



Australian Government



Consumer  
Data Right

## Banking Designation Instrument - minor and technical amendment

Prior to the Minister amending a designation instrument (including minor and technical amendments) there is the requirement to conduct a sectoral assessment which considers the effect of the proposed change (section 56AE of the *Competition and Consumer Act 2010*) (the Act).

### Summary

The *Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2019* (designation instrument) formally designated the banking sector as subject to the consumer data right (CDR) in September 2019. The designation instrument was a key component of implementing the 2018 Review into Open Banking in Australia (Open Banking Review)<sup>1</sup>, which recommended a broad range of lending products provided by banks be in scope for the CDR, including lease products.

The *Competition and Consumer (Consumer Data Right) Rules 2020* (the Rules) have been drafted on the basis that lease products are within scope of the designation - this is because lease products, including consumer leases and asset finance, fall within the prescribed list of banking products.<sup>2</sup> The sector is currently operating consistently with these obligations.

There is currently uncertainty around whether the definition of 'product' in the designation instrument covers all lease products.<sup>3</sup> Accordingly, for the avoidance of doubt, Treasury proposes to amend the designation instrument to explicitly capture the full range of lease products offered by banks (irrespective of how these products are structured).

### Proposed new definition of 'product'

Broadly, the existing definition of 'product' in the designation instrument captures goods and services that have been supplied in connection with taking money on deposit, making advances of money or another financial activity prescribed by regulations for the purposes of the definition of 'banking business'. The definition also captures a purchased payment facility. Treasury proposes to amend the definition to capture goods and services that have been supplied in connection with the letting on hire of goods<sup>4</sup> (leases), including on hire-purchase.

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<sup>1</sup> The Open Banking Review was commissioned in 2017 to recommend the best approach to implement Open Banking in Australia.

<sup>2</sup> In clause 1.4 of Schedule 3 to the *Competition and Consumer (Consumer Data Right) Rules 2020*.

<sup>3</sup> Clause 4 of the *Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2019*.

<sup>4</sup> This definition draws on the meaning of 'provision of finance' outlined in section 32 of *Financial Sector (Collection of Data) Act 2001* which includes "the letting on hire of goods".

## Assessment of proposed change

The Treasury Secretary must comply with reporting obligations (section 56AE), including the need to consult and prepare a report which considers the impact of making a designation instrument by reference to a range of statutory factors.<sup>5</sup>

The implementation of banking in CDR was informed by the Open Banking Review. The Open Banking Review recommended a regulatory framework under which an open banking regime would operate, having regard to international best practice, competition, fairness, innovation, efficiency, regulatory compliance costs and consumer protection.<sup>6</sup>

The final report of the Open Banking Review considered the type of banking data that should be in scope for the CDR and recommended that consumer leases and asset finance (including leases) be expressly covered. The Review analysed the likely benefits to consumers and the economy of sharing banking information through the CDR and examined the use cases that could be supported by this information. A [privacy impact assessment](#) was also conducted which examined the impact of Open Banking on the privacy of individuals.

The change proposed is a minor and technical amendment to ensure that the regime continues to operate as it was envisaged. The proposed change does not seek to broaden the regime beyond what was recommended, or how it is currently operating in practice. Given this, the likely impact of making the proposed technical amendment, assessed by reference to the section 56AD factors, is negligible.

## Question for consultation

- Do stakeholders have any views on the proposed technical amendment to the banking designation instrument?

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<sup>5</sup> Before making an instrument, section 56AD requires the Minister to consider the likely effect of making the instrument on the interests of consumers, the efficiency of relevant markets, the privacy or confidentiality of consumers' information, promoting competition, promoting data-driven innovation, intellectual property and the public interest.

<sup>6</sup> Treasury, December 2017, *Review into Open Banking*, p.vii.