

TREASURY LAWS AMENDMENT (MEASURES FOR CONSULTATION)
BILL 2022: CONSUMER DATA RIGHT-IMPLEMENTING ACTION INITIATION

EXPOSURE DRAFT EXPLANATORY MATERIALS

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Glossary

This Explanatory Memorandum uses the following abbreviations and acronyms.

Abbreviation	Definition
ACCC	Australian Competition and Consumer Commission
Act	<i>Competition and Consumer Act 2010</i>
APPs	Australian Privacy Principles
Bill	Treasury Laws Amendment (Measures for Consultation) Bill 2022: Consumer Data Right – Implementing Action Initiation
CDR	Consumer Data Right
consumer data rules	<i>Competition and Consumer (Consumer Data Right) Rules 2020</i>
Information Commissioner	Australian Information Commissioner
Tribunal	Australian Competition Tribunal

Chapter 1: CDR action initiation

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Outline of Chapter

- 1.1 The CDR framework was created to provide individuals and businesses with a right to access and share their data in sectors that have been designated by the Minister to be part of the CDR system.
- 1.2 This Bill introduces ‘action initiation’ reforms, which would enable CDR consumers to direct accredited persons to send instructions to initiate actions on their behalf. These actions could include things such as making a payment, opening and closing an account, switching providers and updating personal details (such as an address) across providers.
- 1.3 This expands the CDR from a data sharing scheme to a scheme that allows consumers to act on information they receive. For example, this could allow consumers to change energy providers following receipt of information about other providers that offer more suitable or lower cost services.
- 1.4 CDR action initiation builds on the existing infrastructure, objectives and principles underpinning the current data sharing framework, within sectors that are already designated for data sharing.

Context of amendments

- 1.5 In the existing CDR system, individuals and business consumers consent to data holding entities in designated sectors (e.g. banking and energy sectors) disclosing their information to accredited third parties of their choice within the CDR framework.
- 1.6 The *Inquiry into the Future Directions for the Consumer Data Right* recommended strengthening and deepening the CDR’s functionality and use through the implementation of third-party action initiation reforms.¹
- 1.7 Increasing functionality of the CDR to include action initiation empowers consumers to authorise, manage and facilitate actions securely in the digital economy. They would potentially be able to use the CDR to, for example, open and close an account, switch providers, apply for services or make payments where the CDR system extends to such actions. This will reduce complexity, time and cost for consumers looking to safely get better deals and services that meet their needs, unlock new business models, drive innovation and increase competition.
- 1.8 References to legislation in this Explanatory Material are to the *Competition and Consumer Act 2010* unless otherwise stated.

Comparison of key features of new law and current law

Table 1.1 Comparison of new law and current law

New law <i>(in addition to the application of the CDR to data)</i>	Current law
Consumers can use the CDR to have an action initiated on their behalf.	Consumers can use the CDR to access or direct that their data be shared with accredited data recipients.

¹ <https://treasury.gov.au/publication/inquiry-future-directions-consumer-data-right-final-report>

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

New law <i>(in addition to the application of the CDR to data)</i>	Current law
<p>The consumer requests an accredited action initiator to instruct an action service provider (entities that can receive instructions through the CDR to perform an action) on their behalf.</p> <p>The action service provider must perform the action if it is a type of action they ordinarily perform in the course of their business. They cannot discriminate against an instruction received through the CDR, compared to other channels.</p>	<p>The consumer consents to an accredited data recipient collecting their data from a data holder.</p> <p>The accredited data recipient then uses it to provide goods or services to the consumer (such as a comparison service or budgeting app).</p>
<p>The Minister can declare (by legislative instrument) types of actions that can be initiated under the CDR, and the data holders that are to be action service providers.</p>	<p>The Minister may designate (by legislative instrument) a sector of the Australian economy for CDR data sharing, specifying data holders and datasets.</p>
<p>Action service providers can only charge fees for processing requests received through the CDR if the Minister makes rules permitting it. They can charge fees for performing the action, subject to a non-discrimination principle.</p> <p>There are no constraints on accredited action initiators' fee charging.</p>	<p>Data holders may only charge fees for sharing requested data if permitted by the Minister's designation instrument.</p> <p>There are no constraints on accredited data recipients' fee charging.</p>
<p>Accredited persons must act efficiently, honestly and fairly when initiating CDR actions.</p>	<p>No equivalent.</p>
<p>The Minister has comprehensive rulemaking powers for action initiation, including on accreditation of action initiators, how actions are initiated, how requests are processed and factors relevant to assessing discrimination.</p>	<p>The Minister has comprehensive rule-making powers in relation to all aspects of the CDR including accreditation of data recipients, use, storage and accuracy of CDR data, the format of CDR data and the data standards.</p>
<p>The privacy safeguards are extended so that they apply to CDR data that flows in the instruction layer for action initiation.</p>	<p>The CDR includes a set of CDR specific privacy safeguards, modelled off the existing Australian Privacy Principles (APPs) but with additional obligations.</p>

Detailed explanation of new law

- 1.9 The Bill amends the *Competition and Consumer Act 2010* to extend the CDR to action initiation. This builds on the existing CDR data sharing system, where individuals and businesses can directly access or direct that their data be shared with certain participants.
- 1.10 In CDR action initiation, a consumer can request an accredited action initiator to instruct an action service provider on their behalf. The action service provider must carry out the requested action if it is a type of action they ordinarily perform in the course of their business. That is, they cannot discriminate between instructions received through the CDR and those received through other channels.
- 1.11 A consumer may use action initiation as a complement to CDR data sharing, typically using information gained from that process to select a desired action, or access action initiation on its own.
- 1.12 CDR action initiation is generally only concerned with the ‘instruction layer’ of an action, including:
- consumers’ requests to give instructions;
 - accredited action initiators giving instructions to action service providers;
 - how action service providers process instructions, and
 - communication from the action service provider back to the accredited action initiator (including after the action has been performed).
- 1.13 The CDR and its expansion to action initiation does not alter how the ‘action layer’ – that is, performing the action – operates. Existing laws and practices that govern the performance of actions are intended to continue unaffected.
- 1.14 The Bill amends the objects provision and simplified outline for Part IVD of the Act to convey these key concepts. [*Schedule #, items 1-3, sections 56AA and 56AB*]

Declared action types

- 1.15 The Minister may declare types of actions that can be initiated under the CDR. To do so, the Minister makes a legislative instrument declaring one or more types of actions for which an instruction may be given under the consumer data rules. Potential action types include specific types of payments (for example, variable recurring payments), open and closing accounts with utility providers, and updating contact details with specified providers. [*Schedule #, items 4 and 5, heading of Subdivision B of Division 1 of Part IVD and paragraph 56ACA(a)*]

- 1.16 The instrument also declares classes of data holders that are to be action service providers. These are the entities that will receive instructions through the CDR to perform an action. [*Schedule #, item 5, paragraph 56ACA(b)*]
- 1.17 The Bill defines such a declaration as a ‘CDR declaration’ The CDR and its expansion to action initiation do not alter how the ‘action layer’ – that is, performing the action – operates. CDR action initiation is generally only concerned with the ‘instruction layer’ of the action. The Bill also defines ‘CDR action’ as an action of a type so declared. [*Schedule #, item 34, section 56AMA*]
- 1.18 Under the existing CDR system, no data sharing rights or obligations take effect until the Minister designates the relevant sector of the Australian economy and makes rules enabling that data sharing.
- 1.19 Similarly, no action initiation rights or obligations take effect until the Minister declares the relevant action type and makes rules enabling that action initiation. This is how CDR action initiation will be rolled out in the economy.
- 1.20 Like the designation process for CDR data sharing, the declaration process allows for identification and prioritisation of action types that represent the most benefit for consumers and the Australian economy.
- 1.21 The Minister’s declaration instrument is subject to the scrutiny of Parliament and is disallowable.

Example 1.1 Declaration of variable recurring payment initiation

The Minister makes a legislative instrument declaring:

- variable recurring payments as a type of action for which an instruction may be given under the consumer data rules; and
- authorised deposit-taking institutions as the class of data holders that will become action service providers for variable recurring payments.

Authorised deposit-taking institutions would be required to participate in the CDR as action service providers, with obligations taking effect after the Minister makes relevant rules (from the time specified in those rules).

