

EXPOSURE DRAFT EXPLANATORY MATERIALS

Issued by authority of the Assistant Treasurer and Minister for Financial Services

Competition and Consumer Act 2010

Competition and Consumer (Consumer Data Right) Amendment Rules (No. 1) 2024

Section 56BA of the *Competition and Consumer Act 2010* (the Act) provides that the Minister may, by legislative instrument, make consumer data rules for designated sectors in accordance with Part IVD of the Act.

A ‘designated sector’ is a sector of the Australian economy designated, by legislative instrument made under section 56AC of the Act, as subject to the consumer data right (CDR). The designation instrument for a sector also specifies the data (CDR data) that is subject to the CDR and the classes of persons who hold the CDR data. Those persons, and certain other classes of persons covered by section 56AJ of the Act, are ‘data holders’ of CDR data in that sector.

The CDR framework is set out in Part IVD of the Act and the *Competition and Consumer (Consumer Data Right) Rules 2020* (the CDR Rules). Under the CDR, individuals and businesses (CDR consumers) may, through trusted third parties, request access to certain data sets relating to them. Data holders are required or authorised to provide access to the data, subject to controls ensuring the data’s quality, security, privacy and confidentiality. Data holders are also required or authorised to disclose publicly available information on specified product offerings to CDR consumers or other persons.

Rules applying generally across all designated sectors are set out in Parts 1 to 9 of, and Schedules 1 and 2 to, the CDR Rules. Sector-specific rules are set out in Schedule 3 (relating to the banking sector) and Schedule 4 (relating to the energy sector).

In addition to the CDR Rules, data standards are developed and maintained by the Data Standards Body and made by the Data Standards Chair in accordance with the CDR Rules. The data standards underpin the technical delivery and consumer experience of the CDR. This includes imposing requirements for data security, language, and format.

The *Competition and Consumer (Consumer Data Right) Amendment Rules (No. 1) 2024* (the Amending Rules) amends the CDR consent process and introduces several other operational enhancements to the CDR Rules.

Consent amendments

Consent is the primary basis on which a data recipient may collect, use and disclose CDR data for which there are one or more consumers. The amendments to the consent process seek to improve the consumer experience by:

- extending the data minimisation principle to disclosure, ensuring privacy protection coverage for consumers;
- enabling consumers to provide multiple CDR consents with a single action;
- allowing data recipients to pre-select the particular consent elements that would be reasonably needed to provide the requested good or service;

- simplifying the information that data recipients are required to provide to the consumer at the time of seeking the consumer's consent;
- allowing data recipients to consolidate the delivery of 90-day notifications to minimise the notification fatigue that consumers may currently experience;
- requiring data recipients to provide consumers with information about all supporting parties who may access a consumer's data at the time a consumer's consent is sought; and
- requiring data recipients to delete redundant CDR data unless a consumer has given a de-identification consent.

Operational enhancements

The operational enhancements provide changes to support use case development and make it easier for business consumers to use the CDR.

The Amending Rules make changes to the rules of general application, as well as the banking and energy sector rules. Such changes include the following:

- Requiring data holders to provide a straightforward process for consumers to appoint a nominated representative and offer an online process to allow account administrators to be appointed as nominated representatives.
- Allowing accredited authorised deposit-taking institutions (ADIs) to hold CDR data as a data holder where a consumer has applied to acquire a product from an ADI. Among other things, ADIs must notify the consumer that the CDR data collected will be held by the ADI as a data holder.
- Clarifying that a CDR representative principal must ensure their CDR representative(s) comply with consumer data standards as if they were an accredited data recipient (ADR).
- Removing the obligation for data holders to provide account holders with an online service that allows them to stop CDR data being disclosed to a particular ADR in response to data sharing requests made by secondary users.
- Providing a trial products exemption in the energy sector, similar to the existing exemption in the banking sector.

Further information

Details of the Amending Rules are set out in [Attachment A](#).

Before making consumer data rules, the Minister must comply with the requirements in section 56BP of the Act. First, section 56BP requires the Minister to have regard to certain matters set out in section 56AD. These include the likely effect of making the rules on the interests of consumers, the efficiency of relevant markets and the privacy and confidentiality of consumers' information, and the likely regulatory impact of allowing the rules to impose requirements. The Minister will consider each of the relevant matters when making the Amending Rules.

