

EXPOSURE DRAFT

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Inserts for

Treasury Laws Amendment (Measures for a later sitting) Bill 2020: amendments of the consumer data right

Commencement information

Column 1

Column 2

Column 3

Provisions

Commencement

Date/Details

1. Schedule XX

The day after this Act receives the Royal Assent.

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Schedule XX—Amendments of the consumer data right

Competition and Consumer Act 2010

1 Paragraph 56AC(2)(c)

Omit “beginning to hold the designated information”, substitute “holding the designated information”.

2 Subsection 56AD(2)

Repeal the subsection, substitute:

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

- (a) be satisfied that the Secretary of the Department has complied with section 56AE in relation to the making of the instrument; and
- (b) wait at least 60 days after the day the Secretary publishes the report relating to the making of the instrument (see section 56AE).

3 Section 56AE

Repeal the section, substitute:

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

- (1) The Secretary of the Department complies with this section in relation to the making of an instrument under subsection 56AC(2) if the Secretary arranges for all of the following:
 - (a) an analysis of the matters in paragraphs 56AD(1)(a) to (e) in relation to the instrument;
 - (b) public consultation about those matters in relation to the instrument:
 - (i) for at least 28 days; and
 - (ii) in one or more ways that includes making information available on the Department’s website and inviting the public to comment;
 - (c) consultation with each of the following about those matters in relation to the instrument:

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- 1 (i) the Commission;
- 2 (ii) the Information Commissioner;
- 3 (iii) the person or body (if any) that the Secretary believes to
- 4 be the primary regulator of the sector that the instrument
- 5 would designate;
- 6 (iv) any person or body prescribed by the regulations;
- 7 (d) the preparation of a report for the Minister about that analysis
- 8 and consultation.
- 9 (2) The Secretary must publish the report on the Department’s website.

10 **56AEA Commission must analyse an instrument proposing to**

11 **designate a sector**

12 When the Commission is consulted under

13 subparagraph 56AE(1)(c)(i), the Commission must analyse the

14 matters in paragraphs 56AD(1)(a) to (e) in relation to the

15 instrument.

16 **4 Section 56AG**

17 Repeal the section.

18 **5 Section 56AH**

19 Omit “56AE, 56AF or 56AG”, substitute “56AE, 56AEA or 56AF”.

20 **6 Paragraph 56AJ(1)(b)**

21 Repeal the paragraph, substitute:

- 22 (b) the CDR data is held by (or on behalf of) the person on or
- 23 after the earliest holding day specified in the designation
- 24 instrument; and
- 25 (ba) in the case of the CDR data beginning to be held by (or on
- 26 behalf of) the person before that earliest holding day, the
- 27 CDR data:
- 28 (i) is of continuing use and relevance; and
- 29 (ii) is not about the provision before that earliest holding
- 30 day of a product or service by (or on behalf of) the
- 31 person; and

32 **7 Subsection 56AJ(1) (note 2)**

33 Repeal the note, substitute:

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- 1 Note 2: For a product or service that the person began providing before the
2 earliest holding day and continued providing after that day:
- 3 (a) subparagraph (ba)(ii) means the person will not be the data
4 holder of CDR data about the person's provision of the product
5 or service before that day; but
- 6 (b) the person will be the data holder of CDR data about the person's
7 provision of the product or service on or after that day.

8 **8 Subsection 56AM(4)**

9 Omit "if it is not chargeable CDR data.", substitute:

10 if:

- 11 (a) the consumer data rules require it to be disclosed; and
12 (b) it is not chargeable CDR data.

13 **9 At the end of section 56AR**

14 Add:

- 15 (5) If the CDR provisions so apply to an entity covered by
16 subsection (1):
- 17 (a) as a data holder of CDR data, the entity is conferred such
18 functions as are necessary to enable the entity to operate as a
19 data holder in accordance with the CDR provisions; or
- 20 (b) as a designated gateway for CDR data, the entity is conferred
21 such functions as are necessary to enable the entity to operate
22 as a designated gateway in accordance with the CDR
23 provisions.

