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| **EXPOSURE DRAFT** |

Inserts for

Treasury Laws Amendment (Measures for Consultation) Bill 2022: Consumer Data Right—Implementing Action Initiation

| Commencement information | | |
| --- | --- | --- |
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. |  |  |
| 2. Schedule # | The day after this Act receives the Royal Assent. |  |
| 3. |  |  |

Schedule #—Consumer Data Right: Implementing Action Initiation

Part 1—Introductory provisions

Competition and Consumer Act 2010

1 After paragraph 56AA(b)

Insert:

(ba) to enable consumers in those sectors to request accredited persons to give instructions to service providers in those sectors for the performance of actions; and

2 Paragraph 56AA(c)

Omit “and (b)”, substitute “to (ba)”.

3 Section 56AB

Omit:

(c) may require these kinds of disclosures, and other things, to be done in accordance with data standards.

substitute:

(c) enable consumers in those sectors to request accredited persons to give instructions to service providers in those sectors for the performance of actions; and

(d) require these kinds of disclosures and other things to be done, and these kinds of instructions to be given, in accordance with data standards.

This Part regulates the instruction layer associated with instructions for the performance of actions, which includes regulating requests for instructions, the giving of instructions, and how service providers process instructions.

A service provider given an instruction under the rules to perform an action must do so if the provider ordinarily performs actions of that type in the course of its business. Otherwise, this Part contains little regulation of the action layer (that is, regulating how service providers perform actions they are instructed to do). For example, the provider can perform the action, and charge any fees, in the way it ordinarily does.

Part 2—Declaring types of actions that can be initiated under the consumer data rules

Competition and Consumer Act 2010

4 Subdivision B of Division 1 of Part IVD (heading)

Repeal the heading, substitute:

Subdivision B—Designating sectors, and declaring actions, to which the consumer data right applies

5 After section 56AC

Insert:

56ACA Declared types of actions that can be initiated under the consumer data rules

The Minister may, by legislative instrument, declare:

(a) one or more types of actions for which an instruction may be given under the consumer data rules; and

(b) for each of those action types—the classes of data holders, of CDR data, that are to be action service providers for that type of action.

Note: The classes of data holders specified for an action type will have no choice about being action service providers for that action type.

6 Section 56AD (heading)

Repeal the heading, substitute:

56AD Minister’s tasks before designating a sector or declaring actions etc.

7 Subsection 56AD(1)

After “subsection 56AC(2)”, insert “or section 56ACA”.

8 Subparagraph 56AD(1)(a)(vi)

After “information”, insert “, or relating to the actions,”.

9 Paragraph 56AD(1)(b)

After “information”, insert “, or actions,”.

10 Paragraph 56AD(1)(c)

Before “the following matters”, insert “for an instrument under subsection 56AC(2)—”.

11 Paragraph 56AD(1)(d)

Before “whether”, insert “for an instrument under subsection 56AC(2)—”.

12 Subsections 56AD(2) and (3)

After “subsection 56AC(2)”, insert “or section 56ACA”.

13 Section 56AE (heading)

Repeal the heading, substitute:

56AE Secretary must arrange for analysis, consultation and report about an instrument proposing to designate a sector or declare actions

14 Subsection 56AE(1)

After “subsection 56AC(2)”, insert “or section 56ACA”.

15 Subparagraph 56AE(1)(b)(ii)

Omit “includes”, substitute “include”.

16 Subparagraph 56AE(1)(c)(iii)

Repeal the subparagraph, substitute:

(iii) for an instrument under subsection 56AC(2)—the person or body (if any) that the Secretary believes to be the primary regulator of the sector that the instrument would designate;

(iiia) for an instrument under section 56ACA—a person or body (if any) that the Secretary believes to be a regulator of a type of actions that the instrument would declare;

17 Section 56AEA (heading)

Repeal the heading, substitute:

56AEA Commission must analyse an instrument proposing to designate a sector or declare actions

18 Section 56AEA

Omit “56AD(1)(a) to (e)”, substitute “56AD(1)(a) to (d)”.

19 Section 56AF (heading)

Repeal the heading, substitute:

56AF Information Commissioner must analyse and report about an instrument proposing to designate a sector or declare actions

20 Section 56AH

After “subsection 56AC(2)”, insert “or section 56ACA”.

Part 3—Meaning of key terms

Competition and Consumer Act 2010

21 Before subsection 56AI(1)

Insert:

Meaning of **CDR data**

22 Before subsection 56AI(2)

Insert:

Meaning of **directly or indirectly derived**

23 Before subsection 56AI(3)

Insert:

Meaning of **CDR consumer** for CDR data

24 After subparagraph 56AI(3)(b)(ii)

Insert:

(iia) is holding the CDR data as an action service provider for a type of CDR action; or

25 Subparagraph 56AI(3)(b)(iii)

Omit “or (ii)”, substitute “, (ii) or (iia)”.

26 Paragraph 56AI(3)(d)

Omit “conditions”, substitute “exclusions”.

27 After subsection 56AI(3)

Insert:

Meaning of **CDR consumer** for a CDR action

(3A) A person is a ***CDR consumer*** for a CDR action if:

(a) the performance of the CDR action is related to the supply of a good or service to the person or to one or more of the person’s associates (within the meaning of section 318 of the *Income Tax Assessment Act 1936*); and

(b) the performance of the CDR action is to be on the person’s behalf, but not on the person’s behalf as:

(i) an accredited action initiator for CDR actions of that type; or

(ii) an action service provider for CDR actions of that type; and

(c) none of the exclusions (if any) prescribed by the regulations apply to the person in relation to the CDR action.

Note: A supply for the purposes of paragraph (a) includes a future supply or a supply for no fee.

Example: Assume X and Y are both accredited action initiators, and Y gives a valid instruction for the performance of a CDR action (that relates to the supply of accounting services) on X’s behalf. X will be a CDR consumer for the CDR action, but Y will not be because of paragraph (b).

28 Paragraph 56AJ(3)(b)

Repeal the paragraph, substitute:

(b) the person:

(i) is an accredited data recipient of other CDR data; or

(ii) is a voluntary action service provider for a type of CDR action, and the CDR data is within the same class as CDR data for which a data holder declared in the CDR declaration for that type of CDR action is a data holder because of subsection (2).

29 Subsection 56AJ(3) (note 1)

Omit “Paragraph (b)”, substitute “Subparagraph (b)(i)”.

30 Subsection 56AJ(3) (note 2)

Omit “paragraph (b)”, substitute “subparagraph (b)(i)”.

31 After paragraph 56AK(d)

Insert:

; and (e) the first‑mentioned CDR data is not being held by (or on behalf of) the person as an action service provider for a type of CDR action.

32 Section 56AK (before the note)

Insert:

Note 1: Paragraph (c) includes CDR data disclosed under the consumer data rules to the person as an accredited action initiator for a type of CDR action for the purposes of preparing a valid instruction of the kind described in subsection 56BGA(1).

33 Section 56AK (note)

Omit “Note”, substitute “Note 2”.

34 After section 56AM

Insert:

56AMA Meanings of *CDR action* and *CDR declaration*

(1) A ***CDR action*** is an action of a type declared under section 56ACA.

(2) A ***CDR declaration***, for a type of CDR action, is the declaration under section 56ACA that declares actions of that type.

56AMB Meanings of *action service provider* and *voluntary action service provider*

(1) A person is an ***action service provider***, for a type of CDR action, if the person:

(a) is within a class of data holders (of CDR data) declared in the CDR declaration for that type of CDR action; or

(b) is a voluntary action service provider for that type of CDR action.