Second, the Minister must, before making consumer data rules, be satisfied that the Secretary of the Department has arranged for consultation and the making of a report in accordance with section 56BQ of the Act.

Third, the Minister must wait at least 60 days after the day public consultation begins before making consumer data rules.

The Amending Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amending Rules commence on the day after they are registered on the Federal Register of Legislation.

In citations of provisions in this explanatory material, unless otherwise specified, references to rules are to the CDR Rules.

Details of the *Competition and Consumer (Consumer Data Right) Amendment (2024 Measures No. 1) Rules 2024*

Section 1 – Name

This section provides that the name of the instrument is the *Competition and Consumer (Consumer Data Right) Amendment (2024 Measures No. 1) Rules 2024* (the Amending Rules).

Section 2 – Commencement

This section provides that the Amending Rules commence the day after they are registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Amending Rules are made under section 56BA of the *Competition and Consumer Act 2010* (the Act).

Section 4 – Schedules

This section provides that each instrument that is specified in the Schedules to this instrument are amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

Schedule 1 – Amendments

Amendments relating to consent

Consent bundling

1. The Amending Rules provide that accredited persons and CDR representatives cannot include (or ‘bundle’) direct marketing or de-identification consents, or any type of consent that is not within the CDR Rules, with a request for a CDR consumer’s consent to collection, use or disclosure of CDR data. However, collection, use and disclosure consents under the CDR Rules may be bundled together in a single request, and in such a way that the consumer can agree to all consents with a single action.
[Schedule 1, items 44 and 74, rules 4.10 and 4.20D]
2. These provisions as amended, combined with the existing obligation on an accredited person or CDR representative to inform the CDR consumer about why each consent is reasonably needed, mean that each bundled consent will still need to be separately identified in the request.
3. In addition, the data minimisation principle in rule 1.8 continues to apply to consent requests that are presented in a bundled manner. This means the accredited person or CDR representative may only bundle collection, use and disclosure consents that are reasonably needed to provide the good or service that the CDR consumer has requested.

Pre-selecting consent elements

4. Rules setting out how accredited persons and CDR representatives seek CDR consumers' consent are amended to remove the requirement for the consumer to actively select:

- the types of data a collection or disclosure consent applies to;
- who the data may be disclosed to;
- the specific uses for the collected data; and
- the period of the consent.

[Schedule 1, items 45 to 47, 50, 51, 75 to 77, 80 and 82, paragraphs 4.11(1)(a), (b) and (ba), subparagraph 4.11(1)(d)(ii), subrule 4.11(1) (example), subrule 4.11(1A), paragraphs 4.20E(1)(a), (b) and (c), subparagraph 4.20E(1)(e)(ii), subrule 4.20E(1) (example) and subrule 4.20E(1A)]

5. The requirement for the consumer to clearly indicate those things is retained.
6. The prohibition on presenting pre-selected consent options to CDR consumers is also amended so that only direct marketing and de-identification consents are prohibited from being presented as pre-selected options.

[Schedule 1, items 52, 61, 83 and 91, subrules 4.11(2), 4.12C(2), 4.20E(2) and 4.20I(2)]

7. These amendments will enable an accredited person or CDR representative, when seeking a CDR consumer's consent, to present the consumer with the data types and uses, data recipients and the consent durations that are needed to provide the good or service the consumer has requested, and the consumer is able to agree to all with a single action.
8. This will help avoid the inefficiencies produced by requiring a CDR consumer to individually select datasets, data recipients and consent periods in a situation where the good or service the consumer has requested can only be provided if the accredited person or CDR representative has the dataset access enabled by those consents.
9. As the data minimisation principle in rule 1.8 applies to any collection, use or disclosure (following the amendment to extend the principle to disclosure) of a consumer's CDR data, whether the relevant consents were asked for separately, or pre-selected, the accredited person or CDR representative can still only collect, use or disclose the data as reasonably needed to provide the good or service the consumer has requested.
10. Presenting pre-selected consent elements will only be permissible where all elements presented are reasonably needed to provide what the consumer has asked for, and the accredited person or CDR representative is required to inform the consumer about why each element is needed when requesting the consents.
[Schedule 1, items 53 and 84, paragraphs 4.11(3)(caa) and 4.20E(3)(fa)]
11. The amendments do not prevent accredited persons and CDR representatives from asking a consumer to actively select individual consent elements.

