

EXPOSURE DRAFT

EXPOSURE DRAFT

1
2
3
4
5
6
7
8
9
10

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. | | |
-

EXPOSURE DRAFT

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,

EXPOSURE DRAFT

1
2

the provider can perform the action, and charge any fees, in the way it ordinarily does.

3

EXPOSURE DRAFT

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

3 *Competition and Consumer Act 2010*

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

5 Repeal the heading, substitute:

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

8 **5 After section 56AC**

9 Insert:

10 **56ACA Declared types of actions that can be initiated under the**
11 **consumer data rules**

12 The Minister may, by legislative instrument, declare:

- 13 (a) one or more types of actions for which an instruction may be
14 given under the consumer data rules; and
15 (b) for each of those action types—the classes of data holders, of
16 CDR data, that are to be action service providers for that type
17 of action.

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

20 **6 Section 56AD (heading)**

21 Repeal the heading, substitute:

22 **56AD Minister’s tasks before designating a sector or declaring**
23 **actions etc.**

24 **7 Subsection 56AD(1)**

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

26 **8 Subparagraph 56AD(1)(a)(vi)**

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

EXPOSURE DRAFT

1 9 Paragraph 56AD(1)(b)

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

3 10 Paragraph 56AD(1)(c)

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

6 11 Paragraph 56AD(1)(d)

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

9 12 Subsections 56AD(2) and (3)

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

11 13 Section 56AE (heading)

12 Repeal the heading, substitute:

13 **56AE Secretary must arrange for analysis, consultation and report**
14 **about an instrument proposing to designate a sector or**
15 **declare actions**

16 14 Subsection 56AE(1)

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

18 15 Subparagraph 56AE(1)(b)(ii)

19 Omit “includes”, substitute “include”.

20 16 Subparagraph 56AE(1)(c)(iii)

21 Repeal the subparagraph, substitute:

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

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

30 17 Section 56AEA (heading)

31 Repeal the heading, substitute:

EXPOSURE DRAFT

1 **56AEA Commission must analyse an instrument proposing to**
2 **designate a sector or declare actions**

3 **18 Section 56AEA**

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

5 **19 Section 56AF (heading)**

6 Repeal the heading, substitute:

7 **56AF Information Commissioner must analyse and report about an**
8 **instrument proposing to designate a sector or declare**
9 **actions**

10 **20 Section 56AH**

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

EXPOSURE DRAFT

1 **Part 3—Meaning of key terms**

2 *Competition and Consumer Act 2010*

3 **21 Before subsection 56A(1)**

4 Insert:

5 *Meaning of CDR data*

6 **22 Before subsection 56A(2)**

7 Insert:

8 *Meaning of directly or indirectly derived*

9 **23 Before subsection 56A(3)**

10 Insert:

11 *Meaning of CDR consumer for CDR data*

12 **24 After subparagraph 56A(3)(b)(ii)**

13 Insert:

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

16 **25 Subparagraph 56A(3)(b)(iii)**

17 Omit “or (ii)”, substitute “, (ii) or (ia)”.

18 **26 Paragraph 56A(3)(d)**

19 Omit “conditions”, substitute “exclusions”.

20 **27 After subsection 56A(3)**

21 Insert:

22 *Meaning of CDR consumer for a CDR action*

23 (3A) A person is a *CDR consumer* for a CDR action if:

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

EXPOSURE DRAFT

-
- 1 (b) the performance of the CDR action is to be on the person’s
2 behalf, but not on the person’s behalf as:
3 (i) an accredited action initiator for CDR actions of that
4 type; or
5 (ii) an action service provider for CDR actions of that type;
6 and
7 (c) none of the exclusions (if any) prescribed by the regulations
8 apply to the person in relation to the CDR action.
- 9 Note: A supply for the purposes of paragraph (a) includes a future supply or
10 a supply for no fee.
- 11 Example: Assume X and Y are both accredited action initiators, and Y gives a
12 valid instruction for the performance of a CDR action (that relates to
13 the supply of accounting services) on X’s behalf. X will be a CDR
14 consumer for the CDR action, but Y will not be because of
15 paragraph (b).

28 Paragraph 56AJ(3)(b)

16 Repeal the paragraph, substitute:

- 17 (b) the person:
18 (i) is an accredited data recipient of other CDR data; or
19 (ii) is a voluntary action service provider for a type of CDR
20 action, and the CDR data is within the same class as
21 CDR data for which a data holder declared in the CDR
22 declaration for that type of CDR action is a data holder
23 because of subsection (2).
24

29 Subsection 56AJ(3) (note 1)

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

30 Subsection 56AJ(3) (note 2)

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

31 After paragraph 56AK(d)

27 Insert:

- 28 ; and (e) the first-mentioned CDR data is not being held by (or on
29 behalf of) the person as an action service provider for a type
30 of CDR action.
31

32 Section 56AK (before the note)

32 Insert:
33
34
35

EXPOSURE DRAFT

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

5 **33 Section 56AK (note)**

6 Omit “Note”, substitute “Note 2”.

7 **34 After section 56AM**

8 Insert:

9 **56AMA Meanings of *CDR action* and *CDR declaration***

- 10 (1) A *CDR action* is an action of a type declared under section
11 56ACA.
- 12 (2) A *CDR declaration*, for a type of CDR action, is the declaration
13 under section 56ACA that declares actions of that type.