Minister’s tasks before declaring action types

- 1.22 The Minister must consider a series of matters before making a declaration. These are generally the same matters that already apply for a designation in CDR data sharing, including the interests of consumers, privacy, competition, innovation, intellectual property and regulatory impact. [*Schedule #, items*

6- 9, section 56AD (heading), subsection 56AD(1), subparagraph 56AD(1)(a)(vi) and paragraph 56AD(1)(b)]

- 1.23 The Act requires the Minister to consider certain matters before making a designation for data sharing that permits data holders to charge fees. These matters are excluded for action type declarations because the ability to allow fees in CDR action initiation is a matter for the consumer data rules instead. *[Schedule #, item 10, paragraph 56AD(1)(c)]*
- 1.24 The Minister would not need to consider whether to specify a gateway in relation to action type declarations because gateways are not a proposed feature of the CDR action initiation model.² *[Schedule #, item 11, paragraph 56AD(1)(d)]*

Role of the Secretary

- 1.25 As with data sharing designations under the CDR data sharing provisions, the Secretary of the Treasury must arrange for:
- an analysis of those same matters that the Minister must consider;
 - public consultation for at least 28 days;
 - consultation with the ACCC, the Australian Information Commissioner and any other person or body prescribed in regulations; and
 - the preparation of a report for the Minister (which must be published) about that analysis and consultation.

[Schedule #, items 13 and 14, heading of section 56AE and subsection 56AE(1)]

- 1.26 In addition, for an action type declaration, the Secretary of the Treasury must arrange for consultation with a person or body (if any) that the Secretary believes to be a regulator of the action type in question. This recognises that action types often traverse multiple sectors in the economy, such that it may not be possible to identify one primary regulator. *[Schedule #, item 16, subparagraphs 56AE(1)(c)(iii)-(iiia)]*
- 1.27 The Bill corrects a grammatical error in the description of how the public consultation is to occur. *[Schedule #, item 15, subparagraph 56AE(1)(b)(ii)]*

ACCC's role

- 1.28 When consulted in relation to both data sharing designations and action type declarations, the ACCC must analyse those same matters that the Minister must consider. Consideration of 'any other matters the Minister considers

² A gateway is a person, designated by the Minister, whose role it is to facilitate the transfer of data between certain participants in the CDR. This is a feature of the CDR data sharing system established by the Act, but which has not been enlivened for any designated sectors to date.

relevant’ is excluded because these will not necessarily be within the ACCC’s knowledge. *[Schedule #, items 17 and 18, section 56AEA]*

Information Commissioner’s role

- 1.29 Separately, the Minister must also consult the Information Commissioner about the likely effect of making the action type declaration on the privacy or confidentiality of consumers’ information. As with data sharing designations, the Information Commissioner must analyse the likely effect, report to the Minister and publish the report. *[Schedule #, items 12 and 19, subsection 56AD(3) and the heading of section 56AF]*

Proceeding to make the instrument

- 1.30 The Minister can only proceed to make the action type declaration once all of the above has taken place and at least 60 days after the Secretary of the Treasury publishes their report. The Minister must be satisfied that the Secretary of the Treasury has complied with all of these requirements. *[Schedule #, item 12, subsection 56AD(2)]*
- 1.31 As with the provisions that apply to data sharing designations, failure to comply with these tasks and requirements does not invalidate an action type declaration. *[Schedule #, item 20, section 56AH]*

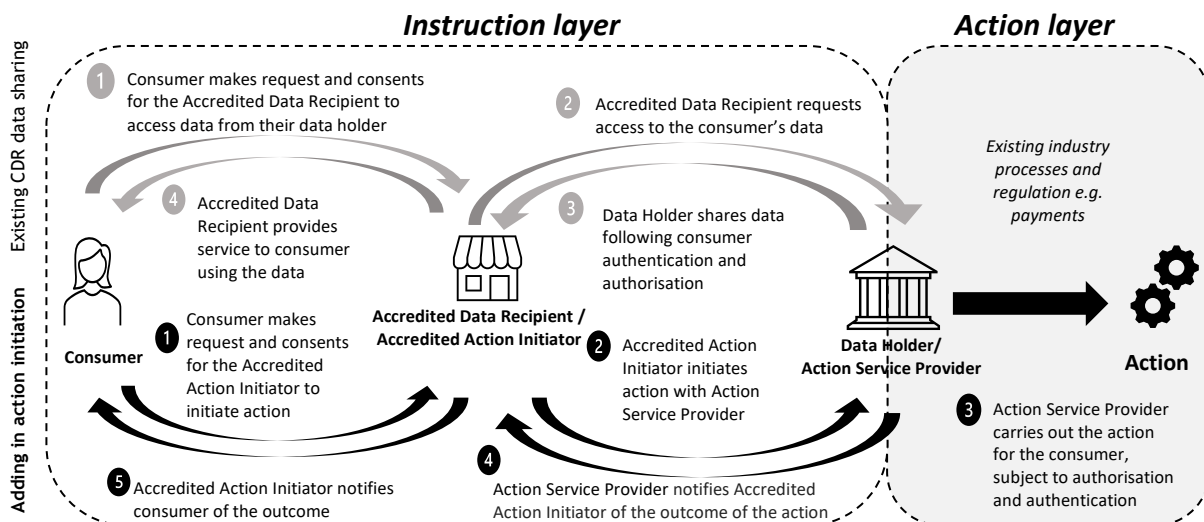
Participants in the CDR system

- 1.32 Existing participants in the CDR system include:
- data holders – persons who hold data specified in a designation instrument and meet relevant conditions in the Act, who may be required to disclose data under the CDR system; and
 - accredited data recipients – entities accredited to receive the data through the CDR system, that then use it to provide a good or service requested by the consumer (such as a budgeting app or comparison service).
- 1.33 CDR action initiation builds on the existing CDR data sharing framework and introduces two new types of participants:
- Action service providers – the entities that carry out an action initiated by an accredited action initiator on a consumer’s behalf; and
 - Accredited action initiators – the entities that, with the consumer’s consent, initiate an action by instructing the action service provider on the consumer’s behalf.

[Schedule #, item 34, sections 56AMB and 56AMC]

- 1.34 The Bill introduces the term ‘CDR action participant’ to group action service providers and accredited action initiators together. [*Schedule #, item 34, section 56AMD*]

Diagram 1.1 – Participant roles in CDR data sharing and action initiation



The grey arrows indicate the typical CDR data sharing process, while the black arrows indicate the typical CDR action initiation process.

Action service providers must also be data holders

1.35 All declared action service providers must also be data holders. If an entity has been designated by the Minister as a data holder for CDR data sharing, the Minister can declare the entity to be an action service provider and participation is mandatory. The Minister can only select from the existing pool of designated data holders.³ [*Schedule #, items 5 and 34, paragraphs 56ACA(b) and 56AMB(1)(a)*]

1.36 In any particular CDR interaction involving both data sharing and action initiation, it is possible that a single entity is both a data holder and an action service provider. That is, the entity may be doing some tasks in its capacity as a data holder and others in its capacity as an action service provider.

Example 1.2 Single entity acting in different capacities

A consumer requests that money be paid from their account to a relative. With the consumer's consent, XYZ Ltd checks the consumer's account balance with ABC Bank and confirms there is enough money in it. XYZ Ltd does this in its capacity as an

³ It is possible for the Minister to simultaneously designate data holders and declare them to become action service providers, by making a data sharing designation instrument and action type declaration instrument at the same time.

accredited data recipient and ABC Bank, consistent with an authorisation by the consumer, discloses the balance in its capacity as a data holder.

XYZ Ltd then instructs ABC Bank to make the payment. XYZ Ltd does this in its capacity as an accredited action initiator and ABC Bank performs the action (makes the payment) in its capacity as an action service provider. ABC Bank makes the payment using its existing payment infrastructure outside of the CDR, and subject to existing rules and processes.

- 1.37 Alternatively, it is possible that the data holder and action service provider could be two different entities, or there could even be multiple action service providers involved. For example, if a consumer uses action initiation to switch energy providers, both the outgoing and incoming providers are considered action service providers.

Example 1.3 Multiple action service providers

A consumer wants to find out the best deal for their circumstances and then switch energy providers. With the consumer's consent, XYZ Ltd obtains electricity usage data from the consumer's current provider, Utility A. XYZ Ltd does this in its capacity as an accredited data recipient and Utility A provides the data in its capacity as a data holder.

XYZ Ltd's analysis shows that Utility B offers the best deal for the consumer. On the consumer's behalf and with their consent, XYZ Ltd instructs Utility A to close the consumer's account and instructs Utility B to open an account for the consumer.