Data minimisation principle

12. Rule 1.8 is amended to extend the data minimisation principle to disclosure of CDR data.
[Schedule 1, item 39, subrule 1.8(2)]
13. This means that any use or disclosure of CDR data cannot exceed what is reasonably needed by the accredited person or CDR representative in order to provide the requested goods or services or to effect another permitted use or disclosure.
14. For clarity and consistency with current drafting practice, the note to rule 1.8 is removed.
[Schedule 1, item 38, rule 1.8 (note)]
15. Amendments are made to subrules 4.12(2) and 4.20F(2), and to the notes to rules 4.3 and 4.3A, to reflect the extension of the data minimisation principle to disclosure.
[Schedule 1, items 41 to 43, 60 and 90, subrules 4.3(2) and (2A) (note 2), 4.3A(2) (note 3) and (3) (note 2), 4.12(2) and 4.20F(2)]

Redundant data

16. The rules dealing with how consumers' CDR data must be treated when it becomes redundant are amended to remove the options for:
 - consumers to elect to have redundant data deleted; and
 - redundant data to be deleted or de-identified in accordance with an accredited person's CDR policy.*[Schedule 1, items 48, 49, 56, 62, 63, 65, 78, 79, 87, 92, 94 and 105, subparagraph 4.11(1)(d)(ii), paragraphs 4.11(1)(e) and (3)(g) and (h), subrule 4.13(3), rule 4.15, Subdivision 4.3.4, subrule 4.18A(2), subparagraph 4.20E(1)(e)(ii), paragraphs 4.20E(1)(f) and (3)(m) and (n), subrule 4.20J(7), Subdivision 4.3A.7 and subrules 4.20Q(2) and 7.12(1)]*
17. Instead of these options, the Amending Rules provide a single mechanism that requires accredited persons and CDR representatives to delete a CDR consumer's CDR data when it becomes redundant unless the consumer gave a de-identification consent in relation to the data, and that consent is current. This is subject to existing rule 1.17A that requires redundant CDR data to which paragraph 56BAA(2)(a), (b) or (c), or 56EO(2)(b) or (c) of the Act applies, be retained until the relevant paragraph no longer applies. Those paragraphs deal with CDR data required to be retained under another Australian law or for the purposes of legal proceedings.
[Schedule 1, items 73 and 102, Subdivisions 4.3.6 and 4.3A.9]
18. This will simplify the requirements regarding redundant CDR data, improving efficiency and certainty for accredited persons and CDR representatives in complying with their CDR data treatment obligations, and enhancing data security for CDR consumers.
19. Requirements about the information an accredited person or a CDR representative must give the consumer when seeking a de-identification consent, have been amended to reflect the fact that CDR data to which a current de-identification

consent applies will not be automatically deleted when it becomes redundant.

[Schedule 1, items 64 and 93, paragraphs 4.15(d) and 4.20L(d)]

20. The CDR policies maintained by accredited persons will also need to provide information about how they delete redundant data, and that CDR data to which a current de-identification consent applies will not be automatically deleted when it becomes redundant.

[Schedule 1, items 103 and 104, subparagraphs 7.2(4)(k)(ii) and (iii) and paragraph 7.2(4)(m)]

Withdrawing consent

21. The Amending Rules remove the requirement that, when being asked to give a consent, a CDR consumer must also be informed about how to withdraw a consent and the consequences of doing so. This information will still be given in the CDR receipt provided when a consent has been given, in the notifications given about current consents, and when a collection consent expires but a use or disclosure consent remains current.

[Schedule 1, items 56 and 87, paragraphs 4.11(3)(g) and 4.20E(3)(m)]

22. This will help streamline the process for requesting and giving consents, and reflects a more intuitive approach for the consumer who will only need to think about the process for withdrawing their consent at the point they are, or may be, considering doing so.

Notifications about current consents

23. The CDR Rules require, where a collection or use consent is current, but 90 days have passed since the CDR consumer either gave or amended the consent, used their consumer dashboard or received a notification under the same rule, the consumer to be notified that the consent is still current.