24 **10 At the end of Division 1 of Part IVD**

25 Add:

26 **Subdivision F—Application to acts done by or in relation to** 27 **agents etc. of CDR entities**

28 **56AU Acts done by or in relation to agents etc. of CDR entities**

29 *Conduct of agents etc. of a CDR entity attributable to the CDR*
30 *entity*

- 31 (1) For the purposes of this Part and the consumer data rules, each of
32 the following provisions applies to a CDR entity who is not a body
33 corporate in a corresponding way to the way that provision applies
34 to a CDR entity who is a body corporate:
- 35 (a) section 84 of this Act;
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(b) section 97 of the Regulatory Powers Act (to the extent that it applies in relation to a provision of this Part).

Acts done in relation to an agent of a CDR entity taken to be done in relation to the CDR entity

- (2) For the purposes of this Part and the consumer data rules, if an act is done by a person in relation to another person (the *agent*) who:
- (a) is acting on behalf of a CDR entity; and
 - (b) is so acting within the agent's actual or apparent authority;
- the act is taken to have also been done in relation to the CDR entity.

Definitions

- (3) In this section:

CDR entity means any of the following:

- (a) a data holder of CDR data;
- (b) an accredited person;
- (c) a designated gateway for CDR data.

11 Section 56BA (heading)

Omit “**Commission**”, substitute “**Minister**”.

12 Subsection 56BA(1)

Omit “**Commission**”, substitute “**Minister**”.

13 At the end of paragraph 56BD(1)(b)

Add:

- ; or (iv) a data holder of the CDR data by a designated gateway for the CDR data; or
- (v) a person acting on behalf a person referred to in subparagraph (i), (ii), (iii) or (iv).

14 Subdivision C of Division 2 of Part IVD

Repeal the Subdivision, substitute:

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1 Subdivision C—Process for making consumer data rules etc.

2 56BP Minister's tasks before making the rules

3 Before making consumer data rules under subsection 56BA(1), the
4 Minister must:

- 5 (a) consider the kinds of matters referred to in paragraphs
6 56AD(1)(a) and (b) in relation to the making of the rules; and
7 (b) be satisfied that the Secretary of the Department has
8 complied with section 56BQ in relation to the making of the
9 rules; and
10 (c) wait at least 60 days after the day public consultation begins
11 under paragraph 56BQ(b) about the making of the rules.

12 56BQ Secretary must arrange for consultation and report before the 13 rules are made

14 The Secretary of the Department complies with this section in
15 relation to the making of consumer data rules if the Secretary
16 arranges for all of the following:

- 17 (a) an analysis of the kinds of matters referred to in paragraphs
18 56AD(1)(a) and (b) in relation to the making of the rules;
19 (b) public consultation about the making of the rules:
20 (i) for at least 28 days; and
21 (ii) in one or more ways that includes making information
22 available on the Department's website and inviting the
23 public to comment;
24 (c) consultation with each of the following about the making of
25 the rules:
26 (i) the Commission;
27 (ii) the Information Commissioner;
28 (iii) the person or body (if any) that the Secretary believes to
29 be the primary regulator of the sector;
30 (iv) any person or body prescribed by the regulations;
31 (d) the preparation of a report for the Minister about that analysis
32 and consultation.

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1 **56BR Commission and Information Commissioner must analyse the** 2 **proposed rules**

3 When consulted under paragraph 56BQ(c), the Commission and
4 the Information Commissioner must each analyse the kinds of
5 matters referred to in paragraphs 56AD(1)(a) and (b) in relation to
6 the making of the rules.

7 **56BS Emergency rules: public consultation not required etc.**

- 8 (1) The Minister may make consumer data rules under
9 subsection 56BA(1):
10 (a) without complying with paragraph 56BP(b) or (c); but
11 (b) after consulting the Commission and Information
12 Commissioner;
13 if the Minister believes (whether or not that belief is reasonable)
14 that it is necessary to do so in order to avoid a risk of serious harm
15 to:
16 (c) the efficiency, integrity or stability of any aspect of the
17 Australian economy; or
18 (d) the interests of consumers.