Note 1: A data holder covered by paragraph (a) has no choice about being an action service provider for CDR actions of that type.

Note 2: A data holder covered by paragraph (a) for one or more types of CDR actions will not be an action service provider for any other type of CDR action unless the data holder chooses to apply to be a voluntary action service provider.

(2) A person is a ***voluntary*** ***action service provider***, for a type of CDR action, if:

(a) paragraph (1)(a) does not apply to the person for that type of CDR action; and

(b) the person holds an approval, of the kind described in subsection 56BHA(1), under the consumer data rules for that type of CDR action.

Note: The person will need to have applied to be approved as an action service provider for CDR actions of that type (see subsection 56BHA(1)).

56AMC Meaning of *accredited action initiator*

A person is an ***accredited action initiator*** for a type of CDR action if:

(a) the person is an accredited person; and

(b) the person’s accreditation authorises the person to initiate that type of CDR action.

Note 1: The consumer data rules may include rules about accreditation, including about different levels of accreditation (see subsection 56BH(1)).

Note 2: The Register of Accredited Persons may include information about what a person’s level of accreditation authorises the person to do (see section 56CE).

56AMD Meaning of *CDR action participant*

A ***CDR action participant*** is an action service provider, or an accredited action initiator, for one or more types of CDR actions.

Part 4—Changes to the power to make consumer data rules

Competition and Consumer Act 2010

35 Subsection 56BA(1)

After “designated sectors”, insert “, or types of CDR actions,”.

36 At the end of subsection 56BA(2)

Add:

; or (e) different rules for different types of CDR actions; or

(f) different rules for different classes of:

(i) action service providers for types of CDR actions; or

(ii) accredited persons; or

(iii) CDR consumers for CDR actions.

37 After paragraph 56BB(c)

Insert:

(ca) initiating CDR actions (see also section 56BGA);

38 Paragraph 56BB(d)

Omit “accreditation of data recipients”, substitute “accreditation for the purposes of this Part”.

39 After paragraph 56BB(d)

Insert:

(da) approving persons to be voluntary action service providers for types of CDR actions (see also section 56BHA);

40 After section 56BG

Insert:

56BGA Rules about initiating CDR actions

Instructions may be given to initiate types of CDR actions

(1) Without limiting paragraph 56BB(ca), the consumer data rules may include the following rules:

(a) requirements on an accredited action initiator for a type of CDR action relating to giving a valid instruction:

(i) for the performance of a CDR action of that type; and

(ii) to an action service provider for a CDR action of that type; and

(iii) on behalf of a CDR consumer for the CDR action, and in response to that consumer’s valid request; and

(iv) after a series of specified kinds of interactions between that initiator, provider, consumer or other persons (whether involving all or any 2 of them);

(b) rules about how an instruction must be prepared for it to be a valid instruction of the kind described in paragraph (a), what matters a valid instruction may cover, and when an instruction ceases to be a valid instruction;

(c) rules about:

(i) how a CDR consumer for a CDR action may make a valid request of the kind described in subparagraph (a)(iii); and

(ii) what must be included in a request for it to be valid, what matters a valid request may cover, and when a request ceases to be a valid request;

(d) requirements on an action service provider for a type of CDR action relating to how the provider processes a valid instruction of the kind described in paragraph (a);

(e) rules relating to the interactions described in subparagraph (a)(iv);

(f) rules relating to the privacy safeguards in relation to an instruction or request relating to a CDR action;

(g) rules relating to information that is not CDR data, but that relates to a CDR action.

Note 1: The requirements described in paragraph (a) could, for example, include a requirement that the instruction be prepared and given in accordance with the relevant data standards.

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

Allowing providers to charge fees at the instruction layer

(2) Without limiting paragraph 56BB(ca), the consumer data rules may include rules declaring that action service providers for a type of CDR action may charge (or cause to be charged) fees for processing valid instructions of the kind described in paragraph (1)(a) for CDR actions of that type.

Note 1: The action service providers will not be able to charge fees for processing valid instructions in the absence of such a declaration (see subsection 56BZD(1) and paragraph 56BZD(2)(a)).

Note 2: This subsection has no effect on what fees the providers decide to charge at the action layer for performing the CDR actions.

Authorised disclosures or use of related CDR data in accordance with valid consents

(3) Without limiting paragraph 56BB(ca), the consumer data rules may include the following rules:

(a) rules authorising a CDR action participant to disclose all or part of specified CDR data to a person in accordance with a valid consent of a CDR consumer for the CDR data;

(b) rules authorising a person to use CDR data in accordance with a valid consent of a CDR consumer for the CDR data;

(c) rules about:

(i) how a CDR consumer for the CDR data may make a valid consent of the kind described in paragraph (a) or (b); and

(ii) what must be included in a consent for it to be valid, what disclosures, uses or other matters a valid consent may cover, and when a consent ceases to be a valid consent.

Rules must not apply at the action layer

(4) Despite any other provision of this Division, the consumer data rules cannot include rules requiring an action service provider for a type of CDR action to perform (or not perform) a CDR action of that type in a particular way.

Note 1: The consumer data rules focus on the instruction layer not the action layer.

Note 2: The action service provider will need to ensure it does not discriminate against a valid instruction given under the consumer data rules (see sections 56BZC and 56BZD).

41 Section 56BH (heading)

Repeal the heading, substitute:

56BH Rules about accreditation for the purposes of this Part

42 After subparagraph 56BH(1)(d)(ii)

Insert:

(iia) specified types of CDR actions; or

43 After paragraph 56BH(1)(d)

Insert:

(da) rules specifying what a person accredited at a particular level is authorised to do (or not authorised to do);

44 Before the note to subsection 56BH(1)

Insert:

Note 1: The rules described in paragraph (d) could, for example, include a level of accreditation for initiating CDR actions under the consumer data rules.

45 Subsection 56BH(1) (note)

Omit “Note”, substitute “Note 2”.

46 Subsection 56BH(3)

Repeal the subsection, substitute:

(3) Without limiting paragraph (1)(e), the grounds for varying, suspending or revoking an accreditation could include failing to comply with a requirement in this Part or in the consumer data rules.

Note 1: The requirements in this Part include the privacy safeguards.

Note 2: An example of a variation could be the imposition of a condition, or changing the level of an accreditation.

47 Subsection 56BH(4)

Repeal the subsection, substitute:

(4) If the consumer data rules include rules enabling decisions to be made:

(a) to vary, suspend or revoke an accreditation; or

(b) to refuse to make a decision described in paragraph (a);

the rules must permit the making of applications to the Administrative Appeals Tribunal for review of those decisions.

Note 1: The consumer data rules can also provide for internal review of these decisions, and internal and AAT review of other decisions (see section 56BJ).

Note 2: The decisions could be decisions of the Minister or of another person (see paragraph 56BJ(c)).