24. Minor amendments are made to allow, where these circumstances apply to more than one current consent, an accredited person or CDR representative to give the consumer a single notification setting out all the current consents. In other words, a separate notification does not need to be given for each consent. In addition, the notifications must be given in accordance with the consumer data standards.

[Schedule 1, items 69 to 72, 98 to 101 and 106, rules 4.20 and 4.20U and paragraph 8.11(1)(fb)]

25. Amendments are also made to extend the notification requirements to include disclosure consents, and to remove the reference to a consumer electing to have their redundant CDR data deleted.

[Schedule 1, items 67, 68, 96 and 97, paragraphs 4.18A(1)(b), subrule 4.18A(2), paragraph 4.20Q(1)(b) and subrule 4.20Q(2)]

Direct marketing and de-identification consents

26. A note is added to clarify that direct marketing and de-identification consents may consist of either a use or disclosure consent, or a combination of use and disclosure consents. This is designed to clarify how these consents are to be treated under the CDR Rules, consistently with the original intention.

[Schedule 1, item 40, subrule 1.10A(1) (note)]

27. When an accredited person or CDR representative is seeking a direct marketing consent, they must inform the CDR consumer about how the CDR data covered by the consent may be used or disclosed.
[Schedule 1, items 54, 58, 59, 85, 88 and 89, paragraph 4.11(3)(da), subrule 4.11(3) (notes), paragraph 4.20E(3)(ga) and subrule 4.20E(3) (notes)]

Information about supporting parties

28. Rules requiring information to be provided when requesting a CDR consumer's consent about any outsourced service providers or sponsors that will be collecting and disclosing CDR data under the consent are amended so that the requirements are consistent. This will improve efficiency and transparency for consumers when consents are requested.
[Schedule 1, items 55, 57 and 86, paragraphs 4.11(3)(f) and (i) and 4.20E(3)(k)]

CDR receipts

29. The requirements regarding CDR receipts are amended so that the CDR Rules only require CDR receipts to be given in accordance with the data standards. The existing timing requirements are retained, that is, a CDR receipt must be given as soon as practicable after a CDR consumer gives, amends or withdraws a collection use or disclosure consent. In addition, the existing requirements regarding CDR receipts will continue to apply until the relevant data standards are made and in effect.
[Schedule 1, items 66, 95, 106 and 109, rules 4.18 and 4.20O, paragraph 8.11(1)(fa) and rules 503 and 504]
30. This simplification of obligations under the CDR Rules and allowing the data standards to specify the information that must be included in receipts will improve consistency and compliance in the provision of CDR receipts.

Miscellaneous amendments

31. An incorrect reference to 'accredited data recipient' is changed to 'CDR representative' in note 3 to subrule 4.20E(1).
[Schedule 1, item 81, subrule 4.20E(1) (note 3)]
32. Minor amendments are made to the provisions relating to consumer dashboards provided by accredited persons, to remove the expression 'functionality', and clarify the wording in line with current drafting practice.
[Schedule 1, items 8, 13 to 15, 24 and 25, rule 1.11, paragraph 1.14(1)(c), subrules 1.14(2A) and (4) and paragraphs 4.12B(2)(a) and 4.20H(2)(a)]
33. Rule 9.8 (civil penalty provisions) is amended to take into account the changes to the current consent notification requirements in rule 4.20. *[Schedule 1, item 107, rule 9.8]*

Operational enhancements

Nominated representatives

34. To improve the ability of eligible CDR consumers that are not individuals or that are partners in a partnership to nominate a nominated representative, the Amending

Rules require that data holders offer a service which a CDR consumer can use to nominate one or more individuals that:

- is simple and straightforward to use; and
- is prominently displayed and readily accessible.

[Schedule 1, item 9, paragraphs 1.13(1)(c) and (d)]

35. The Amending Rules modify the existing requirement, that the service can be used to **revoke** such a nomination, to require that the service must instead provide a mechanism to **withdraw** the nomination. The use of withdraw is a more appropriate description of the action.

