

32 (b) the person is an accredited data recipient of other CDR data.

33 Note 1: Paragraph (b) is referring to other CDR data not covered by
34 paragraph (a).

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1 Note 2: The other CDR data referred to in paragraph (b) could be within a
2 class of information specified in another instrument designating a
3 different sector under subsection 56AC(2).

4 *Third case—conditions in the consumer data rules are met*

- 5 (4) This subsection applies to a person and CDR data if:
6 (a) the person is an accredited person; and
7 (b) the CDR data, or any other CDR data from which it was
8 directly or indirectly derived, was disclosed to the person
9 under the consumer data rules; and
10 (c) the conditions specified in the consumer data rules are met.

11 **56AGA Meaning of *accredited data recipient***

12 A person is an *accredited data recipient*, of CDR data, if:

- 13 (a) the person is an accredited person; and
14 (b) the CDR data is held by (or on behalf of) the person; and
15 (c) the CDR data, or any other CDR data from which it was
16 directly or indirectly derived, was disclosed to the person
17 under the consumer data rules; and
18 (d) the person is not a data holder of the CDR data.

19 Note: For paragraph (d), the person will be a data holder of the CDR data if
20 subsection 56AG(4) applies.

21 **56AGB Meaning of *CDR participant***

22 A *CDR participant*, for CDR data, is a data holder, or an
23 accredited data recipient, of the CDR data.

24 *[Some provisions located here have not been included in this draft.]*

25 **Division 2—Consumer data right**

26 **Subdivision A—Power to make consumer data rules**

27 *[Some provisions located here have not been included in this draft.]*

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56BC Disclosure, use, accuracy, storage, security or deletion of CDR data for which there are CDR consumers

Required disclosures in response to valid requests

- (1) Without limiting paragraph 56BB(a), the consumer data rules may include the following:
- (a) requirements on a CDR participant for CDR data to disclose all or part of the CDR data:
 - (i) in response to a valid request by a CDR consumer for the CDR data; and
 - (ii) to the CDR consumer or to an accredited person;
 - (b) rules about:
 - (i) how a CDR consumer for the CDR data may make a valid request of the kind described in paragraph (a); and
 - (ii) what must be included in a request for it to be valid, what disclosures or other matters a valid request may cover, and when a request ceases to be a valid request;
 - (c) requirements on a person (other than a CDR consumer for the CDR data) to satisfy in order to be disclosed the CDR data in the way described in paragraph (a).

Note: The requirements described in paragraph (a) could, for example, include a requirement that the disclosure be in accordance with the relevant data standards.

Other matters

- (2) Without limiting paragraph 56BB(a), the consumer data rules may include the following:
- (a) rules relating to the privacy safeguards;
 - (b) other requirements or rules affecting one or more of the following kinds of persons:
 - (i) data holders of CDR data;
 - (ii) accredited persons;
 - (iii) accredited data recipients of CDR data;
 - (iv) CDR consumers for CDR data;
- that relate to the disclosure, use, accuracy, storage, security or deletion of CDR data for which there are one or more CDR consumers.

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1 Note: The rules may deal with similar or additional matters to those in the
2 privacy safeguards. When doing so, the rules will need to be
3 consistent with those safeguards (see subsections 56EC(1) and (2)).

4 *Limitation—only designated CDR data can be required to be*
5 *disclosed*

- 6 (3) The consumer data rules can only require a disclosure of CDR data
7 for which there are one or more CDR consumers if:
8 (a) the CDR data is within a class of information specified in an
9 instrument designating a sector under subsection 56AC(2);
10 and
11 (b) the disclosure is to one or more of those CDR consumers, or
12 to an accredited person.

13 Note 1: This means CDR data cannot be required to be disclosed if it:
14 (a) is not within a class specified in such an instrument; and
15 (b) is directly or indirectly derived from CDR data that is within a
16 class specified in such an instrument.

17 Note 2: The consumer data rules can include other requirements and rules
18 relating to this other derived CDR data.

19 Note 3: Voluntary disclosures of this other derived CDR data can be
20 authorised under the consumer data rules.

- 21 (4) Subsection (3) applies despite any other provision of this Division.

