

EXPOSURE DRAFT



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Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2019

I, Josh Frydenberg, Treasurer, make the following instrument.

Dated 2019

Josh Frydenberg **[DRAFT ONLY—NOT FOR SIGNATURE]**
Treasurer

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1 Name

This instrument is the *Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2019*.

2 Commencement

This instrument commences on the day after it is registered.

3 Authority

This instrument is made under subsection 56AC(2) of the *Competition and Consumer Act 2010*.

4 Definitions

- (1) In this instrument, unless the contrary intention appears:

Act means the *Competition and Consumer Act 2010*.

associate has the meaning given by section 318 of the *Income Tax Assessment Act 1936*.

Australian law has the meaning given by subsection 6(1) of the *Privacy Act 1988*.

authorised deposit-taking institution has the meaning given by subsection 5(1) of the *Banking Act 1959*.

Note: Some expressions used in this instrument are defined in the Act.

- (2) In this instrument, *product* means:

- (a) a good or service that is or has been offered or supplied to a person in connection with one or more of the following activities:

- (i) taking money on deposit (otherwise than as part-payment for identified goods or services);
(ii) making advances of money;
(iii) another financial activity prescribed for the purposes of subparagraph (b)(ii) of the definition of banking business in subsection 5(1) of the *Banking Act 1959*; or

- (b) a purchased payment facility that is or has been offered or supplied to a person.

- (3) In this instrument, *purchased payment facility* means a facility (other than cash) in relation to which the following conditions are satisfied:

- (a) the facility is purchased by a person from another person; and
(b) the facility is able to be used as a means of making payments up to the amount that, from time to time, is available for use under the conditions applying to the facility; and

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- (c) those payments are to be made by the provider of the facility or by a person acting under an arrangement with the provider (rather than by the user of the facility).
- (4) In subsection (3):
 - (a) a reference to a facility includes a reference to a right to use a facility; and
 - (b) a reference to the purchase of a facility includes a reference to the payment of an amount for a right to use a facility.

5 Designation of sector subject to the consumer data right

- (1) For paragraph 56AC(2)(a) of the Act:
 - (a) information to which section 6, 7 or 8 applies is specified as a class of information; and
 - (b) information to which section 9 applies does not fall within that class.
- (2) For paragraph 56AC(2)(b) of the Act, authorised deposit-taking institutions are specified as persons who hold such information, or on whose behalf such information is held.
- (3) For paragraph 56AC(2)(c) of the Act, 1 January 2017 is specified as the earliest day applicable to the sector for beginning to hold such information.

Note: Paragraph 56AC(2)(d) of the Act provides that an instrument designating a sector may specify the classes of information for which a person may, in certain circumstances, charge a fee. This instrument does not specify any such classes of information. The information specified in this instrument will, therefore, not constitute chargeable CDR data within the meaning of subsection 56AM(1) of the Act.

6 Specified classes of information—information about user of product

- (1) This section applies to information that:
 - (a) is about:
 - (i) a person to whom a product has been, or is being, supplied; or
 - (ii) the person's associate, where that product has also been, or is also being, supplied to the associate; and
 - (b) was:
 - (i) provided by the person, or the person's associate, in connection with the person's acquisition or use of the product; or
 - (ii) otherwise obtained by or on behalf of the entity that holds the information, or on whose behalf the information is held.
- (2) The information mentioned in subsection (1) includes, but is not limited to, the following:
 - (a) information identifying the person or associate;
 - (b) information relevant to the eligibility of the person or associate to acquire or use a product or a feature of a product;
 - (c) the contact details of the person or associate.

Example 1: For paragraph 6(1)(a), where the person or associate is a business, information about that person or associate would include the type of the business or organisation (eg, whether it is incorporated), the establishment date, the country of registration, and whether the business is a charitable or not-for-profit organisation.

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Example 2: For paragraph 6(2)(a), information identifying an individual would, among other things, include their name. Where the person or associate is a business, that information would include the person or associate's business name and business number (such as an ABN or ACN).