[Schedule 1, item 9, paragraphs 1.13(1)(c) and (d)]

36. The Amending Rules also require that, where non-individual and partnership CDR consumers have, outside of the CDR, authorised a person to manage their accounts online, the service provided under rule 1.13 must be online. The intention of this change is that data holders must offer an online service for non-individual CDR consumers to appoint an existing account administrator as a nominated representative.

[Schedule 1, item 11, subrule 1.13(1A)]

37. Consistent with existing rules, a data holder will be taken to have complied with the following obligations, so long as it takes reasonable steps to ensure it.

- The obligation that the service must allow a request to be made in a manner that is no less timely, efficient and convenient than any of the online services that are ordinarily used by customers of the data holder to deal with it; and
- The obligation that the service must be straightforward and simple to use.

[Schedule 1, item 12, subrule 1.13(4)]

38. The commencement of the obligations to provide a service that is simple and straightforward to use, is prominently displayed and readily accessible, and to provide an online service to allow non-individual and partnership CDR consumers to nominate their online administrators as nominated representatives is deferred by 12 months from the date these amendments take effect.

[Schedule 1, item 109, rule 501]

39. In addition, the Amending Rules broaden the definition of complex request in the energy sector to include a request made on behalf of a CDR consumer by a nominated representative.

[Schedule 1, item 31, paragraph 8.1(d) of Schedule 4 to the CDR Rules]

40. The Amending Rules also revise the definition of **nominated representative** in the definitions rule at the beginning of the CDR Rules, including to adjust it to use the language of ‘withdrawing’ an authorisation.

[Schedule 1, item 4, definition of ‘nominated representative’ in subrule 1.7(1)]

41. Note 4 to subrule 1.13(1) of the CDR Rules is substituted by the Amending Rules, which now explains that a consumer data request service may be offered in an online form even if this subrule does not require it to be an online service.

[Schedule 1, item 10, subrule 1.13(1) (note 4)]

CDR representatives complying with standards

42. The CDR Rules require CDR representatives to comply with any relevant CDR data standards that relate to the CDR representative doing things in accordance with Division 4.3A of the CDR Rules.
43. The Amending Rules create an express requirement that a CDR representative arrangement must contain a term that requires the CDR representative to comply with any consumer experience data standards that are expressed to apply to ADRs, as if the CDR representative were an ADR.
[Schedule 1, item 7, paragraph 1.10AA(1)(d)]
44. This obligation would only apply to CDR representatives when doing anything they are empowered to do under the CDR Rules and does not allow CDR representatives to do things that only ADRs or accredited persons are able to do – for example, to make consumer data requests directly to data holders.
45. As is the case in current subrule 1.16A(2), a civil penalty attaches to a breach of a CDR representative principal’s obligation to ensure their CDR representative complies with the relevant consumer experience data standards as if they were an ADR.
46. The Amending Rules also clarify that a CDR representative principal is liable for their CDR representative breaching a required term of their CDR representative arrangement, irrespective of whether the term in question was actually included as a provision in their arrangement.
[Schedule 1, item 21, paragraph 1.16A(2)(a)].
47. Based on this amendment, subrule 1.16A(5) is no longer necessary and has been repealed.
[Schedule 1, item 22, subrule 1.16A(5)]
48. The commencement of this obligation will be deferred by 6 months from the date these amendments take effect.
[Schedule 1, item 109, rule 502]
49. To support these amendments, the Amending Rules introduce a definition of **consumer experience data standards** as data standards expressed to be consumer experience data standards. This is intended to capture all data standards made by the Data Standards Chair that operate as consumer experience data standards.
[Schedule 1, item 2, definition of ‘consumer experience data standards’ in subrule 1.7(1)]

Accredited authorised-deposit taking institutions holding CDR data as data holders

50. The Amending Rules expand the circumstances in which an accredited authorised deposit-taking institution (ADI) can hold data as a data holder. They do this by creating a second set of conditions (in addition to the existing conditions) under subsection 56AJ(4) of the Act to allow accredited ADIs to hold CDR data they receive under the CDR Rules as a data holder.
[Schedule 1, item 28, clause 7.2 of Schedule 3 to the CDR Rules]
51. Common aspects across the two conditions for accredited ADIs to hold CDR data as data holders are that the CDR data (whether directly or indirectly) has been collected

in accordance with the collection consent, and that the accredited ADI believes that the data is relevant to its supply of a product to the CDR consumer.