22 **56BD Disclosure, use, accuracy, storage, security or deletion of** 23 **product data**

- 24 (1) Without limiting paragraph 56BB(b), the consumer data rules may
25 include the following for CDR data for which there are no CDR
26 consumers:
27 (a) requirements on a CDR participant for the CDR data to
28 disclose all or part of the CDR data to a person in response to
29 a valid request by the person;
30 (b) rules about:
31 (i) how a person may make a valid request of the kind
32 described in paragraph (a); and
33 (ii) what must be included in a request for it to be valid,
34 what disclosures or other matters a valid request may
35 cover, and when a request ceases to be a valid request;
36 (c) requirements on a person to satisfy in order to be disclosed
37 the CDR data in the way described in paragraph (a);

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- 1 (d) other requirements or rules affecting:
2 (i) CDR participants for the CDR data; or
3 (ii) persons wishing to be disclosed the CDR data;
4 that relate to the disclosure, use, accuracy, storage, security
5 or deletion of the CDR data.

6 Note 1: A request for this CDR data could be made, for example, to assist the
7 development of a product or service.

8 Note 2: The privacy safeguards do not apply to this CDR data (see
9 subsection 56EB(1)).

10 Note 3: The requirements described in paragraph (a) could, for example,
11 include a requirement that the disclosure be in accordance with the
12 relevant data standards.

13 *Limitation—only certain kinds of product data can be required to*
14 *be disclosed*

- 15 (2) The consumer data rules can only require a disclosure of CDR data
16 for which there are no CDR consumers if the CDR data is about
17 the eligibility criteria, terms and conditions, or price of:

18 (a) a product or other kind of good; or

19 (b) a service.

20 Note 1: This means other kinds of CDR data for which there are no CDR
21 consumers cannot be required to be disclosed.

22 Note 2: The consumer data rules can include other requirements and rules
23 relating to other kinds of CDR data for which there are no CDR
24 consumers.

25 Note 3: Voluntary disclosures of other kinds of CDR data for which there are
26 no CDR consumers can be authorised under the consumer data rules.

- 27 (3) Subsection (2) applies despite any other provision of this Division.

28 *[Some provisions located here have not been included in this draft.]*

EXPOSURE DRAFT

1 **Division 5—Privacy safeguards**

2 **Subdivision A—Preliminary**

3 **56EA Simplified outline**

4 This Division sets out privacy safeguards that protect the privacy
5 or confidentiality of CDR consumers' CDR data, whether the CDR
6 consumers are individuals or bodies corporate.

7 The privacy safeguards apply to data holders, and accredited data
8 recipients, of the CDR data in relation to their handling of the CDR
9 data.

10 A person's failure to comply with any of these safeguards may lead
11 to consequences, including liability to a civil penalty (see
12 Subdivision G) or the suspension or revocation of the person's
13 accreditation (see subsection 56BF(3)).

14 **56EB Kinds of CDR data to which the privacy safeguards apply**

- 15 (1) The privacy safeguards only apply to CDR data for which there are
16 one or more CDR consumers.

17 Note: For CDR data to have a CDR consumer, there needs to be at least one
18 person to whom the information relates who is identifiable, or
19 reasonably identifiable, from the CDR data (see subsection 56AF(3)).

- 20 (2) The privacy safeguards apply to that CDR data whether that CDR
21 data is true or not.

22 **56EC Relationship with other laws**

23 *Relationship with the consumer data rules*

- 24 (1) If there is an inconsistency between the privacy safeguards and the
25 consumer data rules, those safeguards prevail over those rules to
26 the extent of the inconsistency.

- 27 (2) However, the consumer data rules are taken to be consistent with
28 the privacy safeguards to the extent that they are capable of
29 operating concurrently.

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1 Note: This means that the privacy safeguards do not cover the field that they
2 deal with.

3 *Relationship with the Privacy Act 1988*

4 (3) This Division does not limit Part IIIA (about credit reporting) of
5 the *Privacy Act 1988*. However, the regulations may declare that in
6 specified circumstances that Part applies in relation to CDR data as
7 if specified provisions of that Part were omitted, modified or varied
8 as specified in the declaration.