14 **56AMB Meanings of *action service provider* and *voluntary action* 15 *service provider***

- 16 (1) A person is an *action service provider*, for a type of CDR action, if
17 the person:
18 (a) is within a class of data holders (of CDR data) declared in the
19 CDR declaration for that type of CDR action; or
20 (b) is a voluntary action service provider for that type of CDR
21 action.

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

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

- 28 (2) A person is a *voluntary action service provider*, for a type of CDR
29 action, if:
30 (a) paragraph (1)(a) does not apply to the person for that type of
31 CDR action; and
32 (b) the person holds an approval, of the kind described in
33 subsection 56BHA(1), under the consumer data rules for that
34 type of CDR action.

EXPOSURE DRAFT

1 Note: The person will need to have applied to be approved as an action
2 service provider for CDR actions of that type (see subsection
3 56BHA(1)).

4 **56AMC Meaning of *accredited action initiator***

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

- 7 (a) the person is an accredited person; and
8 (b) the person's accreditation authorises the person to initiate
9 that type of CDR action.

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

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

16 **56AMD Meaning of *CDR action participant***

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

EXPOSURE DRAFT

1 **Part 4—Changes to the power to make consumer**
2 **data rules**

3 *Competition and Consumer Act 2010*

4 **35 Subsection 56BA(1)**

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

6 **36 At the end of subsection 56BA(2)**

7 Add:

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

9 (f) different rules for different classes of:

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

11 (ii) accredited persons; or

12 (iii) CDR consumers for CDR actions.

13 **37 After paragraph 56BB(c)**

14 Insert:

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

16 **38 Paragraph 56BB(d)**

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

19 **39 After paragraph 56BB(d)**

20 Insert:

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

23 **40 After section 56BG**

24 Insert:

25 **56BGA Rules about initiating CDR actions**

26 *Instructions may be given to initiate types of CDR actions*

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

EXPOSURE DRAFT

-
- 1 (a) requirements on an accredited action initiator for a type of
2 CDR action relating to giving a valid instruction:
3 (i) for the performance of a CDR action of that type; and
4 (ii) to an action service provider for a CDR action of that
5 type; and
6 (iii) on behalf of a CDR consumer for the CDR action, and
7 in response to that consumer's valid request; and
8 (iv) after a series of specified kinds of interactions between
9 that initiator, provider, consumer or other persons
10 (whether involving all or any 2 of them);
11 (b) rules about how an instruction must be prepared for it to be a
12 valid instruction of the kind described in paragraph (a), what
13 matters a valid instruction may cover, and when an
14 instruction ceases to be a valid instruction;
15 (c) rules about:
16 (i) how a CDR consumer for a CDR action may make a
17 valid request of the kind described in
18 subparagraph (a)(iii); and
19 (ii) what must be included in a request for it to be valid,
20 what matters a valid request may cover, and when a
21 request ceases to be a valid request;
22 (d) requirements on an action service provider for a type of CDR
23 action relating to how the provider processes a valid
24 instruction of the kind described in paragraph (a);
25 (e) rules relating to the interactions described in
26 subparagraph (a)(iv);
27 (f) rules relating to the privacy safeguards in relation to an
28 instruction or request relating to a CDR action;
29 (g) rules relating to information that is not CDR data, but that
30 relates to a CDR action.

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

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

37 *Allowing providers to charge fees at the instruction layer*

- 38 (2) Without limiting paragraph 56BB(ca), the consumer data rules may
39 include rules declaring that action service providers for a type of
40 CDR action may charge (or cause to be charged) fees for

EXPOSURE DRAFT

1 processing valid instructions of the kind described in
2 paragraph (1)(a) for CDR actions of that type.

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

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

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

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

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

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

17 (c) rules about:

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

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

25 *Rules must not apply at the action layer*

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

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

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

35 **41 Section 56BH (heading)**

36 Repeal the heading, substitute:

EXPOSURE DRAFT

1 56BH Rules about accreditation for the purposes of this Part

2 42 After subparagraph 56BH(1)(d)(ii)

3 Insert:

4 (ia) specified types of CDR actions; or

5 43 After paragraph 56BH(1)(d)

6 Insert:

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

9 44 Before the note to subsection 56BH(1)

10 Insert:

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

14 45 Subsection 56BH(1) (note)

15 Omit “Note”, substitute “Note 2”.

16 46 Subsection 56BH(3)

17 Repeal the subsection, substitute:

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

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

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

25 47 Subsection 56BH(4)

26 Repeal the subsection, substitute:

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

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

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

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

EXPOSURE DRAFT

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

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

6 **48 After section 56BH**

7 Insert:

8 **56BHA Rules about approving persons to be voluntary action** 9 **service providers for types of CDR actions**