XYZ Ltd is instructing in its capacity as an accredited action initiator, Utility A closes the account in its capacity as an action service provider and Utility B opens an account also in its capacity as an action service provider.

- 1.38 Action service providers can receive data as part of action requests without needing to become an accredited data recipient, although they can choose to become an accredited data recipient. An action service provider may choose to become an accredited data recipient to give them more rights in terms of receiving data outside of an action. *[Schedule #, item 31, paragraph 56AK(e)]*

Voluntary action service providers

- 1.39 While all declared action service providers must also be data holders, other entities can apply on their own initiative to become voluntary action service providers. *[Schedule #, item 34, paragraph 56AMB(1)(b) and subsection 56AMB(2)]*

- 1.40 As explained at paragraph 1.108, the consumer data rules may specify eligibility criteria and the process for approving applicants to be voluntary action service providers. **[Schedule #, item 48, section 56BHA]**
- 1.41 Those rules may include, for example:
- a requirement for applicants to demonstrate that they perform actions outside the CDR of a comparable type to the declared action types they wish to participate in; and
 - information security requirements for applicants.

Accredited action initiators must also be accredited persons

- 1.42 All accredited action initiators must also be accredited persons, in the sense that they have been accredited to receive data, even if they have not yet in fact received any.
- 1.43 Accredited data recipients can choose whether to keep providing services just using data sharing or expand their business into action initiation (and seek accreditation to do so).
- 1.44 An accredited person becomes an accredited action initiator if their accreditation authorises them to initiate the type of action they wish to perform. The consumer data rules may include rules about accreditation, including about different levels of accreditation. **[Schedule #, item 34, section 56AMC and subsection 56BH(1)]**
- 1.45 If an accredited person becomes an accredited action initiator without already being an accredited data recipient, they will become an accredited data recipient if they receive CDR data under the consumer data rules for the purposes of preparing a valid instruction for an action. **[Schedule #, items 32 and 33, notes to section 56AK]**
- 1.46 Again, in any particular CDR interaction involving both data sharing and action initiation, it is possible that a single entity is both the accredited data recipient and accredited action initiator.
- 1.47 Alternatively, it is possible that the consumer chooses one entity as accredited data recipient to collect their data and analyse it for them, and another entity as accredited action initiator to instruct for the consumer’s desired action in response to that information.

Building on the existing CDR system

- 1.48 CDR action initiation builds on the existing infrastructure and participant profile for CDR data sharing.

- 1.49 This approach helps limit the scope of action initiation and reflects that many use cases for consumers will involve data sharing prior to action initiation. The crucial aim of the CDR is to access data and then be able to act on it.
- 1.50 This does not mean that a consumer must use CDR data sharing before accessing action initiation. It is possible for a consumer to approach or request an accredited action initiator to instruct for an action on their behalf, without the consumer first having their CDR data shared between a data holder and accredited data recipient.⁴ Instructions will likely include CDR data, although this is not a requirement. Instructions may also include some non-CDR data, such as data about the action service provider.

Example 1.4 Action initiation without CDR data sharing preceding it

A consumer wants to switch their mobile plan from Telco A to Telco B because they have moved to a rural area only serviced by Telco B. There is no need for data sharing to compare the options and work out the best deal, and the consumer is not transferring data from Telco A to Telco B.

The consumer requests XYZ Ltd to initiate the switch. XYZ Ltd does this in its capacity as an accredited action initiator, and Telco A and Telco B are both acting in their capacity as action service providers. Nobody takes any step in an accredited data recipient or data holder capacity.

CDR consumers

- 1.51 In the existing CDR system, a CDR consumer is the person or entity that holds the ‘rights’ to access the data held by a data holder and to direct that this data be shared with an accredited person. The consumer can be an individual or a business.
- 1.52 In CDR action initiation, the scope of who can be a CDR consumer is broader because a person or entity can seek to have an action initiated and performed on their behalf without CDR data sharing having previously occurred and without a pre-existing relationship with a data holder.

Definition of CDR consumer for a CDR action

- 1.53 Accordingly, the Bill introduces the concept of a ‘CDR consumer for a CDR action’. This describes a person if the performance of the CDR action in question is related to the supply of a good or service to the person or to one or more of the person’s associates. [*Schedule #, item 27, subsection 56AI(3A)*]

⁴ In Diagram 1.2, this would involve the black arrows occurring, but not the grey arrows.

- 1.54 The term ‘associate’ is defined with reference to the *Income Tax Assessment Act 1936* and includes a person’s relatives such as spouse, children or siblings.
- 1.55 Importantly, the definition covers future supplies. As a result, action service providers must act on instructions given on behalf of a prospective consumer, not just an existing one. For example, a consumer might be using the CDR to set up a new account with an action service provider with which they have no prior relationship (and that therefore does not hold the consumer’s CDR data).
- 1.56 In the scenario of a consumer using CDR action initiation to make a payment to a merchant in exchange for a good or service, the making of the payment is intended to be considered a service to the end consumer, even if the merchant is notionally also considered a consumer for the purposes of the definition.

Exclusions

- 1.57 Action service providers and accredited action initiators are not CDR consumers for a CDR action, unless they are using the CDR to request an action in their own right (that is, in their capacity as a business consumer that happens to also act as an action service provider or accredited action initiator at other times). [*Schedule #, item 27, paragraph 56AI(3A)(b)*]

Example 1.5 CDR action participants are not consumers, unless they are using the CDR in their own right

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

- 1.58 Regulations may also prescribe other exclusions from being a CDR consumer for a CDR action. [*Schedule #, item 27, paragraph 56AI(3)(c)*]
- 1.59 Separately, the consumer data rules may specify criteria to be an eligible consumer to make an action request.

Adjustments to definition of CDR consumer for CDR data

- 1.60 The Bill adds another circumstance where a person is considered a ‘CDR consumer for CDR data’, assuming other limbs of the definition are satisfied. This is where the CDR data is held by an entity holding it as an action service provider, or by someone else holding it on that entity’s behalf. [*Schedule #, items 24 and 25, subparagraphs 56AI(3)(b)(ia)-(ii)*]
- 1.61 This adjustment reflects that it is possible to have an action service provider who is not a data holder, in the form of a voluntary action service provider.
- 1.62 The Act contains an existing power for regulations to prescribe circumstances in which a person is excluded from being a ‘CDR consumer for CDR data’. To

assist comprehension, the Bill includes an amendment to describe these as ‘exclusions’ rather than ‘conditions’. **[Schedule #, item 26, paragraph 56AI(3)(d)]**

- 1.63 The Bill inserts subheadings to improve navigability of the section in the Act that defines ‘CDR data’, ‘directly or indirectly derived’ and ‘CDR consumer’. **[Schedule #, items 21 to 23, section 56AI]**

Reciprocal data holders

- 1.64 In the existing CDR system, an accredited data recipient will be a data holder for certain data where the entity holds data specified in the designation instrument and that data was not transferred to it under the consumer data rules (or derived from such data). Such an entity is known as a reciprocal data holder.
- 1.65 In CDR action initiation, it is also possible for a voluntary action service provider to become a reciprocal data holder. This occurs if a voluntary action service provider holds designated data relevant to the action class that they are performing in the CDR, either at the time they are approved to join or subsequently. **[Schedule #, items 28 to 30, subsection 56AJ(3)]**
- 1.66 Without this reciprocity principle for voluntary action service providers, those entities could sign up existing CDR consumers to them as a new service provider, with those consumers then losing their data sharing rights.

Example 1.6 Voluntary action service provider becomes a reciprocal data holder

A data sharing designation is in force, designating authorised deposit-taking institutions as data holders, and specifying data about credit provided to consumers as the dataset.

The Minister declares the switching of small loan providers as an action type, and authorised deposit-taking institutions as the data holders that are to become action service providers.

Lender A holds an Australian credit licence and provides credit to its consumers but is not an authorised deposit-taking institution.

Lender A wants borrowers to be able to switch and take out a small loan with them. Therefore, Lender A decides to apply to join the CDR as a voluntary action service provider (for the action type of switching small loan providers).

At the time it is approved to join, Lender A holds data about credit provided to consumers, which it obtained in the ordinary course of its business. This causes Lender A to become a reciprocal data holder for the CDR.

As such, Lender A must share CDR data validly requested by an accredited data recipient with consumer consent. This is especially important for consumers who switch to Lender A and take out a loan with them, so that those consumers can use the CDR to manage their finances and consider their options to switch to someone else.