9 (4) Despite the *Privacy Act 1988*:

10 (a) the Australian Privacy Principles do not apply to an
11 accredited data recipient of CDR data in relation to the CDR
12 data; and

13 (b) if subsection 56EM(1) applies to a disclosure of CDR data by
14 a data holder of the CDR data—Australian Privacy
15 Principle 10 does not apply to the data holder in relation to
16 that disclosure of the CDR data; and

17 (c) if subsection 56EO(1) applies to CDR data and a data holder
18 of the CDR data—Australian Privacy Principle 13 does not
19 apply to the data holder in relation to the CDR data.

20 Note 1: For the accredited data recipient, the privacy safeguards will apply
21 instead.

22 Note 2: Section 56EM (or privacy safeguard 11) is about the quality of CDR
23 data. Section 56EO (or privacy safeguard 13) is about correcting CDR
24 data.

25 (5) Apart from paragraphs (4)(b) and (c), this Division does not affect
26 how the Australian Privacy Principles apply to a data holder of
27 CDR data in relation to the CDR data.

28 Note 1: Privacy safeguard 1 will apply to the data holder in parallel to
29 Australian Privacy Principle 1.

30 Note 2: The consumer data rules (which are made under Division 2) will affect
31 how the Australian Privacy Principles apply. Requirements and
32 authorisations under those rules will be requirements or authorisations
33 under an Australian law for the purposes of the Australian Privacy
34 Principles.

EXPOSURE DRAFT

1 Subdivision B—Consideration of CDR data privacy

2 56ED Privacy safeguard 1—open and transparent management of 3 CDR data

4 *Object*

- 5 (1) The object of this section is to ensure that CDR participants for
6 CDR data manage the CDR data in an open and transparent way.

7 *Compliance with this Part etc.*

- 8 (2) A CDR participant for CDR data must take such steps as are
9 reasonable in the circumstances to implement practices, procedures
10 and systems that:
11 (a) will ensure that the participant complies with this Part and
12 the consumer data rules; and
13 (b) will enable the participant to deal with inquiries or
14 complaints from a CDR consumer for the CDR data about
15 the participant's compliance with this Part or the consumer
16 data rules.

17 *Policy about the management of CDR data*

- 18 (3) A CDR participant for CDR data must have and maintain a clearly
19 expressed and up-to-date policy that:
20 (a) is about the participant's management of CDR data; and
21 (b) is in a form approved in accordance with the consumer data
22 rules.

23 Civil penalty: *to be inserted later*

- 24 (4) Without limiting subsection (3), if the CDR participant is a data
25 holder of any CDR data, the CDR participant's policy must contain
26 the following information:
27 (a) how a CDR consumer for the CDR data may access the CDR
28 data and seek the correction of the CDR data;
29 (b) how a CDR consumer for the CDR data may complain about
30 a failure of the participant to comply with this Part or the
31 consumer data rules, and how the participant will deal with
32 such a complaint.

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- 1 (5) Without limiting subsection (3), if the CDR participant is an
2 accredited data recipient of any CDR data, the CDR participant's
3 policy must contain the following information:
4 (a) the classes of CDR data held by (or on behalf of) the
5 participant as an accredited data recipient, and how such
6 CDR data is held;
7 (b) the purposes for which the participant may collect, hold, use
8 or disclose such CDR data with the consent of a CDR
9 consumer for the CDR data;
10 (c) how a CDR consumer for such CDR data may access the
11 CDR data and seek the correction of the CDR data;
12 (d) how a CDR consumer for such CDR data may complain
13 about a failure of the participant to comply with this Part or
14 the consumer data rules, and how the participant will deal
15 with such a complaint;
16 (e) whether the participant is likely to disclose such CDR data to
17 accredited persons who are based overseas;
18 (f) if the participant is likely to disclose such CDR data to
19 accredited persons who are based overseas—the countries in
20 which such persons are likely to be based if it is practicable
21 to specify those countries in the policy;
22 (g) the circumstances in which the participant may disclose such
23 CDR data to a person who is not an accredited person;
24 (h) the events about which the participant will notify the CDR
25 consumers of such CDR data;
26 (i) the circumstances in which the participant must delete such
27 CDR data in accordance with a request given by a CDR
28 consumer for the CDR data in accordance with the consumer
29 data rules.