48 After section 56BH

Insert:

56BHA Rules about approving persons to be voluntary action service providers for types of CDR actions

(1) Without limiting paragraph 56BB(da), the consumer data rules may include the following rules:

(a) rules for the approval of persons who apply to be action service providers for one or more types of CDR actions;

(b) the criteria for a person to be so approved;

(c) rules providing that such approval may be granted subject to conditions, and that conditions may be imposed on such an approval after it has been granted;

(d) rules providing that such approvals may be granted at different levels corresponding to different risks, including the risks associated with:

(i) specified types of CDR actions; or

(ii) specified classes of CDR data; or

(iii) specified classes of applicants for such approvals;

(e) rules specifying what a person approved at a particular level is authorised to do (or not authorised to do);

(f) rules for the period, renewal, transfer, variation, suspension, revocation or surrender of such approvals;

(g) notification requirements on persons whose such approvals have been granted, renewed, transferred, varied, suspended, revoked or surrendered;

(h) rules about publishing details of such approvals, renewals, transfers, variations, suspensions, revocations or surrenders;

(i) transitional rules for when such an approval is varied, is suspended or ends, including about the disclosure, collection, use, accuracy, storage, security or deletion of CDR data;

(j) rules conferring functions or powers on the Minister for any of the matters described in this subsection.

Note: The Minister may delegate the functions or powers referred to in paragraph (j) (see section 56GAA).

(2) Without limiting paragraph (1)(b):

(a) the criteria may differ for different classes of persons; and

(b) the criteria may permit a person to be approved even if the person:

(i) is not a body corporate established by or under a law of the Commonwealth, of a State or of a Territory; and

(ii) is neither an Australian citizen, nor a permanent resident (within the meaning of the *Australian Citizenship Act 2007*); and

(c) the criteria may include the payment of a fee.

Any fee must not be such as to amount to taxation.

(3) Any such approval is granted on the basis that no compensation is payable if the approval is varied, transferred, suspended, revoked or surrendered in any way.

(4) Without limiting paragraph (1)(f), the grounds for varying, suspending or revoking such an approval could include failing to comply with a requirement in this Part or in the consumer data rules.

Note 1: The requirements in this Part include the privacy safeguards.

Note 2: An example of a variation could be the imposition of a condition, or changing the level of an approval.

(5) If the consumer data rules include rules enabling decisions to be made:

(a) to grant, vary, suspend or revoke such an approval; or

(b) to refuse to make a decision described in paragraph (a);

the rules must permit the making of applications to the Administrative Appeals Tribunal for review of those decisions.

Note: The consumer data rules can also provide for internal review of these decisions, and internal and AAT review of other decisions (see section 56BJ).

(6) Without limiting paragraph (1)(h):

(a) a rule may provide that a person able to make any of the kinds of decisions described in subsection (5) may supply to another person a copy or extract that:

(i) is from a publication of details described in paragraph (1)(h), where those details are matters of fact; and

(ii) is certified by the person to be a true copy or a true extract (as applicable); and

(b) a rule may provide that such a certified copy or extract is admissible in any proceedings as prima facie evidence of the original.

49 After paragraph 56BI(1)(c)

Insert:

(ca) a power for a CDR consumer for a CDR action to direct an accredited action initiator for CDR actions of that type to give the consumer, or an accredited person, reports about:

(i) the consumer’s valid request made to the initiator, under rules like those described in subsection 56BGA(1), for the giving of a valid instruction for the performance of the CDR action; or

(ii) a valid instruction given by the initiator, under rules like those described in subsection 56BGA(1), on behalf of the consumer and for the performance of the CDR action;

(cb) a power for a CDR consumer for a CDR action to direct an action service provider for CDR actions of that type to give the consumer, or an accredited person, reports about the provider’s processing of any valid instruction given to the provider:

(i) on behalf of the consumer under rules like those described in subsection 56BGA(1); and

(ii) for the performance of the CDR action;

50 Paragraph 56BI(1)(d)

After “CDR participants for CDR data”, insert “, or CDR action participants,”.

51 Subsection 56BI(2)

Omit “Without limiting paragraph 56BB(e)”, substitute “Without limiting subsection (1)”.

52 Subsection 56BI(2)

Omit “or accredited persons,”, substitute “CDR action participants or accredited persons”.

53 Subparagraph 56BJ(f)(i)

After “CDR participants for CDR data”, insert “, or CDR action participants,”.

54 Paragraph 56BJ(g)

After “CDR data”, insert “, or CDR action participants,”.

55 After subparagraph 56BJ(ia)(iii)

Insert:

(iv) an action service provider for a type of CDR action;

56 After paragraph 56BK(2)(d)

Insert:

; or (e) is an action service provider for a type of CDR action.

57 Subsection 56BK(3)

Repeal the subsection.

58 Subsection 56BK(4)

Omit “Subsections (1) and (3) apply”, substitute “Subsection (1) applies”.

59 After paragraph 56BP(a)

Insert:

(aa) consider the following kinds of matters in relation to making a rule described in subsection 56BGA(2) (about fees at the instruction layer) for a type of CDR action:

(i) whether performers of actions of that type currently charge fees for processing instructions to perform such actions;

(ii) whether the incentive to perform actions of that type would be reduced if fees could not be charged for processing such instructions;

(iii) the marginal cost of processing such instructions in accordance with the consumer data rules; and

60 Paragraph 56BQ(a)

Omit “56AD(1)(a) and (b)”, substitute “56BP(a) and (aa)”.

61 Section 56BR

Omit “56AD(1)(a) and (b)”, substitute “56BP(a) and (aa)”.

Part 5—Complying with the consumer data rules etc.

Competition and Consumer Act 2010

62 After subparagraph 56BN(1)(c)(ii)

Insert:

; or (iii) a person is a CDR consumer for a CDR action; or

(iv) a person has satisfied any criteria under the consumer data rules for the making of a request, the giving of a valid instruction, or the processing of a valid instruction, for the performance of a CDR action.

63 Subsection 56BN(1) (note)

Omit “or (ii)”, substitute “, (ii), (iii) or (iv)”.

64 After paragraph 56BO(1)(b)

Insert:

; or (c) a person is a CDR consumer for a CDR action; or

(d) a person has satisfied any criteria under the consumer data rules for:

(i) the making of a request; or

(ii) the giving of a valid instruction; or

(iii) the processing of a valid instruction;

for the performance of a CDR action.

65 Subsection 56BO(1) (note 1)

Omit “or (b)”, substitute “, (b), (c) or (d)”.

66 At the end of Division 2 of Part IVD

Add:

Subdivision E—Effective initiation and non‑discriminatory performance of CDR actions

56BZA Accredited persons must act efficiently, honestly and fairly when initiating CDR actions etc.

A person contravenes this section if:

(a) the person is an accredited person; and

(b) the person’s accreditation authorises the person to initiate a type of CDR action; and

(c) the person engages in conduct that includes:

(i) proposing to a potential CDR consumer for a CDR action of that type that the person give a valid instruction under the consumer data rules for the performance of the CDR action; or

(ii) giving a valid instruction under the consumer data rules for the performance of a CDR action of that type; and

(d) the person fails to act efficiently, honestly and fairly in relation to a matter described in subparagraph (c)(i) or (ii).

Note: For enforcement, see Part VI (including section 76 for an order for payment of a pecuniary penalty).

56BZB Accredited persons must only initiate CDR actions in accordance with CDR consumers’ valid requests etc.

A person contravenes this section if:

(a) the person is an accredited person; and

(b) the person’s accreditation authorises the person to initiate a type of CDR action; and

(c) the person purports to give a valid instruction:

(i) for the performance of a CDR action of that type; and

(ii) to an action service provider for a CDR action of that type; and

(iii) on behalf of a CDR consumer for the CDR action; and

(d) when purporting to give that instruction:

(i) there was no valid request by the consumer, made in accordance with the consumer data rules, for the giving of that instruction; or

(ii) the person had failed to comply with a requirement in the consumer data rules for giving a valid instruction for a CDR action of that type.