- 10 (1) Without limiting paragraph 56BB(da), the consumer data rules
11 may include the following rules:
- 12 (a) rules for the approval of persons who apply to be action
13 service providers for one or more types of CDR actions;
 - 14 (b) the criteria for a person to be so approved;
 - 15 (c) rules providing that such approval may be granted subject to
16 conditions, and that conditions may be imposed on such an
17 approval after it has been granted;
 - 18 (d) rules providing that such approvals may be granted at
19 different levels corresponding to different risks, including the
20 risks associated with:
 - 21 (i) specified types of CDR actions; or
 - 22 (ii) specified classes of CDR data; or
 - 23 (iii) specified classes of applicants for such approvals;
 - 24 (e) rules specifying what a person approved at a particular level
25 is authorised to do (or not authorised to do);
 - 26 (f) rules for the period, renewal, transfer, variation, suspension,
27 revocation or surrender of such approvals;
 - 28 (g) notification requirements on persons whose such approvals
29 have been granted, renewed, transferred, varied, suspended,
30 revoked or surrendered;
 - 31 (h) rules about publishing details of such approvals, renewals,
32 transfers, variations, suspensions, revocations or surrenders;
 - 33 (i) transitional rules for when such an approval is varied, is
34 suspended or ends, including about the disclosure, collection,
35 use, accuracy, storage, security or deletion of CDR data;
 - 36 (j) rules conferring functions or powers on the Minister for any
37 of the matters described in this subsection.

EXPOSURE DRAFT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

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:

EXPOSURE DRAFT

-
- 1 (i) is from a publication of details described in
2 paragraph (1)(h), where those details are matters of fact;
3 and
4 (ii) is certified by the person to be a true copy or a true
5 extract (as applicable); and
6 (b) a rule may provide that such a certified copy or extract is
7 admissible in any proceedings as prima facie evidence of the
8 original.

49 After paragraph 56BI(1)(c)

9 Insert:

- 10 (ca) a power for a CDR consumer for a CDR action to direct an
11 accredited action initiator for CDR actions of that type to
12 give the consumer, or an accredited person, reports about:
13 (i) the consumer's valid request made to the initiator, under
14 rules like those described in subsection 56BGA(1), for
15 the giving of a valid instruction for the performance of
16 the CDR action; or
17 (ii) a valid instruction given by the initiator, under rules like
18 those described in subsection 56BGA(1), on behalf of
19 the consumer and for the performance of the CDR
20 action;
21 (cb) a power for a CDR consumer for a CDR action to direct an
22 action service provider for CDR actions of that type to give
23 the consumer, or an accredited person, reports about the
24 provider's processing of any valid instruction given to the
25 provider:
26 (i) on behalf of the consumer under rules like those
27 described in subsection 56BGA(1); and
28 (ii) for the performance of the CDR action;
29

50 Paragraph 56BI(1)(d)

30 After "CDR participants for CDR data", insert " , or CDR action
31 participants,".
32

51 Subsection 56BI(2)

33 Omit "Without limiting paragraph 56BB(e)", substitute "Without
34 limiting subsection (1)".
35

EXPOSURE DRAFT

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

EXPOSURE DRAFT

1 **60 Paragraph 56BQ(a)**

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

3 **61 Section 56BR**

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

EXPOSURE DRAFT

1 **Part 5—Complying with the consumer data rules etc.**

2 *Competition and Consumer Act 2010*

3 **62 After subparagraph 56BN(1)(c)(ii)**

4 Insert:

- 5 ; or (iii) a person is a CDR consumer for a CDR action; or
6 (iv) a person has satisfied any criteria under the consumer
7 data rules for the making of a request, the giving of a
8 valid instruction, or the processing of a valid instruction,
9 for the performance of a CDR action.

10 **63 Subsection 56BN(1) (note)**

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

12 **64 After paragraph 56BO(1)(b)**

13 Insert:

- 14 ; or (c) a person is a CDR consumer for a CDR action; or
15 (d) a person has satisfied any criteria under the consumer data
16 rules for:
17 (i) the making of a request; or
18 (ii) the giving of a valid instruction; or
19 (iii) the processing of a valid instruction;
20 for the performance of a CDR action.

21 **65 Subsection 56BO(1) (note 1)**

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

23 **66 At the end of Division 2 of Part IVD**

24 Add:

25 **Subdivision E—Effective initiation and non-discriminatory
26 performance of CDR actions**

27 **56BZA Accredited persons must act efficiently, honestly and fairly
28 when initiating CDR actions etc.**

29 A person contravenes this section if:

- 30 (a) the person is an accredited person; and
-

EXPOSURE DRAFT

-
- 1 (b) the person’s accreditation authorises the person to initiate a
2 type of CDR action; and
3 (c) the person engages in conduct that includes:
4 (i) proposing to a potential CDR consumer for a CDR
5 action of that type that the person give a valid
6 instruction under the consumer data rules for the
7 performance of the CDR action; or
8 (ii) giving a valid instruction under the consumer data rules
9 for the performance of a CDR action of that type; and
10 (d) the person fails to act efficiently, honestly and fairly in
11 relation to a matter described in subparagraph (c)(i) or (ii).