19 Note: The Minister still needs to comply with paragraph 56BP(a).

- 20 (2) However, a failure to comply with paragraph (1)(b) of this section
21 does not invalidate consumer data rules made as described in
22 subsection (1).

23 Note: Such rules may have a limited life (see section 56BT).

24 **56BT Emergency rules: consequences if made**

25 If:

- 26 (a) the Minister makes consumer data rules as described in
27 subsection 56BS(1) (the *emergency rules*); and
28 (b) the emergency rules are made without consulting either the
29 Commission or the Information Commissioner, or both;
30 the emergency rules cease to be in force 6 months after the day
31 they are made.

32 Note: If the emergency rules vary other consumer data rules, this section
33 causes only the emergency rules to cease to be in force.

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1 56BTA Other matters

2 A failure to comply with section 56BP, 56BQ or 56BR does not
3 invalidate consumer data rules made under subsection 56BA(1).

4 15 Section 56DA (heading)

5 Omit “Commission”, substitute “Minister”.

6 16 Subsections 56DA(1) and (2)

7 Omit “Commission”, substitute “Minister”.

8 17 Subsection 56DA(3)

9 Omit “Commission” (wherever occurring), substitute “Minister”.

10 18 Subsection 56DA(4)

11 Omit “Commission must consult the Information Commissioner about
12 the scheme”, substitute “Minister must arrange for the Information
13 Commissioner to be consulted about the scheme”.

14 19 Section 56EA

15 Omit:

16 The privacy safeguards apply mainly to accredited data recipients,
17 but also to data holders and designated gateways, in relation to
18 their handling of the CDR data.

19 substitute:

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

23 20 After paragraph 56EC(4)(a)

24 Insert:

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

29 21 Subsection 56EC(5)

30 Omit “paragraphs (4)(b) to (d)”, substitute “paragraphs (4)(aa) to (d)”.

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22 Before paragraph 56EC(5)(a)

Insert:

- (aa) an accredited person who does not become an accredited data recipient of the CDR data; or

23 Paragraph 56ED(1)(b)

Before “an accredited data recipient”, insert “an accredited person who is or who may become”.

24 Subsection 56ED(5)

After “If the CDR entity is”, insert “an accredited person who is or who may become”.

25 Paragraph 56ED(5)(a)

Before “held by”, insert “that is or may become”.

26 Paragraph 56ED(5)(a)

After “is held”, insert “or is to be held”.

27 Subsection 56EE(1)

Repeal the subsection, substitute:

(1) A person who is:

(a) an accredited data recipient of CDR data; or

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

must give each CDR consumer for that CDR data the option of using a pseudonym, or not identifying themselves, when dealing with the person in relation to that CDR data.

Note: The CDR participant from whom the person acquired (or may acquire) the CDR data may be subject to a similar obligation under Australian Privacy Principle 2.

28 Section 56EH

Omit “If a person collects CDR data in accordance with section 56EF, the person must:”, substitute “If an accredited data recipient of CDR data collected the CDR data in accordance with section 56EF, the accredited data recipient must:”.

29 Paragraph 56EN(4)(b)

After “requests”, insert “, in accordance with the consumer data rules,”.

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1 **30 Subsection 56EN(4)**

2 After “request by disclosing the corrected CDR data”, insert “, in
3 accordance with the consumer data rules,”.

4 **31 After subsection 56EN(4)**

5 Insert:

6 (4A) However, subsection (4) does not apply to a request covered by
7 consumer data rules made for the purposes of this subsection.

8 **32 After subsection 56ER(1)**

9 Insert:

10 (1A) The Information Commissioner may assess whether an accredited
11 person who may become an accredited data recipient of CDR data
12 is complying with:
13 (a) section 56ED (about privacy safeguard 1); or
14 (b) the consumer data rules to the extent that those rules relate to
15 that section.