Note: For enforcement, see Part VI (including section 76 for an order for payment of a pecuniary penalty).

56BZC No discrimination against CDR action instructions—service provider fails to perform CDR actions when it ordinarily performs actions of that type

A person contravenes this section if:

(a) the person is an action service provider for a type of CDR action; and

(b) the person is given a valid instruction under the consumer data rules to perform a CDR action of that type; and

(c) the person fails to perform the CDR action in accordance with the valid instruction; and

(d) having regard to criteria in the consumer data rules, the person would ordinarily perform actions of that type in the course of the person’s business.

Note: For enforcement, see Part VI (including section 76 for an order for payment of a pecuniary penalty).

56BZD No discrimination against CDR action instructions—service provider’s fees relating to CDR actions

No discrimination against CDR action instructions via fees

(1) A person contravenes this subsection if:

(a) the person is an action service provider for a type of CDR action; and

(b) the person is given a valid instruction under the consumer data rules to perform a CDR action of that type; and

(c) the person charges (or causes to be charged) one or more fees for either or both of the following matters:

(i) processing the valid instruction;

(ii) performing the CDR action in accordance with the valid instruction; and

(d) either subsection (2) or (3) applies to those fees.

Note: For enforcement, see Part VI (including section 76 for an order for payment of a pecuniary penalty).

First case—charging inappropriate fees at the instruction layer

(2) This subsection applies to fees, to the extent they are for processing the valid instruction, if:

(a) the consumer data rules have not declared, as described in subsection 56BGA(2), that fees may be charged (or caused to be charged) for processing valid instructions for CDR actions of that type; or

(b) the fees for processing the valid instruction exceed any fees:

(i) determined under subsection 56BZE(1) for the person; or

(ii) worked out from a method determined under subsection 56BZE(1) for the person;

for processing the valid instruction.

Note: This protects the integrity of the CDR action regime by discouraging the person from charging inappropriate fees at the instruction layer.

Second case—charging higher than ordinary fees at the action layer

(3) This subsection applies to fees, to the extent they are for performing the CDR action in accordance with the valid instruction, if those fees exceed the fees that the person would ordinarily charge for performing actions of that type in the course of the person’s business.

Note: This confirms that the person can continue to charge what the person ordinarily charges at the action layer, but no more than this.

(4) To work out the fees that the person would ordinarily charge for performing actions of that type in the course of the person’s business, have regard to any criteria specified in the consumer data rules.

56BZE Commission may intervene if fee for processing a valid instruction for a CDR action is unreasonable

Commission may intervene to determine a reasonable fee

(1) The Commission may determine the amount of a fee that a specified action service provider for a type of CDR action may charge (or cause to be charged) for processing a valid instruction for a CDR action of that type, or determine a method for working out the amount of such a fee, if:

(a) the consumer data rules have declared, as described in subsection 56BGA(2), that fees may be charged (or caused to be charged) for processing valid instructions for CDR actions of that type; and

(b) the Commission is satisfied that the fee that the provider would otherwise charge (or cause to be charged) is unreasonable having regard to the criteria in subsection (3).

Matters and criteria for the Commission

(2) When determining an amount or method under subsection (1), the Commission must seek to ensure that the resulting fee:

(a) reflects the reasonable costs (including capital costs) necessary for the provider to comply with this Part and the consumer data rules in relation to processing the valid instruction; and

(b) is reasonable having regard to the criteria in subsection (3).

(3) The criteria for the purposes of subsection (1) and paragraph (2)(b) are:

(a) the matters in subparagraphs 56AD(1)(a)(i), (ii) and (iv) to (vi); and

(b) the marginal cost of processing the valid instruction in accordance with the consumer data rules; and

(c) whether a lower fee could result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution); and

(d) whether a lower fee would reduce the incentive to perform actions of that type; and

(e) any other matters the Commission considers relevant.

Whether a determination is a legislative instrument

(4) A determination under subsection (1) specifying a class of action service providers must be made by legislative instrument.

(5) A determination under subsection (1) specifying a particular action service provider:

(a) must be made by written notice given to the provider; and

(b) is not a legislative instrument.

The Commission may publish the determination on the Commission’s website.

A fee must not amount to taxation

(6) A fee determined under subsection (1) must not be such as to amount to taxation.

56BZF Review by the Tribunal of determinations specifying particular action service providers

(1) If the Commission makes a determination under subsection 56BZE(1) in the way described in subsection 56BZE(5):

(a) the action service provider specified in the determination; or

(b) a person whose interests are affected by the determination;

may apply in writing to the Tribunal for a review of the determination.

(2) An application under this section for a review of a determination must be made within 21 days after the day the Commission made the determination.

(3) If the Tribunal receives an application under this section for a review of a determination, the Tribunal must review the determination.

56BZG Functions and powers of Tribunal

(1) On a review of a determination made under subsection 56BZE(1), the Tribunal:

(a) may make a decision affirming, setting aside or varying the determination; and

(b) for the purposes of the review, may perform all the functions and exercise all the powers of the Commission.

(2) A decision by the Tribunal affirming, setting aside or varying such a determination is taken for the purposes of this Act (other than this section and sections 56BZF and 56BZH) to be a determination of the Commission.

(3) For the purposes of a review by the Tribunal, the member of the Tribunal presiding at the review may require the Commission to give such information, make such reports and provide such other assistance to the Tribunal as the member specifies.

(4) For the purposes of a review, the Tribunal may have regard to any information given, documents produced or evidence given to the Commission in connection with the making of the determination to which the review relates.

Note: Division 2 of Part IX applies to proceedings before the Tribunal.

56BZH Provisions that do not apply in relation to a Tribunal review

Division 1 of Part IX does not apply in relation to a review by the Tribunal of a determination made under subsection 56BZE(1).

Subdivision F—Prohibitions on holding out

56BZI Prohibition on holding out that a person is something they are not—offence

(1) A person commits an offence if the person holds out that:

(a) the person is an accredited person; or

(b) the person is an accredited person holding an accreditation that has been granted at a particular level (see paragraph 56BH(1)(d)); or

(c) the person is an accredited person holding an accreditation that authorises the person to do something (see paragraph 56BH(1)(da)); or

(d) the person is an accredited data recipient of CDR data; or

(e) the person is an accredited action initiator for a type of CDR action; or

(f) the person is an action service provider for a type of CDR action; or

(g) the person is approved as an action service provider at a particular level (see paragraph 56BHA(1)(d)); or

(h) the person’s approval as an action service provider authorises the person to do something (see paragraph 56BHA(1)(e));

if that is not the case.

Penalty—body corporate

(2) An offence against subsection (1) committed by a body corporate is punishable on conviction by a fine of not more than the greater of the following:

(a) $10,000,000;

(b) if the court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, have obtained directly or indirectly and that is reasonably attributable to the commission of the offence—3 times the value of that benefit;

(c) if the court cannot determine the value of that benefit—10% of the annual turnover of the body corporate during the 12‑month period ending at the end of the month in which the commission of the offence happened or began.

(3) For the purposes of paragraph (2)(c), ***annual turnover*** has the same meaning as in Division 1 of Part IV.

Penalty—other persons

(4) An offence against subsection (1) committed by a person other than a body corporate is punishable on conviction by imprisonment for not more than 5 years, a fine of not more than $500,000, or both.