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

14 **56BZB Accredited persons must only initiate CDR actions in** 15 **accordance with CDR consumers’ valid requests etc.**

16 A person contravenes this section if:

- 17 (a) the person is an accredited person; and
18 (b) the person’s accreditation authorises the person to initiate a
19 type of CDR action; and
20 (c) the person purports to give a valid instruction:
21 (i) for the performance of a CDR action of that type; and
22 (ii) to an action service provider for a CDR action of that
23 type; and
24 (iii) on behalf of a CDR consumer for the CDR action; and
25 (d) when purporting to give that instruction:
26 (i) there was no valid request by the consumer, made in
27 accordance with the consumer data rules, for the giving
28 of that instruction; or
29 (ii) the person had failed to comply with a requirement in
30 the consumer data rules for giving a valid instruction for
31 a CDR action of that type.

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

34 **56BZC No discrimination against CDR action instructions—service** 35 **provider fails to perform CDR actions when it ordinarily** 36 **performs actions of that type**

37 A person contravenes this section if:

EXPOSURE DRAFT

-
- 1 (a) the person is an action service provider for a type of CDR
2 action; and
3 (b) the person is given a valid instruction under the consumer
4 data rules to perform a CDR action of that type; and
5 (c) the person fails to perform the CDR action in accordance
6 with the valid instruction; and
7 (d) having regard to criteria in the consumer data rules, the
8 person would ordinarily perform actions of that type in the
9 course of the person's business.

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

12 **56BZD No discrimination against CDR action instructions—service** 13 **provider's fees relating to CDR actions**

14 *No discrimination against CDR action instructions via fees*

- 15 (1) A person contravenes this subsection if:
- 16 (a) the person is an action service provider for a type of CDR
17 action; and
18 (b) the person is given a valid instruction under the consumer
19 data rules to perform a CDR action of that type; and
20 (c) the person charges (or causes to be charged) one or more fees
21 for either or both of the following matters:
22 (i) processing the valid instruction;
23 (ii) performing the CDR action in accordance with the valid
24 instruction; and
25 (d) either subsection (2) or (3) applies to those fees.

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

28 *First case—charging inappropriate fees at the instruction layer*

- 29 (2) This subsection applies to fees, to the extent they are for processing
30 the valid instruction, if:
- 31 (a) the consumer data rules have not declared, as described in
32 subsection 56BGA(2), that fees may be charged (or caused to
33 be charged) for processing valid instructions for CDR actions
34 of that type; or
35 (b) the fees for processing the valid instruction exceed any fees:
36 (i) determined under subsection 56BZE(1) for the person;
37 or

EXPOSURE DRAFT

-
- 1 (ii) worked out from a method determined under
2 subsection 56BZE(1) for the person;
3 for processing the valid instruction.

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

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

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

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

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

19 **56BZE Commission may intervene if fee for processing a valid**
20 **instruction for a CDR action is unreasonable**

21 *Commission may intervene to determine a reasonable fee*

- 22 (1) The Commission may determine the amount of a fee that a
23 specified action service provider for a type of CDR action may
24 charge (or cause to be charged) for processing a valid instruction
25 for a CDR action of that type, or determine a method for working
26 out the amount of such a fee, if:
27 (a) the consumer data rules have declared, as described in
28 subsection 56BGA(2), that fees may be charged (or caused to
29 be charged) for processing valid instructions for CDR actions
30 of that type; and
31 (b) the Commission is satisfied that the fee that the provider
32 would otherwise charge (or cause to be charged) is
33 unreasonable having regard to the criteria in subsection (3).

34 *Matters and criteria for the Commission*

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

EXPOSURE DRAFT

-
- 1 (a) reflects the reasonable costs (including capital costs)
2 necessary for the provider to comply with this Part and the
3 consumer data rules in relation to processing the valid
4 instruction; and
5 (b) is reasonable having regard to the criteria in subsection (3).
- 6 (3) The criteria for the purposes of subsection (1) and paragraph (2)(b)
7 are:
8 (a) the matters in subparagraphs 56AD(1)(a)(i), (ii) and (iv) to
9 (vi); and
10 (b) the marginal cost of processing the valid instruction in
11 accordance with the consumer data rules; and
12 (c) whether a lower fee could result in an acquisition of property
13 (within the meaning of paragraph 51(xxxi) of the
14 Constitution); and
15 (d) whether a lower fee would reduce the incentive to perform
16 actions of that type; and
17 (e) any other matters the Commission considers relevant.

18 *Whether a determination is a legislative instrument*

- 19 (4) A determination under subsection (1) specifying a class of action
20 service providers must be made by legislative instrument.
- 21 (5) A determination under subsection (1) specifying a particular action
22 service provider:
23 (a) must be made by written notice given to the provider; and
24 (b) is not a legislative instrument.
- 25 The Commission may publish the determination on the
26 Commission's website.

27 *A fee must not amount to taxation*

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

30 **56BZF Review by the Tribunal of determinations specifying**
31 **particular action service providers**

- 32 (1) If the Commission makes a determination under
33 subsection 56BZE(1) in the way described in
34 subsection 56BZE(5):
35 (a) the action service provider specified in the determination; or
-

EXPOSURE DRAFT

1 (b) a person whose interests are affected by the determination;
2 may apply in writing to the Tribunal for a review of the
3 determination.