Participant obligations

- 1.67 The Bill imposes a number of obligations on CDR action participants. Certain obligations are introduced to deal with wrongdoing specific to CDR action initiation; others are modelled on existing requirements applicable to CDR participants for CDR data.

Obligations of action service providers: the non-discrimination principle

- 1.68 Action service providers must uphold the non-discrimination principle. The non-discrimination principle operates in relation to performing instructions and charging fees.
- 1.69 Firstly, action service providers must not discriminate against an instruction merely because it arrives via the CDR. They must perform a validly requested action in relation to a CDR consumer if, having regard to criteria to be set out in the consumer data rules, they would ordinarily perform actions of that type in the course of their business in relation to that consumer.
- 1.70 This is not intended to prevent an action service provider applying extra security or other checks to CDR action requests on the basis that a third party is involved, provided it is consistent with existing practices. Businesses are also still allowed to refuse to perform an action, provided they do not discriminate against instructions that come through the CDR. [*Schedule #, item 66, section 56BZC*]
- 1.71 Secondly, when *performing CDR actions*, action service providers must not impose charges higher than their ordinary fees (worked out by reference to criteria to be set out in the consumer data rules). They must not charge any fees for *processing CDR action instructions* unless permitted to do so by the consumer data rules. An additional limitation is that if the ACCC has determined the amount of a fee that specified providers may charge for processing an instruction, or a method for working out the amount, those providers' fees must not exceed that amount. [*Schedule #, item 66, sections 56BZD and 56BZE*]

- 1.72 The ACCC’s power to determine fees chargeable by action service providers for processing CDR action instructions is discussed below in the section entitled ‘Regulator roles’.
- 1.73 The fee charging aspect of the non-discrimination principle would not prevent an action service provider offering a discount for processing action instructions received via the CDR, relative to what they would charge to process an instruction of that type received through another channel (for example, by phone). Similarly, the principle does not prevent an action service provider offering a discount for performing the actions.
- 1.74 Criteria relating to the two aspects of the non-discrimination principle will be set out in the consumer data rules. The criteria will be tailored appropriately to declared action types, once those action types are known.

Obligations of accredited persons

- 1.75 Accredited persons must act efficiently, honestly and fairly when initiating CDR actions. Initiating CDR actions includes proposing to give an instruction on behalf of a potential CDR consumer for a CDR action of that type. This obligation is based on those imposed on financial services licensees. Failing to act in this manner is a contravention of the Act, which can result in a civil penalty being imposed. **[Schedule #, item 66, section 56BZA]**
- 1.76 The Act includes a new safeguard requiring that accredited persons must only initiate CDR actions if requested to do so by a CDR consumer in accordance with the consumer data rules. When initiating actions, they must comply with all relevant requirements in the consumer data rules for giving instructions for CDR actions of that type. Failing to act in this manner is a contravention of the Act, which can result in a civil penalty being imposed **[Schedule #, item 66, section 56BZB]**

Obligations of all CDR participants: prohibition on holding out

- 1.77 The Bill repeals the Act’s existing criminal and civil prohibitions on holding out and replaces these with new provisions covering both CDR participants for CDR data sharing and CDR action participants. These new provisions are substantially the same as for current CDR participants, with updates to include the new CDR roles created by action initiation. **[Schedule #, item 66, sections 56BZI and 56BZJ; item 67]**
- 1.78 It is a criminal offence for a person to hold themselves out to be any of the following if that is not the case:
- an accredited person;
 - an accredited person holding an accreditation at a particular level;

- an accredited person holding an accreditation authorising the person to do something;
- an accredited data recipient of CDR data;
- an accredited action initiator for a type of CDR action;
- an action service provider for a type of CDR action;
- approved as an action service provider at a particular level;
- authorised to do something by their approval as an action service provider.

[Schedule #, item 66, subsection 56BZI(1)]

1.79 Where the offence of holding out is committed by a body corporate, it is punishable by a fine of not more than the greatest of three possible amounts, considering the benefit obtained from committing the offence and the size of the business, based on the body corporate’s annual turnover. If the court can determine the value of the benefit obtained, the maximum penalty is the greater of:

- three times the value of the benefit obtained; or
- \$10 million.

If the court cannot determine the value of the benefit obtained, the maximum penalty is the greater of:

- \$10 million; or
- 10 per cent of the annual turnover of the body corporate, for the 12-month period ending the month before the offence happened or began.

‘Annual turnover’ has the meaning given in Division 1 of Part IV of the CC Act. ***[Schedule #, item 66, subsections 56BZI(2) and (3)]***

1.80 If the offence is committed by a person other than a body corporate, it is punishable by no more than five years imprisonment or a fine of not more than \$500,000, or both. ***[Schedule #, item 66, subsection 56BZI(4)]***

1.81 A person who untruthfully holds themselves out to be something they are not in any of the ways mentioned above could also be subject to a civil penalty. ***[Schedule #, item 66, section 56BZJ]***

1.82 After the Bill’s commencement, the repealed holding out provisions will continue to apply to pre-commencement acts or omissions of CDR participants for CDR data. ***[Schedule #, item 68]***

General obligations

1.83 The Bill amends sections 56BN and 56BO, which prohibit misleading and deceptive conduct, to apply the prohibitions to CDR action initiation. The

additional prohibited conduct is conduct that misleads a person into believing that a person is a CDR consumer for a CDR action or is acting in accordance with a valid request or consent from a CDR consumer, when in fact they are not. *[Schedule #, items 62 to 65]*

Enforcement

- 1.84 The new action initiation specific offences described above will attract the operation of the enforcement and remedy provisions in Part VI of the Act. The existing regime in the Act allows courts the flexibility to deal with large and small business and serious and minor contraventions.
- 1.85 Setting the right penalties is integral to CDR action initiation. It is important that the penalties operate as a deterrent and are not seen as a cost of doing business.
- 1.86 Misuse of CDR data as a consequence of initiating CDR actions has the potential to cause harm to consumers and affect confidence in the system. Strong penalties will discourage misuse of CDR data and prevent this misuse from being seen as a cost of doing business.

Consumer data rules

- 1.87 The primary legislation contains the key framework provisions for the CDR scheme, and the Minister is empowered to make consumer data rules to deal with the specific steps involved in initiating actions, accreditation of action initiators and other related matters. *[Schedule #, item 35, subsection 56BA(1)]*
- 1.88 The Minister may make rules for different classes of CDR action participants, consumers, and types of actions within the CDR framework. *[Schedule #, item 36, paragraphs 56BA(2)(e) and (f)].*

Rules about accreditation

- 1.89 Within this power, the Minister may make rules concerning the accreditation of action initiators. Accreditation ensures the credibility and integrity of the participants, encouraging consumer confidence in the CDR system. *[Schedule #, item 38, paragraph 56BB(d)].*
- 1.90 Accordingly, the heading to the section concerning accreditation rules has been amended to reflect that the rulemaking power covers both data recipients and action initiators. *[Schedule #, item 41, heading of section 56BH]*
- 1.91 Given the different risks that may arise within different types of CDR action, accreditation may be granted at different levels responding to specified types of CDR actions, classes of CDR data or classes of applicants. *[Schedule #, items 42, 44 and 45, paragraph 56BH(1)(d) and notes to subsection 56BH(1)].*

- 1.92 Further to this, the Minister may make rules specifying what a person accredited at a particular level is authorised or not authorised to do. *[Schedule #, item 43, paragraph 56BH(1)(da)]*.
- 1.93 Grounds for variation, suspension or revocation of an accreditation could include failure to comply with a requirement in the Act or in the consumer data rules. This ensures compliance with the overarching framework as well as the rules which facilitate its everyday operation. *[Schedule #, item 46, subsection 56BH(3)]*

Review of decision-making processes for accreditation

- 1.94 Currently, where the consumer data rules provide for decisions to be made to vary, suspend, or revoke an accreditation, the rules must also permit applications to be made to the Administrative Appeals Tribunal for review of those decisions. To enhance the procedural fairness afforded by this requirement, it is extended to include the refusal to make such a decision. *[Schedule #, item 47, subsection 56BH(4)]*

Rules about participant roles and activities

- 1.95 Action initiation is the step required before an entity can perform the action, as it involves the ‘instructions’ an entity must receive and with which they must comply to perform a valid action. The accredited action initiator issues the instruction on behalf of the consumer, and the action service provider is responsible for following and acting upon the instruction.