30 *Availability of policy etc.*

- 31 (6) The CDR participant must make the participant's policy available:
32 (a) free of charge; and
33 (b) in accordance with the consumer data rules.

34 Note: One way the consumer data rules could require the policy to be made
35 available is to require the policy to be made available in accordance
36 with a data standard.

- 37 (7) If a copy of the CDR participant's policy is requested by a CDR
38 consumer for the CDR data, the participant must give the CDR
39 consumer a copy in accordance with the consumer data rules.
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56EE Privacy safeguard 2—anonymity and pseudonymity

- (1) An accredited data recipient of CDR data must give each CDR consumer for the CDR data the option of using a pseudonym, or not identifying themselves, when dealing with the accredited data recipient in relation to the CDR data.

Note: The CDR participant from whom the accredited data recipient acquired the CDR data may be subject to a similar obligation under Australian Privacy Principle 2.

- (2) Subsection (1) does not apply in the circumstances specified in the consumer data rules.

Subdivision C—Collecting CDR data

56EF Privacy safeguard 3—soliciting CDR data from CDR participants

An accredited person must not seek to collect CDR data under the consumer data rules from a CDR participant for the CDR data unless:

- (a) a CDR consumer for the CDR data has requested this by giving the person a valid request under the consumer data rules; and
- (b) the person complies with all other requirements in the consumer data rules for the collection of the CDR data from the CDR participant.

Civil penalty: *to be inserted later*

56EG Privacy safeguard 4—dealing with unsolicited CDR data from CDR participants

If an accredited person:

- (a) collects CDR data from a CDR participant for the CDR data:
 - (i) purportedly under the consumer data rules; but
 - (ii) not as the result of seeking to collect that CDR data under the consumer data rules; and
 - (b) is not required to retain that CDR data by or under an Australian law or a court/tribunal order;
- the person must destroy that CDR data as soon as practicable.

Civil penalty: *to be inserted later*

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1 56EH Privacy safeguard 5—notifying of the collection of CDR data

2 If a person collects CDR data in accordance with section 56EF, the
3 person must:

- 4 (a) take the steps specified in the consumer data rules to notify
5 CDR consumers for the CDR data of the collection; and
6 (b) ensure that this notification:
7 (i) is given to those of the CDR consumers (if there are
8 more than one) that the consumer data rules require to
9 be notified; and
10 (ii) covers the matters specified in those rules; and
11 (iii) is given at or before the time specified in those rules.

12 Civil penalty: *to be inserted later*

13 Subdivision D—Dealing with CDR data

14 56EI Privacy safeguard 6—use or disclosure of CDR data by 15 accredited data recipients

- 16 (1) An accredited data recipient of CDR data must not use or disclose
17 it unless:
18 (a) in the case of a disclosure—the disclosure is required under
19 the consumer data rules in response to a valid request from a
20 CDR consumer for the CDR data; or
21 (b) the use or disclosure is authorised under the consumer data
22 rules in accordance with a valid consent of a CDR consumer
23 for the CDR data; or
24 (c) the use or disclosure is required or authorised by or under:
25 (i) an Australian law, other than the Australian Privacy
26 Principles; or
27 (ii) a court/tribunal order;
28 and the person makes a written note of the use or disclosure.

29 Note: The consumer data rules are an Australian law for the purposes of
30 subparagraph (c)(i).

31 Civil penalty: *to be inserted later*

- 32 (2) Subsection (1) does not apply to the use or disclosure of CDR data
33 for the purposes of direct marketing.

