

EXPOSURE DRAFT EXPLANATORY MATERIALS

Issued by authority of the Minister for Superannuation, Financial Services and the Digital Economy

Competition and Consumer Act 2010

Consumer Data Right (Telecommunications Sector) Designation 2021

The purpose of the *Consumer Data Right (Telecommunications Sector) Designation 2021* (the Designation) is to designate the telecommunications sector as subject to the consumer data right.

Subsection 56AC(2) of the *Competition and Consumer Act 2010* (the Act) 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 the Act.

The consumer data right provides individuals and businesses with a right to efficiently and conveniently access specified data that relates to them held by businesses, and to authorise secure access to this data by accredited third parties. The consumer data right also requires businesses to provide public access to information on specified products that they offer.

The consumer data right is designed to give customers more control over their information leading, for example, to more choice in where they take their business, or more convenience in managing their telecommunications usage and services.

The sectors of the Australian economy that are covered by the consumer data right and the type of information consumers can request are limited to those specified in designations made by the Treasurer.

Telecommunications is the third sector of the Australian economy to which the consumer data right will be applied, following the previous designations of the banking and energy sectors.

The Designation sets out, in relation to the telecommunications sector, the classes of information that are subject to the consumer data right regime, the persons who hold this information and will be required or authorised to transfer the information under the regime, and the earliest date that the information being held is subject to the consumer data right.

This information will be CDR data (see section 56AI of the Act). Data holders may be required to disclose CDR data in accordance with the consumer data rules. The rules may also authorise data holders to choose to share this data through the consumer data right.

The classes of information specified by the Designation are customer-provided data, billing and account information, and information about retail telecommunications products.

The Designation does not specify any information as being subject to fees for access or use for the purposes of paragraph 56AC(2)(d) of the Act.

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 commences on the day after it is registered on the Federal Register of Legislation.

Details of the Consumer Data Right (Telecommunications Sector) Designation 2021

Section 1 – Name of the Regulations

This section provides that the name of the instrument is the *Consumer Data Right (Telecommunications Sector) Designation 2021* (the Designation).

Section 2 – Commencement

The Designation commences on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

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

Section 4 – Definitions

The Designation contains a number of definitions. These include:

Act means the *Competition and Consumer Act 2010*.

Associate has the same meaning as in section 318 of the *Income Tax Assessment Act 1936*. This includes an individual's relatives such as spouse, children or siblings, or a company's parents or subsidiaries. This definition of associate is also used in the definition of **CDR consumer** in section 56AI of the Act. The expression associate is used in the designation so that, where a product is supplied to multiple persons, information about each of those persons and their use of the product is captured by the designation. This may occur where the product has more than one account holder, or where the primary account holder has given access to other persons such as a relative or spouse.

Carriage service has the same meaning as in the *Telecommunications Act 1997*.

Carrier and *carriage service provider* both have the same meaning as in the *Telecommunications Act 1997*. In summary, carriers hold a carrier licence granted under that Act and own network units that deliver carriage services. Carriage service providers include organisations that resell time on a carrier network for phone calls, provide access to the internet and provide phone services over the internet.

Offer means an offer for a retail supply.

Product means a carriage service, or a good or a service that is offered or supplied to a person in connection with supplying a carriage service.

Supply is defined in subsection 4(1) and section 4C of the Act but is also limited by section 4 of this Designation to mean a retail supply. Paragraph 4C(b) of the Act provides that a reference to the supply of goods or services includes a reference to agreeing to supply goods or services – this is consistent with the intention of this Designation to capture pre-paid mobile services.

The references to ‘retail’ in the Designation have their plain meaning, with the Designation intending to capture the supply of a product to someone for their use, whether an individual or business customer (as opposed to supply for resale).

The Designation is also intended to capture ‘white-labelled’ products. These are products typically supplied by one entity (a white-labeller) and branded and retailed to consumers by another entity (a brand owner).

The references to ‘entity’ in the Designation have their plain meaning, rather than, for example, their taxation law meaning.

Section 5 – Designation of sector subject to the consumer data right

This section sets out:

- the classes of information that are prescribed and therefore subject to the consumer data right (information set out in sections 6 to 8)
- that carriers and carriage service providers are the data holders for the classes of information that are prescribed
- that the earliest date that the classes of information that are held by a data holder under the Designation can become subject to the consumer data right is 1 July 2020.

Previously-obtained information held by data holders on 1 July 2020 may be subject to the consumer data right where of continuing use and relevance (such as an account number that is still current). It is not necessary that the data holder obtained the information after 1 July 2020.

A note also confirms that no fees can be charged for information accessed under this Designation.

Specified classes of information

Section 6 – information about retail customers and users

The Designation specifies, as information that is subject to the consumer data right, information provided by a customer or an associate or obtained by the data holder in connection with the carriage service being provided.