56BZJ Prohibition on holding out that a person is something they are not—civil penalty

A person must not hold out that:

(a) the person is an accredited person; or

(b) the person is an accredited person holding an accreditation that has been granted at a particular level (see paragraph 56BH(1)(d)); or

(c) the person is an accredited person holding an accreditation that authorises the person to do something (see paragraph 56BH(1)(da)); or

(d) the person is an accredited data recipient of CDR data; or

(e) the person is an accredited action initiator for a type of CDR action; or

(f) the person is an action service provider for a type of CDR action; or

(g) the person is approved as an action service provider at a particular level (see paragraph 56BHA(1)(d)); or

(h) the person’s approval as an action service provider authorises the person to do something (see paragraph 56BHA(1)(e));

if that is not the case.

Note: For enforcement, see Part VI (including section 76 for an order for payment of a pecuniary penalty).

67 Sections 56CC and 56CD

Repeal the sections.

68 Application of repeals

The repeal of sections 56CC and 56CD of the *Competition and Consumer Act 2010* by this Schedule applies in relation to acts or omissions on or after the commencement of this Schedule.

Part 6—Changes to the Privacy safeguards

Competition and Consumer Act 2010

69 Section 56EA

Omit:

The privacy safeguards apply mainly to accredited persons, but also to data holders and designated gateways, in relation to their handling or future handling of the CDR data.

substitute:

The privacy safeguards apply mainly to accredited persons, but also to data holders, designated gateways and action service providers, in relation to their handling or future handling of the CDR data.

The circumstances in which these safeguards can apply to an accredited person include where the person is an accredited action initiator for a type of CDR action who is or may become an accredited data recipient of CDR data.

70 Paragraphs 56EC(4)(aa), (b) and (c)

Repeal the paragraphs, substitute:

(aa) if section 56ED or 56EE applies to an accredited person in relation to CDR data—the corresponding Australian Privacy Principle does not apply to the accredited person in relation to the CDR data; and

(ab) if section 56EF or 56EG applies to a person:

(i) who is an accredited person; or

(ii) as a CDR action participant;

in relation to CDR data—the corresponding Australian Privacy Principle does not apply to the person in relation to the CDR data; and

(b) if subsection 56EN(1) applies to a disclosure of CDR data by a person:

(i) who is a data holder of the CDR data; or

(ii) as an action service provider for a type of CDR action;

then Australian Privacy Principle 10 does not apply to the person in relation to that disclosure of the CDR data; and

(c) if subsection 56EP(1) applies to CDR data and a person:

(i) who is a data holder of the CDR data; or

(ii) as an action service provider for a type of CDR action;

then Australian Privacy Principle 13 does not apply to the person in relation to the CDR data; and

71 After paragraph 56EC(5)(b)

Insert:

; or (c) a person as an action service provider, for a type of CDR action, in relation to CDR data.

72 Subsection 56EC(5) (note 1)

Omit “or designated gateway”, insert “, designated gateway or action service provider”.

73 Subsection 56ED(1)

Repeal the subsection, substitute:

Object

(1) The object of this section is to ensure that each person (a ***CDR entity***) who:

(a) is a data holder of CDR data; or

(b) is an accredited person who is or who may become an accredited data recipient of CDR data; or

(c) is a designated gateway for CDR data; or

(d) as an action service provider for a type of CDR action, has been or may be disclosed CDR data under the consumer data rules;

manages the CDR data in an open and transparent way.

74 Paragraph 56ED(3)(c)

Omit “and (6)”, substitute “, (6) and (6A)”.

75 After subsection 56ED(6)

Insert:

(6A) If the CDR entity is a person who, as an action service provider for a type of CDR action, has been or may be disclosed CDR data under the consumer data rules, the CDR entity’s policy must contain the following information:

(a) how a CDR consumer for the CDR data may access the CDR data and seek the correction of the CDR data;

(b) how a CDR consumer for the CDR data may complain about a failure of the CDR entity to comply with this Part or the consumer data rules, and how the CDR entity will deal with such a complaint.

76 Sections 56EF and 56EG

Repeal the sections, substitute:

56EF Privacy safeguard 3—soliciting CDR data from participants under the consumer data rules

(1) A person covered by column 1 of an item of the following table must not seek to collect CDR data under the consumer data rules from another person covered by column 2 of that item unless:

(a) a CDR consumer for the CDR data has validly requested this under the consumer data rules for the purposes described in column 3 of that item; and

(b) the person complies with all other requirements in the consumer data rules for the collection of the CDR data from that other person.

| Soliciting CDR data from participants under the consumer data rules | | | |
| --- | --- | --- | --- |
| Item | Column 1  A person who: | Column 2  must not seek to collect CDR data from: | Column 3  unless a CDR consumer for the CDR data has requested this for the purposes of: |
| 1 | is an accredited person | a CDR participant for the CDR data | a use or disclosure under the consumer data rules |
| 2 | as one of the kinds of CDR action participant | the other kind of CDR action participant | a valid instruction to be given:  (a) by one of the CDR action participants (as an accredited action initiator for a type of CDR action) to the other; and  (b) under the consumer data rules; and  (c) for the performance of a CDR action of that type |

Note 1: For item 2, the kinds of CDR action participants are accredited action initiators and action service providers (see section 56AMD).

Note 2: For column 3 of item 2, the CDR consumer for the CDR data would need to have requested the collection of the CDR data as a CDR consumer for the CDR action.

Note 3: This subsection is a civil penalty provision (see section 56EU).

(2) Subsection (1) applies whether the collection is directly or indirectly from the person covered by column 2 of the table.

Note: The collection (whether direct or indirect) would need to be under the consumer data rules for subsection (1) to apply.

Example: The valid request referred to in column 3 of item 1 of the table could be given under the consumer data rules through a designated gateway (see section 56BG).

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

(1) A person must destroy CDR data as soon as practicable after collecting it if:

(a) the person (the ***collector***) collected the CDR data while covered by column 1 of an item of the following table, and from a person covered by column 2 of that item; and

(b) the collector collected the CDR data:

(i) purportedly under the consumer data rules; but

(ii) not as the result of seeking to collect the CDR data under the consumer data rules; and

(c) the collector is not required to retain the CDR data by or under an Australian law or a court/tribunal order; and

(d) in the case where item 3 of the table applies, the circumstances specified in the consumer data rules do not apply.

| Dealing with unsolicited CDR data from participants in CDR | | |
| --- | --- | --- |
| Item | Column 1  A collector who: | Column 2  collects CDR data from: |
| 1 | is an accredited person | a CDR participant for the CDR data |
| 2 | as an accredited action initiator for a type of CDR action | an action service provider for that type of CDR action |
| 3 | as an action service provider for a type of CDR action | an accredited action initiator for that type of CDR action |

Note: This subsection is a civil penalty provision (see section 56EU).

(2) Subsection (1) applies whether the collection is directly or indirectly from the person mentioned in column 2 of the table.

Example: For item 1 of the table, the collection could be from the CDR participant through a designated gateway (see section 56BG).

77 Section 56EH (before the note)

Insert:

Note 1: The accredited data recipient could have collected the CDR data in accordance with section 56EF as an accredited action initiator, and from an action service provider, for the purposes of giving a valid instruction of the kind described in item 2 of the table in that section.

78 Section 56EH (note)

Omit “Note”, substitute “Note 2”.

79 Before subsection 56EM(1)

Insert:

Disclosures by data holders

80 Before subsection 56EM(2)

Insert:

Disclosures by accredited data recipients

81 Before subsection 56EM(3)

Insert:

Disclosures to designated gateways

82 At the end of section 56EM

Add:

Disclosures by action service providers

(4) If a person as an action service provider for a type of CDR action is required or authorised under the consumer data rules to disclose CDR data to another person, the action service provider must:

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

(b) ensure that this notification:

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

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

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

Note: This subsection is a civil penalty provision (see section 56EU).