Accredited action initiators

- 1.96 To facilitate the introduction of accredited action initiators into the CDR framework, the Minister is empowered to make rules about initiating CDR actions, including interactions between different parties in the action initiation framework. *[Schedule #, items 37 and 40, paragraph 56BB(ca) and subsection 56BGA(1)]*
- 1.97 The consumer data rules may include requirements on accredited action initiators for types of CDR actions relating to giving a valid instruction in specified circumstances, and may include rules about how a CDR consumer for a CDR action may make a valid request. *[Schedule #, item 42, paragraphs 56BGA(1)(a) and (c)]*
- 1.98 As explained above at paragraph 1.50, a particular action initiation may or may not be preceded by CDR data sharing – that is, a data holder sharing CDR data with an accredited data recipient. The rulemaking power allows the Minister to make differing rules for aspects of initiating actions, depending on whether CDR data sharing has preceded them. *[Schedule #, item 40, subparagraph 56BGA(1)(a)(iv)]*

- 1.99 Following from this, the consumer data rules may prescribe how an instruction is to be prepared for it to be a valid instruction for the performance of a specific type of CDR action, what matters the valid instruction may cover, and when such an instruction ceases to be valid. **[Schedule #, item 40, paragraph 56BGA(1)(b)]**
- 1.100 The consumer data rules may include rules on the authorisation of disclosure and use of CDR data in accordance with valid consent. Although disclosure and use often overlap, they are discrete concepts in the context of the CDR framework (and in other frameworks such as the Privacy Act). For example, a consumer may authorise an accredited action initiator to ‘use’ their data to compare their current service providers with other service providers, but this would not include a consent to ‘disclose’ that data. **[Schedule #, item 40, paragraphs 56BGA(3)(a) and (b)]**
- 1.101 The consumer data rules may also provide for how a CDR consumer may make a valid consent (for authorised disclosures or use of related CDR data) and types of disclosures, uses or other aspects it must cover, and may determine when a consent will cease to be valid. **[Schedule #, item 40, paragraph 56BGA(3)(c)]**
- 1.102 An accredited action initiator or action service provider may receive non-CDR data related to its functions. To address these circumstances, the Minister may make rules relating to information that is not CDR data but relates to a CDR action. **[Schedule #, item 40, paragraph 56BGA(1)(g)]**
- 1.103 Before making consumer data rules about fees at the instruction layer, the Minister must consider the following matters:
- if performers of actions of a particular type currently charge fees for processing instructions to perform such actions;
 - if the incentive to perform actions of that type would be reduced if fees could not be charged for processing such instructions;
 - the marginal cost of processing such instructions in accordance with the consumer data rules.
- [Schedule #, item 59, paragraph 56BP(aa)]**
- 1.104 The provisions about the Secretary, ACCC and Information Commissioner’s roles are amended as a result of the new matters the Minister is required to consider in relation to making rules about fees that may be charged at the instruction layer. **[Schedule #, items 60 and 61, paragraph 56BQ(a) and section 56BR]**

Action service providers

- 1.105 The Minister may make rules about how an action service provider for a type of CDR action processes a valid instruction. **[Schedule #, item 40, paragraph 56BGA(1)(d)]**

- 1.106 However, action initiation is a separate process to the action itself. The CDR framework is not intended to regulate how actions are performed. Each sector is already governed by laws and regulations specifically designed for that sector. Therefore, the Act explicitly provides that the consumer data rules cannot include rules requiring an action service provider for a type of CDR action to perform (or not perform) a CDR action of that type in a particular way. [*Schedule #, item 40, subsection 56BGA(4)*]
- 1.107 The consumer data rules may also allow an action service provider to charge fees at the instruction layer. At the action layer, action service providers can charge to execute CDR action requests as long as the charge does not exceed what they would ordinarily charge. This enables action service providers to pass on existing charges like home loan application fees without being considered to breach the non-discrimination principle. [*Schedule #, item 40, subsection 56BGA(2)*]

Voluntary action service providers

- 1.108 To facilitate the introduction of action service providers, the Minister is explicitly empowered to make rules concerning approvals of persons to be voluntary action service providers for types of CDR action. This could include a requirement to consider existing privacy protections that apply to person seeking to be a voluntary action service provider. Placing approval processes in the rules provides enough flexibility for the consumer data rules to adapt to the different types of actions that might be declared while facilitating sufficient oversight over new entrants. [*Schedule #, items 39 and 48, paragraph 56BB(da) and subsection 56BHA(1)*]
- 1.109 Further to this, the consumer data rules may confer functions or powers on the Minister for any matters concerning the approval processes for persons and conditions attached (retrospectively or prospectively) to such approvals. The approval criteria may also include payment of a fee, however this fee must not be such as to amount to taxation. [*Schedule #, item 48, paragraphs 56BHA(1)(j) and (2)(c)*]
- 1.110 Any functions or powers conferred on the Minister under the consumer data rules may be delegated to an SES level employee or acting SES level employee in the Department or in the ACCC. In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Minister. [*Schedule #, items 140 and 141, section 56GAA (heading) and subsections 56GAA(1A) and (1B)*]
- 1.111 This provision is needed because it is not practicable for such functions and powers to only be exercisable at the Ministerial level, but also recognises the significance of a person’s voluntary participation as a CDR action participant, by requiring the delegation to only be made to an employee at SES level. This is consistent with Senate Standing Committee for the Scrutiny of Bills Guidelines—Principle (ii).

1.112 To maximise participation and oversight of entrants within the CDR framework, the criteria may differ for each class of person, and may permit a person to be approved even if the person:

- is not a body corporate established by or under a law of the Commonwealth, of a State or of a Territory; and
- is neither an Australian citizen, nor a permanent resident (within the meaning of the *Australian Citizenship Act 2007*).

[Schedule #, item 48, subsection 56BHA(2)]

1.113 The consumer data rules may provide that the level at which approvals to be voluntary action service providers are granted may correspond to different risks associated with:

- specified types of CDR action;
- classes of CDR data; and
- classes of applicants for such approvals.

[Schedule #, item 48, paragraph 56BHA(1)(d)]

1.114 The consumer data rules may also acknowledge the level at which a person operates by specifying what a voluntary action service provider approved at a particular level is or is not authorised to do. ***[Schedule #, item 48, paragraph 56BHA(1)(e)]***

1.115 In this vein, the consumer data rules may also provide for approval to be granted with conditions, noting conditions may be imposed after the approval has been granted. The rules may also impose notification requirements on entities approved to be voluntary action service providers, including when such approvals are renewed, transferred, varied, suspended, revoked or surrendered. Rules may also be made about publishing details of such matters. ***[Schedule #, item 48, paragraphs 56BHA(1)(c), (g) and (h)]***

1.116 Similar to the processes in relation to accredited data recipients, where the consumer data rules provide for decisions to be made to vary, suspend, or revoke an accreditation, the rules must also permit applications to be made to the Administrative Appeals Tribunal for review of those decisions. ***[Schedule #, item 48, subsection 56BHA(5)]***

1.117 The consumer data rules may also provide that certified copies or extracts of specified published details of a matter are admissible in proceedings as prima facie evidence of the matter. ***[Schedule #, item 48, subsection 56BHA(6)]***

1.118 No compensation is payable if the approval is transferred, suspended, revoked, or surrendered in any way. ***[Schedule #, item 48, subsection 56BHA(3)]***

1.119 To manage the various implications of an approval being varied or suspended or ending, the Minister may make transitional rules for such events, including

about the disclosure, collection, use, accuracy, storage, security or deletion of CDR data. [*Schedule #, item 48, paragraph 56BHA(1)(i)*]

Rules about reporting, record keeping and auditing

- 1.120 To provide transparency, the consumer data rules may include a power for a CDR consumer of a CDR action to direct an accredited action initiator for CDR actions of that type to give reports. These reports may concern the consumer’s valid request made to the accredited action initiator under the consumer data rules or a valid instruction given by the accredited action initiator under the rules on the consumer’s behalf. [*Schedule #, item 49, paragraph 56BI(1)(ca)*]
- 1.121 Further to this, consumer data the rules also provide transparency in relation to action service providers by enabling a CDR consumer to direct an action service provider for CDR actions of that type to provide reports about their processing of valid instructions given on the consumer’s behalf. [*Schedule #, item 49, paragraph 56BI(1)(cb)*]
- 1.122 The consumer data rules may include requirements for action service providers and accredited action initiators to give the ACCC or Information Commissioner copies of required records or information from such records periodically or on request. A cross-reference in the relevant provision is revised for more precision. [*Schedule #, items 51 and 52, subsection 56BI(2)*]
- 1.123 The consumer data rules may also include requirements for action service providers and accredited action initiators to give reports to the ACCC or Information Commissioner. [*Schedule #, item 50, paragraph 56BI(1)(d)*]