34 Note: Section 56EJ deals with the use or disclosure of CDR data for the
35 purposes of direct marketing.

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1 56EJ Privacy safeguard 7—use or disclosure of CDR data for direct 2 marketing by accredited data recipients

3 An accredited data recipient of CDR data must not use or disclose
4 it for direct marketing unless:

- 5 (a) in the case of a disclosure—the disclosure is required under
6 the consumer data rules in response to a valid request from a
7 CDR consumer for the CDR data; or
8 (b) the use or disclosure is authorised under the consumer data
9 rules in accordance with a valid consent of a CDR consumer
10 for the CDR data; or
11 (c) the use or disclosure is required or authorised by or under:
12 (i) an Australian law, other than the Australian Privacy
13 Principles; or
14 (ii) a court/tribunal order;
15 and the person makes a written note of the use or disclosure.

16 Note: The consumer data rules are an Australian law for the purposes of
17 subparagraph (c)(i).

18 Civil penalty: *to be inserted later*

19 56EK Privacy safeguard 8—cross-border disclosure of CDR data by 20 accredited data recipients

21 If:

- 22 (a) an accredited data recipient of CDR data proposes to disclose
23 the CDR data; and
24 (b) the recipient (the *new recipient*) of the proposed disclosure:
25 (i) is not in Australia or an external Territory; and
26 (ii) is not a CDR consumer for the CDR data;
27 the accredited data recipient must not make the disclosure unless:
28 (c) the new recipient is an accredited person; or
29 (d) the conditions specified in the consumer data rules are met.

30 Note 1: This section applies in addition to the disclosure restrictions in
31 sections 56EI, 56EJ and 56EL.

32 Note 2: A similar disclosure by a data holder of the CDR data that is required
33 under the consumer data rules will be covered by paragraph 8.2(c) of
34 Australian Privacy Principle 8 if the CDR data is personal information
35 about an individual.

36 Civil penalty: *to be inserted later*

EXPOSURE DRAFT

56EL Privacy safeguard 9—adoption or disclosure of government related identifiers by accredited data recipients

1
2
3 (1) If:

- 4 (a) a person is an accredited data recipient of CDR data; and
5 (b) the CDR data includes a government related identifier
6 (within the meaning of the *Privacy Act 1988*) of a CDR
7 consumer for the CDR data who is an individual;

8 the person must not adopt the government related identifier as the
9 person's own identifier of the CDR consumer, or otherwise use the
10 government related identifier, unless:

- 11 (c) the adoption or use is required or authorised by or under:
12 (i) an Australian law other than the consumer data rules; or
13 (ii) a court/tribunal order; or
14 (d) subclause 9.3 of Australian Privacy Principle 9 applies in
15 relation to the adoption or use.

16 Civil penalty: *to be inserted later*

17 (2) If:

- 18 (a) a person who is an accredited data recipient of CDR data
19 proposes to disclose the CDR data; and
20 (b) the CDR data includes a government related identifier
21 (within the meaning of the *Privacy Act 1988*) of a CDR
22 consumer for the CDR data who is an individual;

23 the person must not include the government related identifier in the
24 disclosure unless:

- 25 (c) this is required or authorised by or under:
26 (i) an Australian law other than the consumer data rules; or
27 (ii) a court/tribunal order; or
28 (d) subclause 9.3 of Australian Privacy Principle 9 applies in
29 relation to the disclosure.

30 Note: This subsection applies in addition to the disclosure restrictions in
31 sections 56EI, 56EJ and 56EK.

32 Civil penalty: *to be inserted later*

33 (3) For the purposes of paragraph (1)(d) or (2)(d), disregard
34 paragraph 56EC(4)(a) (about the APPs not applying).

EXPOSURE DRAFT

1 56ELA Privacy safeguard 10—notifying of the disclosure of CDR 2 data

3 (1) If a data holder of CDR data is required to disclose the CDR data
4 to a person under the consumer data rules in response to a valid
5 request from a CDR consumer for the CDR data, the data holder
6 must:

7 (a) take the steps specified in the consumer data rules to notify
8 CDR consumers for the CDR data of the disclosure; and

9 (b) ensure that this notification:

10 (i) is given to those of the CDR consumers (if there are
11 more than one) that the consumer data rules require to
12 be notified; and

13 (ii) covers the matters specified in those rules; and

14 (iii) is given at or before the time specified in those rules.