83 Subsections 56EN(3) and (4)

Repeal the subsections, substitute:

Disclosures by action service providers

(2A) If a person as an action service provider for a type of CDR action is required or authorised under the consumer data rules to disclose CDR data, the action service provider must take reasonable steps to ensure that the CDR data is, having regard to the purpose for which it is held, accurate, up to date and complete.

Note: This subsection is a civil penalty provision (see section 56EU).

Becoming aware after disclosure that the CDR data was incorrect—advising CDR consumer

(3) If a person:

(a) makes a disclosure referred to in subsection (1), (2) or (2A) for a CDR consumer for CDR data; and

(b) later becomes aware that some or all of the CDR data was incorrect when it was disclosed because, having regard to the purpose for which it was held, it was inaccurate, out of date or incomplete;

the person must advise the CDR consumer accordingly in accordance with the consumer data rules.

Note: This subsection is a civil penalty provision (see section 56EU).

Becoming aware after disclosure that the CDR data was incorrect—disclosing corrected CDR data

(4) A person, who is required by subsection (3) to advise a CDR consumer for CDR data that some or all of the CDR data was incorrect when it was earlier disclosed, must:

(a) correct the CDR data; and

(b) disclose the corrected CDR data, in accordance with the consumer data rules, to the recipient of the earlier disclosure;

if the person:

(c) is requested to do so by the CDR consumer in accordance with the consumer data rules; or

(d) if the earlier disclosure was related to a CDR action in a way described in the consumer data rules—is required to do so by the consumer data rules.

Note: This subsection is a civil penalty provision (see section 56EU).

84 Subsection 56EN(5) (note)

Omit “and (2)”, substitute “, (2) and (2A)”.

85 Subsection 56EP(1)

Repeal the subsection, substitute:

Obligation on data holders and action service providers

(1) If:

(a) a CDR consumer for CDR data gives a request to the following person (the ***CDR entity***):

(i) a data holder of the CDR data (including a request given through a designated gateway for the CDR data);

(ii) a person as an action service provider for a type of CDR action; and

(b) the request is for the CDR entity to correct the CDR data; and

(c) the CDR entity was earlier required or authorised under the consumer data rules to disclose the CDR data;

the CDR entity must respond to the request to correct the CDR data by taking such steps as are specified in the consumer data rules to deal with each of the matters in subsection (3).

Note: This subsection is a civil penalty provision (see section 56EU).

86 After subsection 56ER(1A)

Insert:

(1B) The Information Commissioner may assess whether an action service provider for a type of CDR action, who has been or may be disclosed CDR data under the consumer data rules, is maintaining and handling the CDR data in accordance with:

(a) the privacy safeguards; or

(b) the consumer data rules to the extent that those rules relate to:

(i) the privacy safeguards; or

(ii) the privacy or confidentiality of the CDR data.

87 Subsections 56ER(2) and (3)

Omit “or (1A)”, substitute “, (1A) or (1B)”.

88 Paragraph 56ET(3)(a)

Omit “or accredited person”, substitute “, accredited person or action service provider for a type of CDR action”.

89 After paragraph 56ET(4)(c)

Insert:

or (d) an action service provider for a type of CDR action, who has been or may be disclosed CDR data under the consumer data rules;

90 Subsection 56ET(4) (at the end of the cell at table item 5, column headed “… substitute a reference to …”)

Add:

; or (c) an action service provider for a type of CDR action, who has been or may be disclosed CDR data under the consumer data rules.

91 Subparagraph 56ET(5)(b)(iii)

Omit “respondent; and”, substitute “respondent; or”.

92 After subparagraph 56ET(5)(b)(iii)

Insert:

(iv) in the case of a complaint about an act or practice of an action service provider for a type of CDR action, who has been or may be disclosed CDR data under the consumer data rules—the action service provider is the respondent; and

93 At the end of paragraph 56ET(5)(d)

Add:

(iv) a paragraph that states that an act or practice of an action service provider for a type of CDR action, who has been or may be disclosed CDR data under the consumer data rules, has breached a privacy safeguard; and

94 Paragraph 56EU(1)(i)

Omit “or (2)”, substitute “, (2) or (4)”.

95 Paragraph 56EU(1)(j)

After “(2),”, insert “(2A),”.

Part 7—CDR Accreditor

Competition and Consumer Act 2010

96 Subsection 4(1)

Insert:

***CDR Accreditor*** means:

(a) if a person holds an appointment under subsection 56CG(1)—that person; or

(b) otherwise—the Commission.

97 Subsection 4(1) (definition of *Data Recipient Accreditor*)

Repeal the definition.

98 Paragraph 56BH(1)(a)

Omit “Data Recipient Accreditor”, substitute “CDR Accreditor”.

99 Subparagraph 56BI(1)(h)(i)

Omit “Data Recipient Accreditor”, substitute “CDR Accreditor”.

100 Subsection 56CA(1)

Omit “Data Recipient Accreditor” (wherever occurring), substitute “CDR Accreditor”.

101 Section 56CB

Omit “Data Recipient Accreditor”, substitute “CDR Accreditor”.

102 Subdivision C of Division 3 of Part IVD (heading)

Repeal the heading, substitute:

Subdivision C—CDR Accreditor

103 Section 56CG (heading)

Omit “**Data Recipient Accreditor**”, substitute “**CDR Accreditor**”.

104 Subsection 56CG(1)

Omit “Data Recipient Accreditor” (first occurring), substitute “CDR Accreditor”.

105 Section 56CG (note 2)

Omit “Data Recipient Accreditor” (first occurring), substitute “CDR Accreditor”.

106 Section 56CG (note 2)

Omit “of ***Data Recipient Accreditor***”, substitute “of ***CDR Accreditor***”.

107 Transitional—current Data Recipient Accreditor

(1) An appointment:

(a) under subsection 56CG(1) of the *Competition and Consumer Act 2010*; and

(b) in force immediately before the commencement of Schedule # to the *Treasury Laws Amendment (Measures for Consultation) Act 2022*;

continues in force (and may be dealt with), on and after that commencement, as if it were an appointment of the CDR Accreditor under that subsection as amended by this Schedule.

(2) A thing done by, or in relation to, the Data Recipient Accreditor under the CDR provisions before that commencement has effect, on and after that commencement, as if it had been done by, or in relation to, the CDR Accreditor. However, this is not taken to change the time at which the thing was actually done.

108 Subsections 56CH(1) and (2)

Omit “Data Recipient Accreditor”, substitute “CDR Accreditor”.

109 Subsection 56CH(2)

Omit “Data Recipient Accreditor’s”, substitute “CDR Accreditor’s”.

110 Subsection 56CH(3)

Omit “Data Recipient Accreditor” (wherever occurring), substitute “CDR Accreditor”.

111 Paragraph 56CH(4)(a)

Omit “Data Recipient Accreditor”, substitute “CDR Accreditor”.

112 Subsection 56CH(4)

Omit “Data Recipient Accreditor’s” (wherever occurring), substitute “CDR Accreditor’s”.

113 Subsections 56CI(1) and (3)

Omit “Data Recipient Accreditor”, substitute “CDR Accreditor”.

114 Subsection 56CJ(1)

Omit “Data Recipient Accreditor’s”, substitute “CDR Accreditor’s”.