The information must have been either provided directly by the person or their associate when acquiring or using a product (for example, the person's name and address) or otherwise obtained by or on behalf of the carrier or carriage service provider (or the entity that holds information on the carrier or carriage service provider's behalf).

Section 7 – information about retail supplies

The Designation specifies billing and account information about retail supplies of products as information that is subject to the consumer data right.

Section 7 is intended to cover information that customers typically already have available to them, whether on a bill or general account information (which might be accessible by logging in online or via a mobile application). While some information is described broadly as 'billing information', these elements of section 7 apply regardless of whether the information appears on every customer's bill.

Section 7 limits the scope of billing and account information to the following categories:

- information about accounts with persons to whom bills for the supply are sent
- information about bills issued in relation to the supply
- information about arrangements for payments to be made in response to such bills
- information about payments in connection with the supply
- information about concessions or rebates provided in connection with the supply
- other information about such supplies that is used for the purposes of billing
- how long until a contract relating to a particular product is due to end.

These categories are intended to encompass the following information typically included on a customer's bill for a phone or internet service:

- account number
- invoice number
- billing period
- date of issue of the bill
- customer's mobile number
- previous balance
- current balance (total payable)
- due date
- date of direct debit
- payment details to make a debit, online payment, BPAY details

- summary of customer's communications (no. of calls and total time, no. of messages, data used)
- details about phone handset payments due
- detailed usage data (date, time, type of call, duration, cost)
- messages summary (type of message (picture or text), number sent, cost)
- data summary (date, type, usage, cost)
- details of previous payments (e.g. receipt number)
- additional fees and charges
- name of plan the customer is on.

The content of communications, location data, mobile tower information, broadband speed information and National Broadband Network connection information are not designated.

Paragraph 7(2)(a) carves out any location data otherwise captured by section 7. This is intended to exclude information often shown on customers' bills that shows, for example, the suburb where they made or received a mobile call. An exclusion is not necessary for the location where the customer made a landline call, their address already being captured as customer data under section 6.

Information relating to whether a customer is participating in a carriage service provider or carrier's financial hardship program is similarly excluded.

Any information that is 'materially enhanced' is excluded by section 9 and therefore not subject to the consumer data right, subject to the matters explained below.

Section 8 – information about products

The Designation specifies information about products that are or have been offered or supplied by carriage service providers or carriers as subject to the consumer data right.

Section 8 is written to broadly include information that identifies or describes products, and the terms and conditions of those products. The list is non-exhaustive and written to cover – amongst other things – information that would generally be included in a Critical Information Summary, as required of carriage service providers under the Telecommunications Consumer Protections Code.

Subsection 8(3) includes offers or supplies that are offered to particular persons or entities, or classes of persons or entities. This ensures that where bespoke or custom services are offered, this information is still captured under the consumer data right. This may be relevant where, for example, a customer is using a legacy product that is no longer being offered to the general public, or where a customer has negotiated a price specific to them.

Paragraph 8(2)(g) specifies information about services that are available for customers who require additional assistance, such as customers with disability. It is not intended that instances where a given consumer has opted to utilise such services

would be included within the consumer data right, only that the offers or supply included the availability of these services.

Expiry dates relating to pre-paid mobile services are an example of product data intended to be captured by section 8.

Section 9 – Exclusion – materially enhanced information

Section 9 carves out information about the supply of a product which might otherwise be designated by section 7 where that data has been materially enhanced.

The concept of materially enhanced information refers to data which is the result of the application of insight, analysis or transformation of data to significantly enhance its useability and value in comparison to its source material. For the purposes of this test, source material is information to which section 7 applies. This means that while materially enhanced information may have been derived either entirely from information to which section 7 applies, or from a combination of information covered by section 7 and other information, the test only requires the enhanced information to be significantly more valuable than the section 7 inputs.

The intention is that information whose value has been largely generated by the actions of the data holder will be carved out by the ‘materially enhanced’ test.

While materially enhanced information is excluded from the class of information to which section 7 applies, such information may nonetheless be CDR data due to paragraph 56AI(1)(b) of the Act, which captures information that is wholly or partly derived from information that falls within a class of information specified in this Designation. This means that:

- the consumer data right applies to materially enhanced information, and
- while data holders are not required to disclose materially enhanced information under the consumer data right, customers can still authorise data holders to disclose this information through the consumer data right, where this is authorised under the consumer data rules.

Subsection 9(2) also provides for information that is not materially enhanced. Information is not materially enhanced where it was derived in order to meet a regulatory requirement. Additionally, information that has been materially enhanced and would be excluded from section 9 but otherwise fits within the definitions of section 6 or 8 is not excluded from either of those sections by virtue of being materially enhanced information.

An example of this could be where insight or analysis was derived about a customer’s use of an existing carriage service and the provider offered a modified service to the customer (under paragraph 8(3)(b)). Even though the modified product was made through the use of materially enhanced section 7 data, it would still form designated data under section 8.