15 Civil penalty: *to be inserted later*

16 (2) If an accredited data recipient of CDR data discloses the CDR data,
17 the accredited data recipient must:

18 (a) take the steps specified in the consumer data rules to notify
19 CDR consumers for the CDR data of the disclosure; and

20 (b) ensure that this notification:

21 (i) is given to those of the CDR consumers (if there are
22 more than one) that the consumer data rules require to
23 be notified; and

24 (ii) covers the matters specified in those rules; and

25 (iii) is given at or before the time specified in those rules.

26 Civil penalty: *to be inserted later*

27 Subdivision E—Integrity of CDR data

28 56EM Privacy safeguard 11—quality of CDR data

29 *Disclosures by data holders*

30 (1) If a data holder of CDR data is required to disclose the CDR data
31 under the consumer data rules in response to a valid request from a
32 CDR consumer for the CDR data, the data holder must take
33 reasonable steps to ensure that the CDR data is, having regard to
34 the purpose for which it is held, accurate, up-to-date and complete.

EXPOSURE DRAFT

1 Civil penalty: *to be inserted later*

2 *Disclosures by accredited data recipients*

3 (2) If an accredited data recipient of CDR data is disclosing the CDR
4 data when:

5 (a) required by the consumer data rules to do so in response to a
6 valid request from a CDR consumer for the CDR data; or

7 (b) authorised by the consumer data rules to do so in accordance
8 with a valid consent of a CDR consumer for the CDR data;

9 the accredited data recipient must take reasonable steps to ensure
10 that the CDR data is, having regard to the purpose for which it is
11 held, accurate, up-to-date and complete.

12 Civil penalty: *to be inserted later*

13 *Advising consumer if data later found to have been incorrect*

14 (3) If a CDR participant for CDR data:

15 (a) makes a disclosure referred to in subsection (1) or (2) for a
16 CDR consumer; and

17 (b) later, would reasonably be expected to be aware that some or
18 all of the CDR data was incorrect when it was disclosed
19 because, having regard to the purpose for which it was held,
20 it was inaccurate, out of date or incomplete;

21 the CDR participant must advise the CDR consumer accordingly,
22 and do so in writing.

23 Civil penalty: *to be inserted later*

24 *Disclosing corrected CDR data*

25 (4) If:

26 (a) a CDR consumer for CDR data is advised under
27 subsection (3) by a CDR participant for the CDR data that
28 some or all of the CDR data was incorrect when the CDR
29 participant had earlier disclosed it; and

30 (b) the CDR consumer requests the CDR participant to disclose
31 the corrected CDR data to the recipient of that earlier
32 disclosure;

33 the CDR participant must comply with the request.

34 Civil penalty: *to be inserted later*

EXPOSURE DRAFT

Purpose for which the CDR data was held

- 1
2 (5) When working out the purpose for which the CDR data is or was
3 held, disregard the purpose of holding the CDR data so that it can
4 be disclosed as required by the consumer data rules.

5 Note: This subsection is relevant for subsections (1) and (2) and
6 paragraph (3)(b).

7 **56EN Privacy safeguard 12—security of CDR data held by**
8 **accredited data recipients**

- 9 (1) An accredited data recipient of CDR data must take the steps
10 specified in the consumer data rules to protect the CDR data from:
11 (a) misuse, interference and loss; and
12 (b) unauthorised access, modification or disclosure.

13 Civil penalty: *to be inserted later*

- 14 (2) If:
15 (a) a person is an accredited data recipient of CDR data; and
16 (b) the person no longer needs some or all of the CDR data:
17 (i) for the purposes permitted under the consumer data
18 rules; or
19 (ii) for any purpose for which the person is able to use or
20 disclose that data in accordance with this Division; and
21 (c) the person is not required by or under:
22 (i) an Australian law, other than the Australian Privacy
23 Principles; or
24 (ii) a court/tribunal order;
25 to retain the data for which paragraph (b) is satisfied (the
26 **redundant data**);
27 the person must take the steps specified in the consumer data rules
28 to destroy the redundant data or to ensure that the redundant data is
29 de-identified.