115 Subparagraph 56CJ(1)(b)(ii)

Omit “Data Recipient Accreditor”, substitute “CDR Accreditor”.

116 Subsection 56CJ(2)

Omit “Data Recipient Accreditor”, substitute “CDR Accreditor”.

Part 8—Miscellaneous amendments

Competition and Consumer Act 2010

117 Subsection 4(1)

Insert:

***accredited action initiator*** has the meaning given by section 56AMC.

***action service provider*** has the meaning given by subsection 56AMB(1).

***CDR action*** has the meaning given by subsection 56AMA(1).

***CDR action participant*** has the meaning given by section 56AMD.

118 Subsection 4(1) (definition of *CDR consumer*)

After “56AI(3)”, insert “or (3A)”.

119 Subsection 4(1)

Insert:

***CDR declaration*** has the meaning given by subsection 56AMA(2).

***voluntary action service provider*** has the meaning given by subsection 56AMB(2).

120 Paragraph 56AC(2)(b)

Omit “one or more specified classes of the designated information”, substitute “information within those classes of information”.

121 Subsection 56AC(2) (note 2)

Omit “(b),”.

122 Subsection 56AO(1)

Omit “and (3)”, substitute “to (3B)”.

123 After subsection 56AO(3)

Insert:

CDR provisions apply for CDR actions to be performed inside Australia

(3A) To the extent that the CDR provisions have effect in relation to a CDR action to be performed within Australia, the CDR provisions apply in relation to all persons (including foreign persons).

CDR provisions can apply for CDR actions to be performed outside Australia

(3B) To the extent that the CDR provisions have effect in relation to an act, or omission, relating to a CDR action to be performed outside Australia, the CDR provisions only apply if:

(a) the act or omission is by (or on behalf of) an Australian person; or

(b) the act or omission occurs wholly or partly in Australia, or wholly or partly on board an Australian aircraft or an Australian ship; or

(c) the act or omission occurs wholly outside Australia, and an Australian person suffers, or is likely to suffer, financial or other disadvantage as a result of the act or omission.

124 Subsection 56AO(4)

After “(3)”, insert “or (3B)”.

125 Subsection 56AO(5)

Insert:

***Australian aircraft*** has the same meaning as in the *Criminal Code*.

***Australian ship*** has the same meaning as in the *Criminal Code*.

126 Subsection 56AR(3)

Repeal the subsection, substitute:

(3) However, whether or not such a declaration is in force for an entity referred to in subsection (2), the CDR provisions apply in relation to the entity to the extent that:

(a) the CDR provisions relate to a CDR consumer for CDR data, and the entity is a CDR consumer for CDR data (or would be if the entity were a person); or

(b) the CDR provisions relate to a CDR consumer for a CDR action, and the entity is a CDR consumer for a CDR action (or would be if the entity were a person).

Note: For how the CDR provisions so apply, see subsection (4).

127 After paragraph 56AR(5)(a)

Insert:

(aa) as an accredited person, the entity is conferred such functions as are necessary to enable the entity to operate as an accredited person in accordance with the CDR provisions; or

128 At the end of subsection 56AR(5)

Add:

; or (c) as an action service provider for a type of CDR action, the entity is conferred such functions as are necessary to enable the entity to operate as an action service provider in accordance with the CDR provisions.

Note: None of these amendments of section 56AR of the *Competition and Consumer Act 2010* affect how the CDR provisions apply in relation to a State or Territory government entity acting in a capacity other than as a consumer.

129 Subsection 56AU(3) (at the end of the definition of *CDR entity*)

Add:

; (d) an action service provider for a type of CDR action.

130 Subsection 56BAA(1)

Omit “in response to a valid request by a CDR consumer for the CDR data to be deleted”, substitute “if a CDR consumer for the CDR data validly requests this”.

131 Subparagraph 56BD(1)(b)(v)

After “on behalf”, insert “of”.

132 Paragraph 56DA(1)(a)

After “designated sectors”, insert “or types of CDR actions”.

133 After subparagraph 56DA(1)(b)(iii)

Insert:

(iiia) CDR action participants;

(iiib) CDR consumers for CDR actions;

134 Subparagraph 56DA(1)(b)(iv)

After “designated sectors”, insert “or types of CDR actions”.

135 After paragraph 56FA(1)(d)

Insert:

(da) the format and description of a valid instruction for the performance of a type of CDR action;

(db) the giving of a valid instruction for the performance of a type of CDR action;

136 After paragraph 56FB(1)(b)

Insert:

(ba) different provisions for different types of CDR actions; or

137 After paragraph 56FB(1)(c)

Insert:

(ca) different provisions for different classes of action service providers for types of CDR actions; or

138 Paragraph 56FB(2)(b)

Repeal the paragraph, substitute:

(b) each of the different classes or types referred to in any of paragraphs (1)(b) to (d) of this section.

139 After subsection 56FD(2)

Insert:

(2A) A contract is taken to be in force between:

(a) an action service provider for a type of CDR action to which a binding data standard applies; and

(b) each accredited action initiator for a CDR action of that type;

under which each of those persons:

(c) agrees to observe the standard to the extent that the standard applies to the person; and

(d) agrees to engage in conduct that the person is required by the standard to engage in.

Note: This means the action service provider will be taken to have a separate contract with each of those accredited action initiators.

140 Section 56GAA (heading)

After “**Delegation by**”, insert “**the** **Minister or the**”.

141 Before subsection 56GAA(1)

Insert:

Delegation by the Minister of functions or powers relating to voluntary action service providers

(1A) The Minister may, in writing, delegate all or any of the Minister’s functions or powers included:

(a) as described in paragraph 56BHA(1)(j); and

(b) in the consumer data rules;

to an SES employee, or an acting SES employee, in the Department or in the Commission.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

(1B) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Minister.

Delegation by the Secretary

142 Section 56GAB

Repeal the section, substitute:

56GAB Concurrent operation of other laws

The CDR provisions are not intended to exclude or limit the operation of a law of the Commonwealth, or of a State or Territory, that is capable of operating concurrently with the CDR provisions.

143 After paragraph 56GB(1)(a)

Insert:

(aa) CDR declarations for types of CDR actions;

144 Section 56GC (heading)

Repeal the heading, substitute:

56GC Complying with CDR requirements etc.: protection from liability

145 Subsection 56GC(1)

Repeal the subsection, substitute:

(1) If a person (the ***CDR entity***), acting as described in an item of the following table, does something mentioned in that item:

(a) in good faith; and

(b) in compliance with the CDR provisions; and

(c) in compliance with each law (if any) of the Commonwealth, of a State or of a Territory prescribed by the regulations;

the CDR entity is not liable to an action or other proceeding, whether civil or criminal, for or in relation to the thing in that item.

| Doing a CDR thing in good faith in compliance with the CDR provisions etc. | | |
| --- | --- | --- |
| Item | When acting: | the things are: |
| 1 | (a) as a data holder of CDR data; or  (b) as an accredited data recipient of CDR data; or  (c) as a designated gateway for CDR data | (a) providing the data to another person; or  (b) otherwise allowing another person access to the data. |
| 2 | as an accredited action initiator for a type of CDR action | giving an instruction that is a valid instruction for the performance of a CDR action of that type. |
| 3 | as an action service provider for a type of CDR action | processing an instruction that is a valid instruction for the performance of a CDR action of that type. |

Note 1: Item 3 of the table is focussing on the instruction layer not the action layer, and so does not cover performance of the CDR action.

