

## **EXPOSURE DRAFT EXPLANATORY MATERIALS**

### **Issued by authority of the Assistant Treasurer and Minister for Financial Services**

*Competition and Consumer Act 2010*

*Consumer Data Right (Authorised Deposit-Taking Institutions) Amendment Designation 2022*

Subsection 56AC(2) of the *Competition and Consumer Act 2010* provides that the Minister may, by legislative instrument, designate a sector of the Australian economy to be subject to the consumer data right. The consumer data right is set out in Part IVD of that Act.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that a power to make an instrument includes (inter alia) a power to amend the instrument.

The purpose of the *Consumer Data Right (Authorised Deposit-Taking Institutions) Amendment Designation 2022* (the Designation) is to resolve an ambiguity in the definition of **product** in the *Consumer Data Right Amendment (Authorised Deposit-Taking Institutions) Designation 2019* (the principal Designation). This amendment will ensure that the definition of ‘product’ in the principal Designation extends to leases.

Details of the Designation are set out in Attachment A.

The Designation is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Designation will commence on the day after it is registered.

**Details of the Consumer Data Right (Authorised Deposit-Taking Institutions) Amendment Designation 2022**

**Section 1—Name**

This section provides that the title of the Designation is the *Consumer Data Right (Authorised Deposit-Taking Institutions) Amendment Designation 2022*.

**Section 2—Commencement**

This section provides that the Designation will commence on the day after it is registered.

**Section 3—Authority**

This section states that the Designation is made under subsection 56AC(2) of the Act.

**Section 4—Schedule**

This section provides that each instrument that is specified in a Schedule to this instrument will be amended or repealed as set out in the applicable items in the Schedule, and any other item in the Schedule to this instrument has effect according to its terms.

**Schedule 1 – Amendments**

**Item [1] – Paragraph 4(2)(a)**

Item 1 amends paragraph 4(2)(a) of the principal Designation by inserting new subparagraph (a)(ia), relating to letting goods on hire, including on hire-purchase. The intention is to clarify that the definition of *product* in subsection 4(2) includes a lease, including a lease of the following kinds:

- a consumer lease;
- an equipment operating lease;
- a finance lease (for either a vehicle or equipment);
- a novated lease (used for car finance when employees salary sacrifice through their employer, with the lessor making the lease arrangement with the employer);
- vehicle fleet leasing;
- asset finance or ‘asset purchase’ (the provider purchases and owns the asset, and the customer buys it from the provider in instalments over an agreed period, with ownership transferring to the customer upon final payment).

It is intended to capture a lease whether or not the lessee has a right or obligation to purchase the goods to which the lease relates.

Currently, 'product' is defined in subsection 4(2) of the principal Designation as a good or service that is or has been offered or supplied to a person in connection with:

- taking money on deposit, for example a savings account;
- making advances of money, for example a mortgage or credit card;
- another financial activity prescribed by regulations for the purposes of the definition of a banking business.

A *product* also includes a purchased payment facility that is or has been offered or supplied to a person.

This amendment will put beyond doubt that the definition of 'product' in the principal Designation extends to leases.