Other amendments relating to the consumer data rules

- 1.124 The Bill inserts references to CDR action participants and action service providers, as appropriate, to ensure the following rulemaking powers extend to action initiation:
- rules about the manner in which participants may charge (or cause to be charged) a fee for a matter covered by the consumer data rules [*Schedule #, item 53, subparagraph 56BJ(f)(i)*]
 - rules requiring participants to have internal or external dispute resolution processes, that meet specified criteria [*Schedule #, item 54, paragraph 56BJ(g)*]
 - rules requiring agents of participants to do or not to do specified things when acting on behalf of the participant and within the agent’s actual or apparent authority [*Schedule #, item 55, subparagraph 56BJ(ia)(iv)*]

- rules requiring participants to do something on a particular day, in relation to CDR data generated or collected on an earlier day. [*Schedule #, item 56, paragraph 56BK(2)(e)*]
- 1.125 The Bill removes the power for regulations to exclude or limit specified consumer data rules having effect. This is because the power is redundant, with the rulemaking function having been transferred to the Minister in 2021. [*Schedule #, items 57 and 58, subsections 56BK(3) and (4)*]

Privacy safeguards

- 1.126 The privacy safeguards are comparable to protections for individuals contained in the APPs and provide consistent protections for consumer data of both individual and business enterprises. However, they contain more restrictive requirements on participants than those applying under the *Privacy Act 1988*. The Minister may make rules relating to the privacy safeguards in relation to an instruction or request relating to a CDR action [*Schedule #, item 40, paragraph 56BGA(1)(f)*].
- 1.127 The privacy safeguards will apply to an accredited person where the person is:
- an accredited action initiator for a type of CDR action; and
 - that person is or may become an accredited data recipient of CDR data.
- 1.128 This ensures proper regulation and oversight of CDR data.
- 1.129 The Bill extends the following safeguards to action service providers:
- privacy safeguard 1: open and transparent management of data;
 - privacy safeguard 3: requirements on when an entity can solicit CDR data from CDR participants;
 - privacy safeguard 4: dealing with unsolicited CDR data from participants in the CDR;
 - privacy safeguard 10: notifying of the disclosure of CDR data;
 - privacy safeguard 11: ensuring quality of the data; and
 - privacy safeguard 13: correction of CDR data
- [*Schedule #, items 73, 76, 79 and 83, sections 56ED, 56EF, 56EG, 56EM and 56EN*]
- 1.130 If privacy safeguards 11 and 13 apply to a data holder of CDR data or a person acting as an action service provider for a type of CDR person, neither APP 10 nor 13 will apply to those persons in relation to the CDR data. As privacy safeguards 11 and 13 concern the quality of CDR data and correction of CDR data respectively, it is suitable for action service providers for a type of CDR action to comply with the privacy safeguards instead. This is because an action

service provider’s ability to execute an instruction properly is contingent on whether the CDR data they receive is correct. *[Schedule #, item #70, paragraphs 56EC(4)(b) and (c)]*

- 1.131 The amendments emphasise a delineation between the instruction layer and the action layer. Action service providers are likely to collect data externally to the CDR framework because of pre-existing, everyday business practices involving the use and disclosure of information. Requiring action service providers to comply with the privacy safeguards and APPs in full could result in duplication with existing regulations. This would risk inefficiency and confusion. The existing APPs and the *Privacy Act 1988* would apply in those circumstances, subject to relevant thresholds in that Act.
- 1.132 The privacy safeguards have been introduced to facilitate further protection of information being used within the CDR framework. While action service providers should have the discretion to treat relevant data received in an action request consistently with their existing governance arrangements, there are instances where some privacy safeguards should apply. The purpose of extending these privacy safeguards to action service providers is to manage risks associated with the flow of CDR data in the instruction layer, and where risks are specifically attributable to the CDR.
- 1.133 The simplified outline of the division, and paragraphs of section 56EC have been amended to reflect the introduction of CDR participants. *[Schedule #, items 69 and 76, sections 56EA and 56EC]*

Application of privacy safeguards and APPs

- 1.134 The interaction between the privacy safeguards and the APPs is governed by section 56EC of the Act. Under this arrangement, if a particular privacy safeguard applies to a specified person in relation to their CDR data, the corresponding APP generally does not apply. This section has been updated to provide that the privacy safeguards are intended to apply to action service providers in the same manner that the privacy safeguards currently apply to data holders. Specifically:
- if privacy safeguards 1 or 2 apply to an accredited person in relation to CDR data—the corresponding APP does not apply;
 - if privacy safeguards 3 or 4 applies to an accredited person or a CDR action participant in relation to CDR data—the corresponding APP does not apply; and
 - if privacy safeguards 11 or 13 apply to a disclosure of CDR data by a data holder or action service provider—the corresponding APP does not apply.
- [Schedule #, item 70, paragraphs 56EC(4)(aa) to (c)]*

- 1.135 Note 1 to subsection 56EC(5) has been updated to accommodate the entrance of action service providers in the CDR framework. This clarifies that privacy safeguard 1 is intended to apply to action service providers in the same manner that it currently applies to data holders. [*Schedule #, item 72, paragraph 56EC(5)(c)*].

Consideration of CDR data privacy

Privacy safeguard 1 – Open and transparent management of CDR data

- 1.136 The object provision of privacy safeguard 1 has been amended to bring action service providers within its scope. Action service providers have been brought within the definition of ‘CDR entity’ for the purposes of this privacy safeguard. As action service providers will ultimately use and disclose CDR data according to instructions received by accredited action initiators, it is appropriate that they comply with privacy safeguard 1. [*Schedule #, item 73, subsection 56ED(1)*]
- 1.137 Action service providers are subject to all existing requirements of privacy safeguard 1 that apply to CDR entities generally. Additionally, an action service provider for a type of CDR action that has been, or may be, disclosed CDR data under the consumer data rules must have a policy with the following information:
- how a CDR consumer for the CDR data may access the CDR data and seek correction of the CDR data;
 - how a CDR consumer for the CDR data may complain about a failure of an action service provider to comply with Part IVD of the Act or the consumer data rules, and how the CDR entity will deal with such a complaint.

[Schedule #, item 74, paragraph 56ED(3)(c) and subsection 56ED(6A)]

- 1.138 It is appropriate for action service providers to comply with privacy safeguard 1 because an action service provider is required to ‘use’ CDR data in accordance with instructions provided by an accredited action initiator. Compliance with privacy safeguard 1 will provide further assurance that an action service provider manages CDR data in an open and transparent way. The requirement for the CDR entity to have a clearly expressed and up-to-date policy about CDR data management is a civil penalty provision. [*Schedule #, item 75, subsection 56ED(3)*].

Collecting CDR data

Privacy safeguard 3 – Soliciting CDR data

- 1.139 Privacy safeguard 3 has been amended to cover CDR action participants and reformatted to include a table. The requirements set out in table item 1 are existing requirements covering accredited persons seeking to collect CDR data

from data holders. The requirements in table items 2 and 3 reflect the extension of privacy safeguard 3 to accredited action initiators and action service providers. This safeguard is a civil penalty provision. **[Schedule #, item 76, subsection 56EF(1) and section 56EU]**

1.140 An accredited person must not seek to collect data from a CDR participant for the CDR data unless:

- a CDR consumer for CDR data has validly requested this under the consumer data rules for the purposes of a use or disclosure under the rules; and
- the accredited person complies with all other requirements in the consumer data rules for the collection of the CDR data from that other participant.

[Schedule #, item 76, subsection 56EF(1)]

1.141 An action service provider or an accredited action initiator must not seek to collect CDR data under the consumer data rules from another action participant unless certain conditions are met. The conditions are that a CDR consumer for the CDR data has requested this for the purposes of a valid instruction to be given:

- by one of the CDR action participants (as an action service provider) to the other; and
- under the consumer data rules; and
- for the performance of a CDR action of that type. A note is also included explaining the meaning of the words ‘the kinds of CDR action participants’.

[Schedule #, item 76, subsection 56EF(1)]

1.142 This ensures privacy safeguard 3 will be extended to action service providers and accredited action initiators.

1.143 Furthermore, an additional subsection clarifies that, for the purposes of the requirements discussed above, the collection could be direct or indirect.