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

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

10 **56BZG Functions and powers of Tribunal**

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

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

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

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

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

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

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

30 **56BZH Provisions that do not apply in relation to a Tribunal review**

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

EXPOSURE DRAFT

1 Subdivision F—Prohibitions on holding out

2 **56BZI Prohibition on holding out that a person is something they** 3 **are not—offence**

- 4 (1) A person commits an offence if the person holds out that:
- 5 (a) the person is an accredited person; or
 - 6 (b) the person is an accredited person holding an accreditation
7 that has been granted at a particular level (see
8 paragraph 56BH(1)(d)); or
 - 9 (c) the person is an accredited person holding an accreditation
10 that authorises the person to do something (see
11 paragraph 56BH(1)(da)); or
 - 12 (d) the person is an accredited data recipient of CDR data; or
 - 13 (e) the person is an accredited action initiator for a type of CDR
14 action; or
 - 15 (f) the person is an action service provider for a type of CDR
16 action; or
 - 17 (g) the person is approved as an action service provider at a
18 particular level (see paragraph 56BHA(1)(d)); or
 - 19 (h) the person’s approval as an action service provider authorises
20 the person to do something (see paragraph 56BHA(1)(e));
- 21 if that is not the case.

22 *Penalty—body corporate*

- 23 (2) An offence against subsection (1) committed by a body corporate
24 is punishable on conviction by a fine of not more than the greater
25 of the following:
- 26 (a) \$10,000,000;
 - 27 (b) if the court can determine the value of the benefit that the
28 body corporate, and any body corporate related to the body
29 corporate, have obtained directly or indirectly and that is
30 reasonably attributable to the commission of the offence—3
31 times the value of that benefit;
 - 32 (c) if the court cannot determine the value of that benefit—10%
33 of the annual turnover of the body corporate during the
34 12-month period ending at the end of the month in which the
35 commission of the offence happened or began.
- 36 (3) For the purposes of paragraph (2)(c), *annual turnover* has the
37 same meaning as in Division 1 of Part IV.

EXPOSURE DRAFT

Penalty—other persons

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

6 **56BZJ Prohibition on holding out that a person is something they**
7 **are not—civil penalty**

8 A person must not hold out that:

- 9 (a) the person is an accredited person; or
10 (b) the person is an accredited person holding an accreditation
11 that has been granted at a particular level (see
12 paragraph 56BH(1)(d)); or
13 (c) the person is an accredited person holding an accreditation
14 that authorises the person to do something (see
15 paragraph 56BH(1)(da)); or
16 (d) the person is an accredited data recipient of CDR data; or
17 (e) the person is an accredited action initiator for a type of CDR
18 action; or
19 (f) the person is an action service provider for a type of CDR
20 action; or
21 (g) the person is approved as an action service provider at a
22 particular level (see paragraph 56BHA(1)(d)); or
23 (h) the person's approval as an action service provider authorises
24 the person to do something (see paragraph 56BHA(1)(e));
25 if that is not the case.

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

28 **67 Sections 56CC and 56CD**

29 Repeal the sections.

30 **68 Application of repeals**

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

EXPOSURE DRAFT

1 Part 6—Changes to the Privacy safeguards

2 *Competition and Consumer Act 2010*

3 **69 Section 56EA**

4 Omit:

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

8 substitute:

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

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

17 **70 Paragraphs 56EC(4)(aa), (b) and (c)**

18 Repeal the paragraphs, substitute:

- 19 (aa) if section 56ED or 56EE applies to an accredited person in
20 relation to CDR data—the corresponding Australian Privacy
21 Principle does not apply to the accredited person in relation
22 to the CDR data; and
- 23 (ab) if section 56EF or 56EG applies to a person:
24 (i) who is an accredited person; or
25 (ii) as a CDR action participant;
26 in relation to CDR data—the corresponding Australian
27 Privacy Principle does not apply to the person in relation to
28 the CDR data; and
- 29 (b) if subsection 56EN(1) applies to a disclosure of CDR data by
30 a person:
31 (i) who is a data holder of the CDR data; or
32 (ii) as an action service provider for a type of CDR action;

EXPOSURE DRAFT

1 then Australian Privacy Principle 10 does not apply to the
2 person in relation to that disclosure of the CDR data; and
3 (c) if subsection 56EP(1) applies to CDR data and a person:
4 (i) who is a data holder of the CDR data; or
5 (ii) as an action service provider for a type of CDR action;
6 then Australian Privacy Principle 13 does not apply to the
7 person in relation to the CDR data; and

8 **71 After paragraph 56EC(5)(b)**

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

12 **72 Subsection 56EC(5) (note 1)**

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

15 **73 Subsection 56ED(1)**

16 Repeal the subsection, substitute:

17 *Object*

18 (1) The object of this section is to ensure that each person (a **CDR**
19 **entity**) who:
20 (a) is a data holder of CDR data; or
21 (b) is an accredited person who is or who may become an
22 accredited data recipient of CDR data; or
23 (c) is a designated gateway for CDR data; or
24 (d) as an action service provider for a type of CDR action, has
25 been or may be disclosed CDR data under the consumer data
26 rules;
27 manages the CDR data in an open and transparent way.