Note 2: A defendant bears an evidential burden in relation to the matter in this subsection for a criminal action or criminal proceeding (see subsection 13.3(3) of the *Criminal Code*).

146 Subsection 56GD(2)

Repeal the subsection, substitute:

(2) The Commission may, by written notice given to a person, exempt the person in relation to:

(a) particular CDR data or one or more classes of CDR data; or

(b) a particular CDR action or one or more types of CDR actions;

from all or specified provisions covered by this section.

147 Subsection 56GE(2)

Repeal the subsection, substitute:

(2) The regulations may:

(a) exempt a particular person in relation to:

(i) particular CDR data or one or more classes of CDR data; or

(ii) a particular CDR action or one or more types of CDR actions;

from all or specified provisions covered by this section; or

(b) exempt a class of persons in relation to:

(i) particular CDR data or one or more classes of CDR data; or

(ii) a particular CDR action or one or more types of CDR actions;

from all or specified provisions covered by this section; or

(c) declare that provisions covered by this section apply in relation to:

(i) a particular person in relation to particular CDR data or one or more classes of CDR data; or

(ii) a class of persons in relation to particular CDR data or one or more classes of CDR data; or

(iii) a particular person in relation to a particular CDR action or one or more types of CDR actions; or

(iv) a class of persons in relation to a particular CDR action or one or more types of CDR actions;

as if specified provisions were omitted, modified or varied as specified in the declaration.

148 Transitional—existing exemptions and modifications by regulations

Regulations under the *Competition and Consumer Act 2010* that:

(a) are made for the purposes of subsection 56GE(2) of that Act; and

(b) are in force immediately before the commencement of this Schedule;

continue in force (and may be dealt with) as if they had been made for the purposes of that subsection as amended by this Act.

149 Subsection 56GF(8) (at the end of the definition of *CDR entity*)

Add:

; (d) an action service provider for a type of CDR action.

150 Subsection 75B(1)

Omit “, 56BU(1) or 56CC(1), section 56CD”, substitute “or 56BU(1), section 56BZA, 56BZB or 56BZC, subsection 56BZD(1) or 56BZI(1), section 56BZJ”.

151 Subparagraph 76(1)(a)(ib)

Omit “56CD”, substitute “56BZA, 56BZB or 56BZC, subsection 56BZD(1), section 56BZJ”.

152 Paragraph 76(1A)(b)

Omit “56CD”, substitute “56BZA, 56BZB or 56BZC, subsection 56BZD(1), section 56BZJ”.

153 Paragraph 76(1B)(ab)

Omit “56CD”, substitute “56BZA, 56BZB or 56BZC, subsection 56BZD(1), section 56BZJ”.

154 Subsections 76B(2), (3) and (4)

Omit “56CD”, substitute “56BZJ”.

155 Paragraph 76B(5)(a)

Omit “56CD”, substitute “56BZJ”.

156 Subparagraphs 79A(1)(a)(i) and 79B(a)(ii)

Omit “56CC(1)”, substitute “56BZI(1)”.

157 Subparagraph 80(1)(a)(iib)

Omit “, 56BU(1) or 56CC(1), section 56CD”, substitute “or 56BU(1), section 56BZA, 56BZB or 56BZC, subsection 56BZD(1) or 56BZI(1), section 56BZJ”.

158 Paragraphs 80(9)(a) and (b)

Omit “56CC(1)”, substitute “56BZI(1)”.

159 Paragraph 82(1)(c)

Omit “, 56BU(1) or 56CC(1) or section 56CD”, substitute “or 56BU(1), section 56BZA, 56BZB or 56BZC, subsection 56BZD(1) or 56BZI(1) or section 56BZJ”.

160 Subparagraph 83(1)(a)(ii)

Omit “56CC(1)”, substitute “56BZI(1)”.

161 Subparagraph 83(1)(b)(iii)

Omit “56CD”, substitute “56BZA, 56BZB or 56BZC, subsection 56BZD(1), section 56BZJ”.

162 Paragraph 84(1)(a)

Omit “56CC(1)”, substitute “56BZI(1)”.

163 Paragraph 84(1)(b)

Omit “, 56BU(1) or 56CC(1), section 56CD”, substitute “or 56BU(1), section 56BZA, 56BZB or 56BZC, subsection 56BZD(1) or 56BZI(1), section 56BZJ”.

164 Paragraph 84(3)(a)

Omit “56CC(1)”, substitute “56BZI(1)”.

165 Paragraph 84(3)(b)

Omit “, 56BU(1) or 56CC(1), section 56CD”, substitute “or 56BU(1), section 56BZA, 56BZB or 56BZC, subsection 56BZD(1) or 56BZI(1), section 56BZJ”.

166 Subsection 86(1A)

Omit “56CD”, substitute “56BZA, 56BZB or 56BZC, subsection 56BZD(1), section 56BZJ”.

167 Subsection 86(2)

Omit “56CD”, substitute “56BZA, 56BZB or 56BZC, subsection 56BZD(1), section 56BZJ”.

168 Paragraph 86A(1)(b)

Omit “56CD”, substitute “56BZA, 56BZB or 56BZC, subsection 56BZD(1), section 56BZJ”.

169 Subsection 86C(4) (paragraph (a) of the definition of *contravening conduct*)

Omit “, 56BU(1) or 56CC(1), section 56CD, section 60C”, substitute “or 56BU(1), section 56BZA, 56BZB or 56BZC, subsection 56BZD(1) or 56BZI(1), section 56BZJ, 60C”.

170 Paragraph 86D(1)(b)

Omit “56CC(1)”, substitute “56BZI(1)”.

171 Subsection 86D(1A)

Omit “56CC(1)”, substitute “56BZI(1)”.

172 Paragraph 86E(1)(a)

Omit “, 56BU(1) or 56CC(1), section 56CD”, substitute “or 56BU(1), section 56BZA, 56BZB or 56BZC, subsection 56BZD(1) or 56BZI(1), section 56BZJ”.

173 Paragraph 86E(1A)(a)

Omit “56CC(1)”, substitute “56BZI(1)”.

174 Subsection 87(1)

Omit “56CC(1)”, substitute “56BZI(1)”.

175 Subsection 87(1)

Omit “56CD”, substitute “56BZA, 56BZB or 56BZC, subsection 56BZD(1), section 56BZJ”.

176 Paragraphs 87(1A)(a), (b) and (baa)

Omit “, 56BU(1) or 56CC(1), section 56CD”, substitute “or 56BU(1), section 56BZA, 56BZB or 56BZC, subsection 56BZD(1) or 56BZI(1), section 56BZJ”.

177 Paragraph 87(1A)(ba)

Omit “56CC(1)”, substitute “56BZI(1)”.

178 Subsection 87(1C)

Omit “, 56BU(1) or 56CC(1), section 56CD”, substitute “or 56BU(1), section 56BZA, 56BZB or 56BZC, subsection 56BZD(1) or 56BZI(1), section 56BZJ”.

179 After paragraph 157AA(3)(a)

Insert:

(aa) an agency having the function in a foreign country of supervising or regulating types of actions similar to those declared under section 56ACA; or

180 Paragraph 163(2)(a)

Omit “56CC(1)”, substitute “56BZI(1)”.

181 Subsection 163A(4B)

Omit “56CC(1)”, substitute “56BZI(1)”.

182 Paragraph 163A(4C)(a)

Omit “56CC(1)”, substitute “56BZI(1)”.

183  Subsection 163A(4D)

Omit “56CC(1)”, substitute “56BZI(1)”.