[Schedule #, item 76, subsection 56EF(2)]

Privacy safeguard 4 – Dealing with unsolicited CDR data

1.144 The amendments extend the application of privacy safeguard 4 to accredited action initiators and action service providers. This privacy safeguard is a civil penalty provision.

1.145 Previously, privacy safeguard 4 only applied to accredited persons collecting CDR data from a CDR participant. The extension of this privacy safeguard will mean an accredited action initiator or the action service provider will be

required to delete the data they have incidentally collected if either of the following situations apply:

- an accredited action initiator collected unsolicited data from an action service provider within the CDR framework;
- an action service provider collected unsolicited data from an accredited action initiator within the CDR framework. [*Schedule #, item 76, paragraphs 56EG(1)(a) and (b)*]

1.146 However, there are two exceptions to this requirement. The collector need not destroy the data if:

- required to retain the data under an Australian law, or under a court or tribunal order; or
- the data was collected by an action service provider from an accredited action initiator, and the consumer data rules allow the data to be retained.

[*Schedule #, item 76, paragraphs 56EG(1)(c) and (d)*]

Privacy safeguard 5 – Notifying the collection of CDR data

1.147 The Bill adds a note to privacy safeguard 5 clarifying that the reference to an accredited data recipient collecting data in accordance with privacy safeguard 3 could be a reference to an accredited action initiator collecting data from an action service provider. The numbering of the notes has been amended accordingly. [*Schedule #, items 77 and 78, section 56EH*]

Dealing with CDR data

Privacy safeguard 10 – Use or disclosure of CDR data

1.148 The amendments insert multiple subsection headings in privacy safeguard 10 to clarify the roles and CDR participants to which specific aspects of privacy safeguard 10 apply. This privacy safeguard is a civil penalty provision. [*Schedule #, items 79 to 81, subsections 56EM(1), (2) and (3)*]

1.149 The amendments extend the application of privacy safeguard 10 to action service providers. In practice, this means an action service provider for a type of CDR action that is required or authorised under the consumer data rules to disclose CDR data to another person must take the steps specified in the consumer data rules to notify CDR consumers for the CDR data of the disclosure. This notification must cover the matters specified in the consumer data rules and be given to the CDR consumers that the consumer data rules require to be notified at or before the time specified in the consumer data rules. [*Schedule #, item 82, subsection 56EM(4)*].

Integrity of CDR data

Privacy safeguard 11 – Quality of CDR data

- 1.150** Privacy safeguard 11 has been updated to reflect the introduction of action service providers into the CDR framework. This means action service providers will be required to take reasonable steps to ensure CDR data is accurate, up to date and complete. Privacy safeguard 11 is a civil penalty provision. [*Schedule #, item 83, subsection 56EN(2A) and section 56EU*]
- 1.151 The requirement to advise a CDR consumer in accordance with the consumer data rules if a person makes a disclosure of the CDR data and later becomes aware that some or all of the CDR data was incorrect when it was disclosed is now extended to action service providers. [*Schedule #, item 83, subsection 56EN(3)*]
- 1.152 If a person is required to advise a CDR consumer for CDR data that some or all of their data was incorrect when it was disclosed, they must correct the data and disclose the corrected data:
- if requested to do so by the CDR consumer in accordance with the consumer data rules; or
 - if the disclosure was related to a CDR action, and the person is required to do so by the consumer data rules.
- [*Schedule #, item 83, subsection 56EN(4)*]
- 1.153 The note under privacy safeguard 11 has been updated to reflect its extension to action service providers. [*Schedule #, item 84, subsection 56EN(5)*]

Correction of CDR data

Privacy safeguard 13 – Correction of CDR data

- 1.154 Privacy safeguard 13 has been extended to apply to action service providers. This means if a CDR consumer gives a request to an action service provider to correct CDR data and the action service provider was earlier required or authorised under the consumer data rules to disclose the data, the action service provider must respond to the request by taking the steps specified in the consumer data rules. This privacy safeguard is a civil penalty provision. [*Schedule #, item 85, subsection 56EP(1) and section 56EU*]

Compliance with the privacy safeguards

- 1.155 The Bill extends the Information Commissioner’s power to assess whether an action service provider’s management of CDR data is in accordance with the privacy safeguards in the Act, or privacy-related aspects of the consumer data rules. [*Schedule #, item 86, subsection 56ER(1B)*]

- 1.156 The Information Commissioner may conduct assessments as the Information Commissioner sees fit, and may report to the Minister, ACCC or Data Standards Chair about an assessment. **[Schedule #, item 87, subsections 56ER(2) and (3)]**
- 1.157 The ability to investigate for a ‘privacy safeguard breach’ has been expanded to include breaches by action service providers of a type of CDR action. ‘Privacy safeguard breaches’, for the purposes of this section, include breaches of any of the following in relation to the CDR data of a CDR consumer who is an individual or a small business carried on by a CDR consumer for the CDR data:
- privacy safeguards;
 - consumer data rules to the extent they relate to one or more of the privacy safeguards or the privacy or confidentiality of CDR data;
 - sections 26WH, 26WK or 26W1 or subsection 26WR(10) of the *Privacy Act 1988* as they apply because of the requirements to notify for breaches.

[Schedule #, items 88-90, paragraph 56ET(3)(a) and subsection 56ET(4)]

- 1.158 The application of Part V of the *Privacy Act* is extended to action service providers, to facilitate investigating breaches of privacy in the CDR action initiation framework. **[Schedule #, items 91-93, subparagraphs 56ET(5)(b)(iii) and (iv) and paragraph 56ET(5)(d)]**
- 1.159 New civil penalty provisions have been introduced for contravention by action service providers of the following privacy safeguards:
- privacy safeguard 10: notifying CDR consumers for the CDR data of disclosure in a specified manner; and
 - privacy safeguard 11: taking reasonable steps to ensure the CDR data is accurate, up to date and complete, considering the purposes for which it is held.

[Schedule #, items 94 and 95, paragraphs 56EU(1)(i) and (j)]

Regulator roles

- 1.160 The Bill creates a new power for the ACCC to intervene by determining fees for processing instructions for types of CDR actions. The power to intervene will be triggered if the consumer data rules have declared that fees are chargeable for CDR actions of that type and the ACCC is satisfied that, absent its intervention, the relevant fee would be unreasonable. To ascertain a fee’s unreasonableness, the ACCC must have regard to criteria including the following:

- the marginal cost of processing the valid instruction in accordance with the consumer data rules;
 - whether a lower fee could result in an acquisition of property or reduce the incentive to perform actions of that type;
 - the likely effect of making the instrument on the interests of consumers, efficiency of relevant markets; promoting competition and data driven innovation.
- 1.161 A fee determined by the ACCC must not amount to taxation. [*Schedule #, item 66, section 56BZE*]
- 1.162 Fee determinations may specify classes of action service providers or particular action service providers. Determinations specifying particular action service providers are not of legislative character. In stating this, the Bill merely declares the effect of table item 19 of subsection 6(1) of the *Legislation (Exemptions and Other Matters) Regulation 2015*. [*Schedule #, item 66, section 56BZE*]
- 1.163 Fee determinations are reviewable by the Tribunal. Applications for review may be made within 21 days after the making of a determination. If an application is made, the Tribunal must review the determination, and, following that review, may make a decision affirming, setting aside or varying the determination. For the purposes of the review, the Tribunal may perform all the functions and exercise all the powers of the ACCC. Division 2 of Part IX of the Act does not apply in relation to reviews of fee determinations. [*Schedule #, item 66, sections 56BZF to 56BZH*]
- 1.164 The ACCC, or another person appointed under the Act, is to be the CDR Accreditor. This entity was formerly known as the Data Recipient Accreditor. Its role has been extended to enable it to accredit CDR action participants. Minor amendments have also been made to change references from Data Recipient Accreditor to CDR Accreditor. [*Schedule #, items 98-106 and 108-116, sections 56BH, 56BI, 56CA, 56CB, Subdivision C of Division 3 of Part IVD, heading, sections 56CG, 56CH, 56CI and 56CJ*]
- 1.165 The appointment of the Data Recipient Accreditor in force immediately before the commencement of this Schedule continues on and after that commencement as if it were an appointment of the CDR Accreditor, and actions taken by or in relation to the Data Recipient Accreditor before that commencement, are deemed to have been taken by or in relation to the CDR Accreditor after that commencement. [*Schedule #, item 107*]
- 1.166 A new definition for the expression *CDR Accreditor* has been added to the general interpretation section in the Act, and the definition for the expression *Data Recipient Accreditor* has been removed, as this term will no longer be used in the Act. [*Schedule #, items 96 and 97, subsection 4(1)*]