28 **74 Paragraph 56ED(3)(c)**

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

30 **75 After subsection 56ED(6)**

31 Insert:
32 (6A) If the CDR entity is a person who, as an action service provider for
33 a type of CDR action, has been or may be disclosed CDR data

EXPOSURE DRAFT

1 under the consumer data rules, the CDR entity’s policy must
2 contain the following information:

- 3 (a) how a CDR consumer for the CDR data may access the CDR
4 data and seek the correction of the CDR data;
5 (b) how a CDR consumer for the CDR data may complain about
6 a failure of the CDR entity to comply with this Part or the
7 consumer data rules, and how the CDR entity will deal with
8 such a complaint.

9 **76 Sections 56EF and 56EG**

10 Repeal the sections, substitute:

11 **56EF Privacy safeguard 3—soliciting CDR data from participants** 12 **under the consumer data rules**

- 13 (1) A person covered by column 1 of an item of the following table
14 must not seek to collect CDR data under the consumer data rules
15 from another person covered by column 2 of that item unless:
16 (a) a CDR consumer for the CDR data has validly requested this
17 under the consumer data rules for the purposes described in
18 column 3 of that item; and
19 (b) the person complies with all other requirements in the
20 consumer data rules for the collection of the CDR data from
21 that other person.
22

Soliciting CDR data from participants under the consumer data rules

Item	Column 1	Column 2	Column 3
	A person who:	must not seek to collect CDR data from:	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

EXPOSURE DRAFT

Soliciting CDR data from participants under the consumer data rules

Item	Column 1	Column 2	Column 3
	A person who:	must not seek to collect CDR data from:	unless a CDR consumer for the CDR data has requested this for the purposes of: action of that type

- 1 Note 1: For item 2, the kinds of CDR action participants are accredited action
2 initiators and action service providers (see section 56AMD).
- 3 Note 2: For column 3 of item 2, the CDR consumer for the CDR data would
4 need to have requested the collection of the CDR data as a CDR
5 consumer for the CDR action.
- 6 Note 3: This subsection is a civil penalty provision (see section 56EU).
- 7 (2) Subsection (1) applies whether the collection is directly or
8 indirectly from the person covered by column 2 of the table.
- 9 Note: The collection (whether direct or indirect) would need to be under the
10 consumer data rules for subsection (1) to apply.
- 11 Example: The valid request referred to in column 3 of item 1 of the table could
12 be given under the consumer data rules through a designated gateway
13 (see section 56BG).

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

- 14
- 15
- 16 (1) A person must destroy CDR data as soon as practicable after
17 collecting it if:
- 18 (a) the person (the *collector*) collected the CDR data while
19 covered by column 1 of an item of the following table, and
20 from a person covered by column 2 of that item; and
- 21 (b) the collector collected the CDR data:
- 22 (i) purportedly under the consumer data rules; but
23 (ii) not as the result of seeking to collect the CDR data
24 under the consumer data rules; and
- 25 (c) the collector is not required to retain the CDR data by or
26 under an Australian law or a court/tribunal order; and
- 27 (d) in the case where item 3 of the table applies, the
28 circumstances specified in the consumer data rules do not
29 apply.
30

EXPOSURE DRAFT

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

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

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

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

6 **77 Section 56EH (before the note)**

7 Insert:

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

12 **78 Section 56EH (note)**

13 Omit “Note”, substitute “Note 2”.

14 **79 Before subsection 56EM(1)**

15 Insert:

16 *Disclosures by data holders*

17 **80 Before subsection 56EM(2)**

18 Insert:

19 *Disclosures by accredited data recipients*

20 **81 Before subsection 56EM(3)**

21 Insert:

EXPOSURE DRAFT

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;

EXPOSURE DRAFT

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

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

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

- 6 (4) A person, who is required by subsection (3) to advise a CDR
7 consumer for CDR data that some or all of the CDR data was
8 incorrect when it was earlier disclosed, must:
- 9 (a) correct the CDR data; and
 - 10 (b) disclose the corrected CDR data, in accordance with the
11 consumer data rules, to the recipient of the earlier disclosure;
12 if the person:
 - 13 (c) is requested to do so by the CDR consumer in accordance
14 with the consumer data rules; or
 - 15 (d) if the earlier disclosure was related to a CDR action in a way
16 described in the consumer data rules—is required to do so by
17 the consumer data rules.

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

19 **84 Subsection 56EN(5) (note)**

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

21 **85 Subsection 56EP(1)**

22 Repeal the subsection, substitute:

23 *Obligation on data holders and action service providers*

- 24 (1) If:
- 25 (a) a CDR consumer for CDR data gives a request to the
26 following person (the *CDR entity*):
 - 27 (i) a data holder of the CDR data (including a request given
28 through a designated gateway for the CDR data);
 - 29 (ii) a person as an action service provider for a type of CDR
30 action; and
 - 31 (b) the request is for the CDR entity to correct the CDR data; and
 - 32 (c) the CDR entity was earlier required or authorised under the
33 consumer data rules to disclose the CDR data;

EXPOSURE DRAFT

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

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

86 After subsection 56ER(1A)

6 Insert:

7 (1B) The Information Commissioner may assess whether an action
8 service provider for a type of CDR action, who has been or may be
9 disclosed CDR data under the consumer data rules, is maintaining
10 and handling the CDR data in accordance with:

11 (a) the privacy safeguards; or

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

14 (i) the privacy safeguards; or

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

87 Subsections 56ER(2) and (3)

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

88 Paragraph 56ET(3)(a)

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

89 After paragraph 56ET(4)(c)

22 Insert:

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

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

28 Add:

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

91 Subparagraph 56ET(5)(b)(iii)

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

EXPOSURE DRAFT

1 **92 After subparagraph 56ET(5)(b)(iii)**

2 Insert:

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

8 **93 At the end of paragraph 56ET(5)(d)**

9 Add:

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

15 **94 Paragraph 56EU(1)(i)**

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

17 **95 Paragraph 56EU(1)(j)**

18 After “(2),” insert “(2A),”.

EXPOSURE DRAFT

1 **Part 7—CDR Accreditor**

2 *Competition and Consumer Act 2010*

3 **96 Subsection 4(1)**

4 Insert:

5 *CDR Accreditor* means:

- 6 (a) if a person holds an appointment under
7 subsection 56CG(1)—that person; or
8 (b) otherwise—the Commission.

9 **97 Subsection 4(1) (definition of *Data Recipient Accreditor*)**

10 Repeal the definition.

11 **98 Paragraph 56BH(1)(a)**

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

13 **99 Subparagraph 56BI(1)(h)(i)**

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

15 **100 Subsection 56CA(1)**

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

18 **101 Section 56CB**

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

20 **102 Subdivision C of Division 3 of Part IVD (heading)**

21 Repeal the heading, substitute:

22 **Subdivision C—CDR Accreditor**

23 **103 Section 56CG (heading)**

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

25 **104 Subsection 56CG(1)**

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

EXPOSURE DRAFT

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”.

EXPOSURE DRAFT

1 **113 Subsections 56CI(1) and (3)**

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

3 **114 Subsection 56CJ(1)**

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

5 **115 Subparagraph 56CJ(1)(b)(ii)**

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

7 **116 Subsection 56CJ(2)**

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

EXPOSURE DRAFT

1 **Part 8—Miscellaneous amendments**

2 *Competition and Consumer Act 2010*

3 **117 Subsection 4(1)**

4 Insert:

5 *accredited action initiator* has the meaning given by section
6 56AMC.

7 *action service provider* has the meaning given by subsection
8 56AMB(1).

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

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

11 **118 Subsection 4(1) (definition of *CDR consumer*)**

12 After “56AI(3)”, insert “or (3A)”.

13 **119 Subsection 4(1)**

14 Insert:

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

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

18 **120 Paragraph 56AC(2)(b)**

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

21 **121 Subsection 56AC(2) (note 2)**

22 Omit “(b),”.

23 **122 Subsection 56AO(1)**

24 Omit “and (3)”, substitute “to (3B)”.

25 **123 After subsection 56AO(3)**

26 Insert:

EXPOSURE DRAFT

1 *CDR provisions apply for CDR actions to be performed inside*
2 *Australia*

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

6 *CDR provisions can apply for CDR actions to be performed*
7 *outside Australia*

- 8 (3B) To the extent that the CDR provisions have effect in relation to an
9 act, or omission, relating to a CDR action to be performed outside
10 Australia, the CDR provisions only apply if:

- 11 (a) the act or omission is by (or on behalf of) an Australian
12 person; or
13 (b) the act or omission occurs wholly or partly in Australia, or
14 wholly or partly on board an Australian aircraft or an
15 Australian ship; or
16 (c) the act or omission occurs wholly outside Australia, and an
17 Australian person suffers, or is likely to suffer, financial or
18 other disadvantage as a result of the act or omission.

19 **124 Subsection 56AO(4)**

20 After “(3)”, insert “or (3B)”.

21 **125 Subsection 56AO(5)**

22 Insert:

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

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

25 **126 Subsection 56AR(3)**

26 Repeal the subsection, substitute:

- 27 (3) However, whether or not such a declaration is in force for an entity
28 referred to in subsection (2), the CDR provisions apply in relation
29 to the entity to the extent that:
30 (a) the CDR provisions relate to a CDR consumer for CDR data,
31 and the entity is a CDR consumer for CDR data (or would be
32 if the entity were a person); or

EXPOSURE DRAFT

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

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

127 After paragraph 56AR(5)(a)

5 Insert:

6 (aa) as an accredited person, the entity is conferred such functions
7 as are necessary to enable the entity to operate as an
8 accredited person in accordance with the CDR provisions; or
9

128 At the end of subsection 56AR(5)

10 Add:

11 ; or (c) as an action service provider for a type of CDR action, the
12 entity is conferred such functions as are necessary to enable
13 the entity to operate as an action service provider in
14 accordance with the CDR provisions.
15

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

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

19 Add:

20 ; (d) an action service provider for a type of CDR action.
21
22

130 Subsection 56BAA(1)

23 Omit “in response to a valid request by a CDR consumer for the CDR
24 data to be deleted”, substitute “if a CDR consumer for the CDR data
25 validly requests this”.
26

131 Subparagraph 56BD(1)(b)(v)

27 After “on behalf”, insert “of”.
28

132 Paragraph 56DA(1)(a)

29 After “designated sectors”, insert “or types of CDR actions”.
30

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

31 Insert:

32 (iiia) CDR action participants;
33 (iiib) CDR consumers for CDR actions;
34

EXPOSURE DRAFT

1 **134 Subparagraph 56DA(1)(b)(iv)**

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

3 **135 After paragraph 56FA(1)(d)**

4 Insert:

- 5 (da) the format and description of a valid instruction for the
6 performance of a type of CDR action;
7 (db) the giving of a valid instruction for the performance of a type
8 of CDR action;