52. In addition to the above, the new set of conditions will be met if:
- before the first collection of CDR data collected in accordance with a collection consent, the accredited ADI notified the consumer that they would be a data holder for CDR data collected in accordance with that consent;
 - the accredited ADI informed the consumer that the CDR Privacy Safeguards as applicable to a data holder, rather than those applicable to an ADR, would apply in relation to the data;
 - the accredited ADI informed the consumer of the manner in which they propose to treat the data.

[Schedule 1, item 28, subclause 7.2(2B) of Schedule 3 to the CDR Rules]

53. An accredited ADI may only give a notification in accordance with the new set of conditions if they are supplying the product to the consumer (i.e., the consumer has acquired a product), or the consumer has applied or is applying to acquire a product. This will be the case, for example, when a consumer is completing an online application to apply for a personal loan or credit card, but the bank requires the consumer's transaction data to finalise and assess their application.

[Schedule 1, item 28, subclause 7.2(2C) of Schedule 3 to the CDR Rules]

54. Any future CDR data collected in accordance with the collection consent can also be held by the accredited ADI as a data holder. So long as the first notification was provided in accordance with these new conditions, the accredited ADI is not required to provide such a notification each time CDR data is collected in connection with that consent.

[Schedule 1, item 28, paragraph 7.2(2B)(a) of Schedule 3 to the CDR Rules]

55. The existing conditions in the CDR Rules remain in operation, which allow accredited ADIs to hold CDR data as data holders where a consumer has acquired a product from the ADI and has agreed to the ADI holding this data as a data holder, rather than an ADR. These have taken a slightly new form in the Amending Rules, but the effect is intended to remain unchanged.

[Schedule 1, item 28, subclause 7.2(2) of Schedule 3 to the CDR Rules]

56. For clarity, where the original set of conditions are met (i.e., the consumer has consented to the ADI holding the data as a data holder after the data has been collected), an accredited ADI cannot automatically hold any future CDR data collected in accordance with the relevant collection consent as a data holder. To do so, they must satisfy either the existing or new conditions in clause 7.2 of Schedule 3 to the CDR Rules.

Secondary users

57. The Amending Rules remove the obligation currently imposed on data holders to offer a functionality that allows an account holder who has given a secondary user instruction to indicate, through their consumer dashboard, that the holder no longer approves CDR data relating to that account being disclosed to a particular accredited person in response to consumer data requests made by that secondary user. The

Amending Rules make a minor addition to the data holder consumer dashboard service requirements that the service also be ‘readily accessible’.

[Schedule 1, item 18, paragraphs 1.15(5)(b) to (f)]

58. Data holders may still provide this functionality to account holders but are not compelled to do so. Instead, an account holder can continue to rely on the ability to block secondary user authorised data sharing by stopping all data sharing from the account on behalf of the *specified* secondary user by withdrawing the secondary user instruction.
59. The Amending Rules maintain the current rule that a data holder will not contravene its obligations to ensure the service is simple and straightforward to use, and no more complicated to use than the processes for giving the authorisation or instruction, so long as it takes reasonable steps to comply with those requirements.
[Schedule 1, item 20, subrule 1.15(6)]
60. As a result of the amendments, Note 2 in subrule 1.15(5) is no longer relevant and has been repealed.
[Schedule 1, item 19, subrule 1.15(5) (notes)]
61. The Amending Rules also address an irregularity in the CDR Rules that allows a secondary user to make a consumer data request on an account even when the relevant account holder is no longer eligible to share data. This is achieved by amending the definition of secondary user and introducing a temporal requirement.
[Schedule 1, items 5, 6 and 23, definition of ‘secondary user’ in subrule 1.7(1) and rule 4.6A]

Miscellaneous dashboard requirements for data holders

62. The Amending Rules align the consumer dashboard functionality requirements for data holders with new dashboard requirements related to secondary users outlined above.
[Schedule 1, items 16 and 17, paragraphs 1.15(1)(c) to (h) and subrule 1.15(4)]
63. Similar amendments are made to data holder consumer dashboard functionality requirements for joint account holders. The Amending Rules remove the ‘reasonable steps’ protection to the extent it relates to the requirement for the online service to be prominently displayed. This is consistent with other provisions in the CDR Rules that include requirements on data holders to provide services that are ‘prominently displayed and readily accessible’.
[Schedule 1, items 26 and 27, paragraphs 4A.13(1)(d) to (h) and subrule 4A.13(4)]