Consequential and minor amendments

- 1.167 Definitions for the new expressions: *accredited action initiator*, *action service provider*, *CDR action*, *CDR action participant*, *CDR declaration* and *voluntary action service provider* have been added to the general interpretation section in the Act, and a minor amendment is made to a cross reference in the existing definition of *CDR consumer*. [*Schedule #, items 117-119, subsection 4(1)*]
- 1.168 Instruments designating sectors of the Australian economy may specify classes of information and people who hold that information. A minor amendment is made to clarify that subclasses of that information do not need to be specified in relation to the people who hold the information. [*Schedule #, items 120-121, subsection 56AC(2)*]
- 1.169 Minor amendments are made to clarify terminology in relation to CDR consumers requesting deletion of data and to correct a typographical error about persons acting on behalf of accredited persons, designated gateways and data holders. [*Schedule #, items 130 and 131, subsection 56BAA(1) and subparagraph 56BD(1)(b)(v)*]
- 1.170 Currently, conduct done by or to agents of CDR entities (data holders, accredited persons and designated gateways) is taken to have been done by or to that entity. This is extended to include agents of action service providers for a type of CDR action. [*Schedule #, item 129, paragraph 56AU(3)(d)*]
- 1.171 The CDR provisions are intended to operate concurrently with other legislative regimes where there is no direct inconsistency, and an amendment is made to the provision that sets this out to clarify that it applies to other Commonwealth laws, in addition to those of the States and Territories. [*Schedule #, item 142, section 56GAB*]
- 1.172 The meaning of *CDR entity* for the purposes of the constitutional basis for the CDR framework is amended to include action service providers for a type of CDR action. [*Schedule #, item 149, subsection 56GF(8)*]
- 1.173 As described above, the current prohibitions on holding out in the CDR framework are repealed and replaced with new provisions dealing with these matters for CDR data sharing and CDR actions. The Bill makes consequential amendments to the provisions in the Act that deal with enforcement and remedies, prosecutions and declarations and orders that are needed following this repeal and replacement. [*Schedule #, items 150-178 and 180-183, subsection 75B(1), subparagraph 76(1)(a)(ib), paragraph 76(1A)(b), paragraph 76(1B)(ab), subsections 76B(2)(3) and (4), paragraph 76B(5)(a), subparagraphs 79A(1)(a)(i), 79B(a)(ii) and 80(1)(a)(iib), paragraphs 80(9)(a) and (b) and 82(1)(c), subparagraphs 83(1)(a)(ii) and (b)(iii), paragraphs 84(1)(a) and (b) and (3)(a) and (b), subsections 86(1A) and (2), paragraph 86A(1)(b), subsection 86C(4), paragraph 86D(1)(b), subsection 86D(1A), paragraphs 86E(1)(a) and (1A)(a), 87(1), paragraphs 87(1A)(a),*]

(b), (baa) and (ba) and subsection 87(1C), paragraph 163(2)(a), subsection 163A(4B), paragraph 163A(4C)(a) and subsection 163A(4D)]

Extraterritorial operation

- 1.174 The current extraterritorial operation of the CDR provisions about data sharing is extended to apply to CDR actions that are performed in Australia, including by foreign persons, and to acts or omissions relating to CDR actions performed outside Australia if the act or omission:
- is by or on behalf of an Australian person;
 - occurs wholly or partly in Australia or on board an Australian aircraft or ship; or
 - occurs wholly or partly outside Australia and an Australian person suffers, or is likely to suffer, financial or other disadvantage as a result.
- 1.175 Definitions for the expressions *Australian aircraft* and *Australian ship* are also added, taking the meaning those expressions are given in the *Criminal Code*. [*Schedule #, items 122-125, section 56AO*]

Participation by State or Territory entities

- 1.176 Commonwealth, State or Territory government entities may participate, in their capacity as a CDR consumer, in the CDR in relation to data sharing. This is extended to include participation as a CDR consumer for a type of CDR action. However, the manner in which the CDR provisions currently apply to State and Territory government entities is not changed in any respect other than in their capacity as a consumer. [*Schedule #, item 126, subsection 56AR(3) and note to item 128*]
- 1.177 In addition, the current application of the CDR provisions to Commonwealth government entities is amended to allow government entities to participate as an entity operating as an accredited person or an action service provider for a type of CDR action. [*Schedule #, items 127 and 128, subsection 56AR(5)*]

External dispute resolution schemes

- 1.178 The Minister may currently recognise external dispute resolution schemes for the resolution of disputes relating to designated sectors for CDR data and participants in relation to CDR data sharing. This is extended to include disputes in relation to types of CDR action, CDR action participants and CDR consumers for CDR actions. [*Schedule #, items 132-134, subsection 56DA(1)*]

Data standards

- 1.179 The current provisions that allow the Data Standards Chair to make data standards about certain matters to do with CDR data sharing, is extended to allow data standards to be made about similar matters to do with giving and preparing valid instructions, and in relation to action service providers and types of CDR actions. **[Schedule #, items 135-138, subsection 56FA(1) and section 56FB]**
- 1.180 In addition, the legal effect of binding data standards is extended to provide that where such a standard applies to an action service provider and accredited action initiator for a type of CDR action, it constitutes an enforceable contract between those persons. **[Schedule #, item 139, subsection 56FD(2)]**

Referring to external instruments

- 1.181 The consumer data rules, regulations and instruments that designate sectors for data sharing are able to apply, adopt or incorporate material in any other instrument or writing as in force at a particular time or from time to time. This is extended to apply to declarations for types of CDR actions. **[Schedule #, item 143, paragraph 56GB(1)(aa)]**
- 1.182 It is important to have this flexibility for delegated legislation in the CDR because of the broad range of sectors the CDR could apply to and the corresponding range of standards, codes and other regulatory instruments that may have relevant material that it may be necessary to incorporate into an instrument in CDR.

Protection from liability

- 1.183 Currently, data holders, accredited data recipients and designated gateways will not be liable to a civil or criminal action against them where they allow access to CDR data in good faith and in compliance with Part IVD of the Act, the consumer data rules and the regulations. A person wishing to rely on this protection bears the evidential burden of establishing that there was a reasonable possibility they disclosed the information in good faith in accordance with the CDR requirements. This is appropriate as that person will know if they received evidence of a valid consent or request and otherwise met their CDR obligations.
- 1.184 This protection is extended to apply to accredited action initiators and action service providers for a type of CDR action. The circumstances of the CDR actions that a person could engage in that would be covered by the protection are outlined, as well as that the action should be in compliance with CDR provisions and any Commonwealth, State or Territory law prescribed by the regulations. For action service providers for a type of CDR action, the relevant conduct is the processing of the instruction received under the CDR, rather

than the actual performance of the action, which does not occur within the CDR. *[Schedule #, items 144 and 145, section 56GC (heading) and subsection 56GC(1)]*

Exemptions that may be made

- 1.185 The ACCC may exempt a person from some or all of the provisions of Part IVD of the Act, the consumer data rules or regulations in respect of particular CDR data, or one or more classes of CDR data. This is extended to allow such an exemption from a particular CDR action, or one or more types of CDR action. *[Schedule #, item 146, section 56GD(2)]*
- 1.186 Regulations may be made that exempt a particular person or class of persons, in relation to particular CDR data or one or more classes of CDR data, from some or all of the provisions of Part IVD of the Act, the consumer data rules or regulations. Regulations may also declare that any such provisions apply as if specified provisions were omitted, modified or varied as set out in the declaration. This is extended to allow such exemptions and declarations to be made in relation to a particular CDR action or one or more types of CDR action. *[Schedule #, item 147, subsection 56GE(2)]*
- 1.187 Regulations made under subsection 56GE(2) of the Act immediately before the commencement of Schedule # continue in force and may be dealt with as if made under that subsection after that commencement. *[Schedule #, item 148]*

Disclosure to foreign agencies

- 1.188 The ACCC may disclose information it obtains under the Act or the consumer data rules to an agency of a foreign country that has the function of supervising or regulating disclosure of similar information to that covered by a designation instrument made under subsection 56AC(2) of the Act. This is extended to include agencies in foreign countries that have the function of supervising or regulating types of actions similar to declared types of actions for which instructions may be given under the consumer data rules. *[Schedule #, item 179, subsection 157AA(3)]*