9 **136 After paragraph 56FB(1)(b)**

10 Insert:

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

12 **137 After paragraph 56FB(1)(c)**

13 Insert:

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

16 **138 Paragraph 56FB(2)(b)**

17 Repeal the paragraph, substitute:

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

20 **139 After subsection 56FD(2)**

21 Insert:

- 22 (2A) A contract is taken to be in force between:
23 (a) an action service provider for a type of CDR action to which
24 a binding data standard applies; and
25 (b) each accredited action initiator for a CDR action of that type;
26 under which each of those persons:
27 (c) agrees to observe the standard to the extent that the standard
28 applies to the person; and
29 (d) agrees to engage in conduct that the person is required by the
30 standard to engage in.

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

EXPOSURE DRAFT

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:

EXPOSURE DRAFT

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

EXPOSURE DRAFT

1 (b) a particular CDR action or one or more types of CDR
2 actions;
3 from all or specified provisions covered by this section.

4 **147 Subsection 56GE(2)**

5 Repeal the subsection, substitute:

6 (2) The regulations may:

7 (a) exempt a particular person in relation to:

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

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

12 from all or specified provisions covered by this section; or

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

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

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

18 from all or specified provisions covered by this section; or

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

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

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

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

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

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

31 **148 Transitional—existing exemptions and modifications by** 32 **regulations**

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

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

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

EXPOSURE DRAFT

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

3 **149 Subsection 56GF(8) (at the end of the definition of *CDR***
4 ***entity*)**

5 Add:
6 ; (d) an action service provider for a type of CDR action.

7 **150 Subsection 75B(1)**

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

11 **151 Subparagraph 76(1)(a)(ib)**

12 Omit “56CD”, substitute “56BZA, 56BZB or 56BZC, subsection
13 56BZD(1), section 56BZJ”.

14 **152 Paragraph 76(1A)(b)**

15 Omit “56CD”, substitute “56BZA, 56BZB or 56BZC, subsection
16 56BZD(1), section 56BZJ”.

17 **153 Paragraph 76(1B)(ab)**

18 Omit “56CD”, substitute “56BZA, 56BZB or 56BZC, subsection
19 56BZD(1), section 56BZJ”.

20 **154 Subsections 76B(2), (3) and (4)**

21 Omit “56CD”, substitute “56BZJ”.

22 **155 Paragraph 76B(5)(a)**

23 Omit “56CD”, substitute “56BZJ”.

24 **156 Subparagraphs 79A(1)(a)(i) and 79B(a)(ii)**

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

26 **157 Subparagraph 80(1)(a)(iib)**

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

30 **158 Paragraphs 80(9)(a) and (b)**

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

EXPOSURE DRAFT

1 **159 Paragraph 82(1)(c)**

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

5 **160 Subparagraph 83(1)(a)(ii)**

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

7 **161 Subparagraph 83(1)(b)(iii)**

8 Omit “56CD”, substitute “56BZA, 56BZB or 56BZC, subsection
9 56BZD(1), section 56BZJ”.

10 **162 Paragraph 84(1)(a)**

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

12 **163 Paragraph 84(1)(b)**

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

16 **164 Paragraph 84(3)(a)**

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

18 **165 Paragraph 84(3)(b)**

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

22 **166 Subsection 86(1A)**

23 Omit “56CD”, substitute “56BZA, 56BZB or 56BZC, subsection
24 56BZD(1), section 56BZJ”.

25 **167 Subsection 86(2)**

26 Omit “56CD”, substitute “56BZA, 56BZB or 56BZC, subsection
27 56BZD(1), section 56BZJ”.

28 **168 Paragraph 86A(1)(b)**

29 Omit “56CD”, substitute “56BZA, 56BZB or 56BZC, subsection
30 56BZD(1), section 56BZJ”.

EXPOSURE DRAFT

1 **169 Subsection 86C(4) (paragraph (a) of the definition of**
2 ***contravening conduct***)

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

6 **170 Paragraph 86D(1)(b)**

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

8 **171 Subsection 86D(1A)**

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

10 **172 Paragraph 86E(1)(a)**

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

14 **173 Paragraph 86E(1A)(a)**

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

16 **174 Subsection 87(1)**

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

18 **175 Subsection 87(1)**

19 Omit “56CD”, substitute “56BZA, 56BZB or 56BZC, subsection
20 56BZD(1), section 56BZJ”.

21 **176 Paragraphs 87(1A)(a), (b) and (baa)**

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

25 **177 Paragraph 87(1A)(ba)**

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

27 **178 Subsection 87(1C)**

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

EXPOSURE DRAFT

1 **179 After paragraph 157AA(3)(a)**

2 Insert:

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

6 **180 Paragraph 163(2)(a)**

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

8 **181 Subsection 163A(4B)**

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

10 **182 Paragraph 163A(4C)(a)**

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

12 **183 Subsection 163A(4D)**

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

14