Trial products for the energy sector

64. The Amending Rules are aimed to remove possible disincentives for electricity retailers to introduce innovative new products in the CDR. The Amending Rules achieve this by mirroring, to some extent, the operation of the ‘trial product’ provisions in the banking schedule of the CDR Rules (Schedule 3). This change will allow retailers to trial products without those products being subject to CDR data sharing obligations. This is achieved by exempting trial products from the application of Part 3 of Schedule 4.
[Schedule 1, item 30, clause 3.1A of Schedule 4 to the CDR Rules]

65. The meaning of trial product for the purposes of the energy sector has a different meaning in the context of the products and services offered in that sector as compared to the banking sector. As such, a trial product is described in the Amending Rules for the energy sector as a *plan*, which is a more appropriate term for the sector. A plan will be a trial product for the purposes of the energy sector if it is offered:

- with the description ‘pilot’ or ‘trial’;
- with a statement specifying a trial period of no more than 12 months;
- on the basis that it will be supplied to no more than 1,000 customers; and
- with a statement that it may be terminated before the end of the trial period in which case CDR data in relation to the product may not be available.

[Schedule 1, item 29, meaning of ‘trial product’ in subclause 1.5(1) of Schedule 4 to the CDR Rules]

66. A plan ceases to be a trial product if it continues to be offered after the end of trial period or it is supplied to more than 1,000 customers.

[Schedule 1, item 29, meaning of ‘trial product’ in subclause 1.5(2) of Schedule 4 to the CDR Rules]

Equalisation of data holder obligation dates for accredited persons who become small retailers (energy sector)

67. Currently, there is no deferral of data holder obligations for accredited persons who become small retailers. This has the effect that those entities are required to comply with data holder obligations as small retailers on the day they become small retailers.

68. In contrast, small retailers that become accredited persons have the benefit of a 12-month deferral on the obligation to comply with non-complex consumer data requests made by accredited persons on behalf of CDR consumers. For complex requests, there is an 18-month delay of those obligations.

69. The Amending Rules amend clause 8.6 of Schedule 4 to the CDR Rules to align the compliance dates for accredited persons who become small retailers (and vice versa). This is achieved by specifying the dates that Part 4 of the CDR Rules (which deals with consumer data requests made by accredited persons on behalf of CDR consumers) will apply to a person who is both a small retailer and an accredited person for non-complex and complex requests.

[Schedule 1, item 37, subclauses 8.6(7) and (8) of Schedule 4 to the CDR Rules]

Obligation dates for small retailers that become larger retailers

70. The Amending Rules fix an inconsistency whereby a small retailer that reaches the customer numbers for a larger retailer has less time to comply with complex data sharing requests (12 months) than a small retailer that becomes an accredited person (18 months).

71. The Amending Rules achieve this by clarifying that Part 4 (which deals with consumer data requests by accredited persons on behalf of CDR consumers) of the CDR Rules applies to a larger retailer in relation to a complex request from the later

of the tranche 4 date (1 May 2024) and the day that is 6 months after the day that it became a larger retailer. As subclause 8.3(1) of Schedule 4 to the CDR Rules provides a retailer that reaches the customer numbers for a larger retailer with a 12-month delayed obligation period, this amendment has the effect that a small retailer that reaches the customer numbers for a larger retailer will have 18 months prior to its obligations in relation to complex requests taking effect.

[Schedule 1, item 36, subclause 8.6(6) of Schedule 4 to the CDR Rules]

Miscellaneous amendments to staged application for energy sector

72. The Amending Rules make several minor amendments to Part 8 of Schedule 4 to the CDR Rules to assist clarity and comprehension. These minor changes relate to clauses dealing with the timing of obligations taking effect in relation to product data requests under Part 2 and Part 4 of the CDR Rules.

[Schedule 1, items 32 to 35, clause 8.4 and subclauses 8.6(1) to (5) of Schedule 4 to the CDR Rules]