7 Specified classes of information—information about use of product

- (1) Subject to subsection (3), this section applies to information about the use of a product by:
 - (a) a person to whom the product has been, or is being, supplied; or
 - (b) the person's associate, where that product has also been, or is also being, supplied to the associate.
- (2) The information mentioned in subsection (1) includes, but is not limited to, the following:
 - (a) information identifying an account associated with the product;
 - (b) each balance of an account associated with the product;
 - (c) information about a transaction made by the person or associate in connection with the product;
 - (d) information about an authorisation given by the person or associate in connection with an account associated with the product, including information about:
 - (i) the persons who are authorised to use or access, or view information relating to, the account; and
 - (ii) a third party authorisation to make a payment.
- (3) The information mentioned in subsection (1) does not include information to which section 10 applies.

Example 1: For paragraph 7(1)(a), an account number and account name are examples of information identifying an account associated with a product.

Example 2: For paragraph 7(1)(d), a direct debit authorisation, a scheduled payment and a payee authorisation are examples of a third party authorisation to make a payment. Information about a direct debit authorisation may include, for example, the party to whom the payment is to be made, the amount to be debited and the date on which the transaction is to be made.

8 Specified classes of information—information about a product

- (1) This section applies to information about a product, including, but not limited to, the following:
 - (a) information identifying or describing the product;
 - (b) each price of the product, including a fee, charge or interest rate associated with the product;
 - (c) a feature or benefit of the product;
 - (d) the terms and conditions associated with the product;
 - (e) the eligibility criteria a person must meet in order to acquire or use the product.

Example: For paragraph 8(1)(c), an example of a feature or benefit of a product is a discount or bundle offered in connection with the product.

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- (2) Without limiting subsection (1), the information may relate to the product:
 - (a) as offered or provided to particular classes of customer; or
 - (b) as tailored to a particular customer.

9 Exclusion from specified classes of information—credit information

This section applies to the following information:

- (a) information described in paragraph 6N(d), (i), (j) or (l) of the *Privacy Act 1988*;
- (b) new arrangement information within the meaning of subsection 6S(2) of the *Privacy Act 1988*.

10 Exclusion from specified classes of information—materially enhanced information

- (1) Subject to subsection (2), this section applies to information (*materially enhanced information*) where:
 - (a) the information was wholly or partly derived through the application of insight or analysis to information to which subsection 7(1) applies (*source material*); and
 - (b) that insight or analysis:
 - (i) was applied by, or on behalf of, the entity that holds the information or on whose behalf the information is held; and
 - (ii) rendered the information significantly more valuable than the source material.

Note 1: The materially enhanced information may have been derived entirely from information to which subsection 7(1) applies, or from a combination of information covered by subsection 7(1) and other information. It is only necessary for the application of insight or analysis to render the information significantly more valuable than the inputs covered by subsection 7(1).

Note 2: The application of insight or analysis may have rendered the information more valuable than the source material by enhancing its usefulness, usability or commercial value.

Publicly available information is not excluded from specified class

- (2) Subsection (1) does not apply where:
 - (a) the information is publicly available; or
 - (b) an Australian law (other than the Act) requires the disclosure of the information to one or more of the following:
 - (i) the public;
 - (ii) a person to whom a product has been or is being supplied;
 - (iii) a class of persons that includes the person mentioned in subparagraph (ii).
- (3) To avoid doubt, the following information is not materially enhanced information:
 - (a) a calculated balance;
 - (b) an amount of interest earned or charged;
 - (c) a fee charged;

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- (d) a reference number, including a routing number, a clearing house number or a swift code;
- (e) information identifying a person, body, product, transaction or account;
- (f) information mentioned in paragraph 7(2)(d) (about an authorisation);
- (g) the categorisation of source material based on a feature of the product to which it relates, including categorisation by the fees or interest rates applicable to the product;
- (h) information that results from filtering or sorting source material by reference to a date, period, amount or classification.

Note 1: Section 10 only operates to exclude information from the scope of section 7(1). As a result, information to which sections 6 and 8 apply is not excluded by virtue of this section. For instance, where materially enhanced information would fall within the terms of section 8, that information would still form part of the class of information specified for the purposes of paragraph 56AC(2)(a) of the Act.

Note 2: Subsection (3) is not an exhaustive statement of the information that may fall outside of subsection (1).

- (4) Subsection (3) does not imply that any of the information mentioned in that subsection would otherwise be materially enhanced information.