30 Civil penalty: *to be inserted later*

EXPOSURE DRAFT

1 Subdivision F—Correction of CDR data

2 56EO Privacy safeguard 13—correction of CDR data

3 *Obligation on data holders*

4 (1) If:

5 (a) a CDR consumer for CDR data requests a data holder of the
6 CDR data to correct the CDR data; and

7 (b) the data holder was earlier required to disclose:

8 (i) the CDR data; or

9 (ii) other CDR data from which the first-mentioned CDR
10 data is directly or indirectly derived;

11 under the consumer data rules in response to a valid request
12 from a CDR consumer for the CDR data;

13 the data holder must respond to the request by taking such steps as
14 are specified in the consumer data rules to deal with each of the
15 matters in subsection (3).

16 Civil penalty: *to be inserted later*

17 *Obligation on accredited data recipients*

18 (2) If a CDR consumer for CDR data requests an accredited data
19 recipient of the CDR data to correct the CDR data, the accredited
20 data recipient must respond to the request by taking such steps as
21 are specified in the consumer data rules to deal with each of the
22 matters in subsection (3).

23 Civil penalty: *to be inserted later*

24 *Relevant matters when responding to correction requests*

25 (3) The matters are as follows:

26 (a) either:

27 (i) to correct the CDR data; or

28 (ii) to include a statement with the CDR data, to ensure that,
29 having regard to the purpose for which the CDR data is
30 held, the CDR data is accurate, up to date, complete and
31 not misleading;

EXPOSURE DRAFT

1 (b) to give notice of any correction or statement, or notice of
2 why a correction or statement is unnecessary or
3 inappropriate.

4 (4) When working out the purpose for which the CDR data is held (see
5 subparagraph (3)(a)(ii)), disregard the purpose of holding the CDR
6 data so that it can be disclosed as required by the consumer data
7 rules.

8 *[Some provisions located here have not been included in this draft.]*

EXPOSURE DRAFT

Part 2—Other amendments

[Some provisions located here have not been included in this draft.]

Competition and Consumer Act 2010

6 Subsection 4(1)

Insert:

Accreditation Registrar means:

- (a) if a person or body holds an appointment under subsection 56CH(1)—that person or body; or
- (b) otherwise—the Commission.

accredited data recipient has the meaning given by section 56AGA.

accredited person means a person who holds an accreditation under subsection 56CE(1).

Australian law has the same meaning as in the *Privacy Act 1988*.

binding data standard has the meaning given by subsection 56FE(3).

CDR consumer has the meaning given by subsection 56AF(3).

CDR data has the meaning given by subsection 56AF(1).

CDR participant has the meaning given by section 56AGB.

civil penalty provision of the consumer data rules means a provision of the consumer data rules that is a civil penalty provision (within the meaning of the Regulatory Powers Act).

Commonwealth entity for the purposes of the finance law means a person or body that is a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) for the purposes of the finance law (within the meaning of that Act).

consumer data rules means rules made under section 56BA.

EXPOSURE DRAFT

1 *court/tribunal order* has the same meaning as in the *Privacy Act*
2 *1988*.

3 *data holder* has the meaning given by subsection 56AG(1).

4 *Data Recipient Accreditor* means:

- 5 (a) if a person or body holds an appointment under
6 subsection 56CA(1)—that person or body; or
7 (b) otherwise—the Commission.

8 *data standard* means a data standard made under section 56FE.

9 *Data Standards Body* means the body holding an appointment
10 under paragraph 56FA(1)(b).

11 *Data Standards Chair* means:

- 12 (a) if a person holds an appointment under
13 paragraph 56FA(1)(a)—that person; or
14 (b) otherwise—the Commission.

15 *designated sector* has the meaning given by subsection 56AC(1).

16 *directly or indirectly derived* has the meaning given by
17 subsection 56AF(2).

18 *earliest holding day* has the meaning given by
19 paragraph 56AC(2)(c).

20 *privacy safeguards* are set out in Division 5 of Part IVD (about the
21 consumer data right).

22 *Regulatory Powers Act* means the *Regulatory Powers (Standard*
23 *Provisions) Act 2014*.

24 *[Some provisions located here have not been included in this draft.]*