16 **33 Subsections 56ER(2) and (3)**

17 Omit “the assessment”, substitute “an assessment under subsection (1)
18 or (1A)”.

19 **34 Paragraph 56ET(3)(a)**

20 Omit “or designated gateway”, substitute “, designated gateway or
21 accredited person”.

22 **35 Subsection 56ET(3)**

23 Omit “act of practice”, substitute “act or practice”.

24 **36 After paragraph 56ET(4)(b)**

25 Insert:

26 or (c) an accredited person who may become an accredited data
27 recipient of CDR data;

28 **37 Subparagraph 56ET(5)(b)(ii)**

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

30 **38 At the end of paragraph 56ET(5)(b)**

31 Add:

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- 1 (iii) in the case of a complaint about an act or practice of an
2 accredited person who may become an accredited data
3 recipient of CDR data—the accredited person is the
4 respondent; and

5 **39 At the end of paragraph 56ET(5)(d)**

6 Add:

- 7 (iii) a paragraph that states that an act or practice of an
8 accredited person who may become an accredited data
9 recipient of CDR data has breached a privacy safeguard;
10 and

11 **40 Paragraph 56GA(1)(b)**

12 Repeal the paragraph, substitute:

- 13 (b) to consult with or advise any of the following about any
14 matter relevant to the operation of this Part (or the operation
15 of instruments made under this Part):
16 (i) the Minister;
17 (ii) the Secretary of the Department;
18 (iii) the Commission;
19 (iv) the Data Standards Chair.

20 **41 After section 56GA**

21 Insert:

22 **56GAA Delegation by Secretary**

- 23 (1) The Secretary of the Department may, in writing, delegate all or
24 any of the Secretary's functions or powers under this Part to an
25 SES employee, or an acting SES employee, in the Department.

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

- 28 (2) In performing a delegated function or exercising a delegated
29 power, the delegate must comply with any written directions of the
30 Secretary.

31 **42 After subsection 157AA(2)**

32 Insert:

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Disclosure to the Secretary

- 1
- 2 (2A) The Commission or a Commission official may disclose to:
- 3 (a) the Secretary of the Department; or
- 4 (b) any employee of the Department or consultant assisting the
- 5 Secretary in performing the Secretary's functions, or
- 6 exercising the Secretary's powers, relating to Part IVD;
- 7 any information that the Commission obtains under this Act, or the
- 8 consumer data rules, that is relevant or likely to be relevant to the
- 9 functions or powers referred to in paragraph (b).

10 Note: The *Privacy Act 1988* also contains provisions relevant to the use and

11 disclosure of information.

- 12 (2B) The Secretary or a person mentioned in paragraph (2A)(b) must
- 13 only use the information:
- 14 (a) for a purpose connected with the performance of the
- 15 functions, or the exercise of the powers, referred to in
- 16 paragraph (2A)(b); and
- 17 (b) in accordance with any conditions imposed under
- 18 subsection (4).

19 **43 Subsection 157AA(4)**

20 Omit "(1) or (3)", substitute "(1), (2A) or (3)".

21 **44 Application, saving and transitional provisions**

- 22 (1) Despite the amendments of Part IVD of the *Competition and Consumer*
- 23 *Act 2010* made by this Schedule, that Part continues to apply, in relation
- 24 to consultation by the Minister:

- 25 (a) starting before the commencement of this Schedule; and
- 26 (b) under subsection 56AD(2) of that Act (as in force
- 27 immediately before that commencement);

28 as if those amendments had not been made.

- 29 (2) Despite the amendments of Part IVD of the *Competition and Consumer*
- 30 *Act 2010* made by this Schedule, rules made by the Commission that are
- 31 in force under subsection 56BA(1) of that Act immediately before the
- 32 commencement of this Schedule:

- 33 (a) continue in force; and
- 34 (b) may be dealt with;

35 on and after that commencement as if they had been made by the

36 Minister under that subsection as amended by this Schedule.