

EXPOSURE DRAFT

2016-2017-2018

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Treasury Laws Amendment (Consumer Data Right) Bill 2018

No. , 2018

(Treasury)

**A Bill for an Act to amend the law relating to
competition, fair trading, consumer protection and
privacy, and for related purposes**

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1 **A Bill for an Act to amend the law relating to**
2 **competition, fair trading, consumer protection and**
3 **privacy, and for related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act is the *Treasury Laws Amendment (Consumer Data Right)*
7 *Act 2018*.

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with
11 column 2 of the table. Any other statement in column 2 has effect
12 according to its terms.

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Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

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(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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3 Schedules

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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Treasury Laws Amendment (Consumer Data Right) Bill 2018

No. , 2018

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1 **Schedule 1—Consumer data right**

2 **Part 1—Main amendments**

3 *Competition and Consumer Act 2010*

4 **1 After Part IVC**

5 Insert:

6 **Part IVD—Consumer data right**

7 **Division 1—Preliminary**

8 **56AA Object of this Part**

9 The object of this Part is:

- 10 (a) to enable consumers in certain sectors of the Australian
11 economy to require information relating to themselves in
12 those sectors to be disclosed:
13 (i) to themselves; or
14 (ii) to others in those sectors that they trust; and
15 (b) to enable any person to access any information in those
16 sectors that does not relate to any identifiable, or reasonably
17 identifiable, consumers; and
18 (c) as a result of paragraphs (a) and (b), to create more choice
19 and competition within those sectors.

20 **56AB Simplified outline**

21 Rules made under this Part may:

- 22 (a) enable consumers in certain sectors of the Australian
23 economy to require information relating to themselves in
24 those sectors to be disclosed to them or to accredited
25 persons that they trust; and
26 (b) enable any person to be disclosed any information in
27 those sectors that does not relate to any identifiable, or
28 reasonably identifiable, consumers; and

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- (c) may require these kinds of disclosures, and other things, to be done in accordance with data standards.

A register is to be kept of accredited persons.

Privacy safeguards apply:

- (a) to persons who are directed under those rules to disclose information relating to identifiable, or reasonably identifiable, consumers; and
- (b) to accredited persons who, under those rules, are disclosed information relating to identifiable, or reasonably identifiable, consumers.

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56AC Designated sectors subject to the consumer data right

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- (1) A *designated sector* means a sector of the Australian economy designated under subsection (2).
- (2) After complying with section 56AD, the Minister may, by legislative instrument, designate a sector of the Australian economy by specifying information that:
- (a) is held by, or on behalf of, specified persons; and
- (b) began to be held by, or on behalf of, those persons on or after a specified day.
- Note 1: The persons specified under paragraph (a) will be holders of the information, rather than the consumers to whom the information relates.
- Note 2: The information and persons may be specified by class, see subsection 13(3) of the *Legislation Act 2003*.
- Note 3: For variation and repeal, see subsection 33(3) of the *Acts Interpretation Act 1901*.
- (3) A day specified under paragraph (2)(b) may be a day happening before the designation is made (including a day happening before this Part commences).

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56AD Minister's tasks before designating a sector etc.

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- (1) Before making an instrument under subsection 56AC(2), the Minister must consider:
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- 1 (a) the likely effect of the instrument on:
2 (i) consumers; and
3 (ii) the efficiency of relevant markets; and
4 (iii) the privacy of consumers, whether the consumers be
5 individuals or other persons such as businesses; and
6 (iv) promoting competition; and
7 (v) promoting data-driven innovation; and
8 (b) the likely regulatory impact of allowing the consumer data
9 rules to impose requirements on the persons, in relation to the
10 information, to be covered by the instrument; and
11 (c) any other matters the Minister considers relevant.
- 12 (2) Before making an instrument under subsection 56AC(2), the
13 Minister must consult:
14 (a) the Commission; and
15 (b) any person or body prescribed by the regulations for the
16 purposes of this paragraph;
17 about the matters in paragraphs (1)(a) to (c) of this section.
- 18 (3) Before making an instrument under subsection 56AC(2), the
19 Minister must consult the Information Commissioner about the
20 likely effect of the instrument on the privacy of consumers,
21 whether the consumers be individuals or other persons such as
22 businesses.

23 **56AE Other matters relating to designating a sector etc.**

24 *Commission must consult about the instrument*

- 25 (1) If the Commission is consulted under subsection 56AD(2), the
26 Commission must:
27 (a) analyse the likely effect of making the instrument on the
28 matters in paragraphs 56AD(1)(a) to (c); and
29 (b) undertake public consultation about those matters in relation
30 to the instrument; and
31 (c) report to the Minister about that analysis and consultation.
32 The Commission must publish the report on its website.

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- 1 *Information Commissioner must consider the instrument*
- 2 (2) If the Information Commissioner is consulted under
3 subsection 56AD(3), the Information Commissioner must:
4 (a) analyse the likely effect of making the instrument on the
5 privacy of consumers, whether the consumers be individuals
6 or other persons such as businesses; and
7 (b) report to the Minister about that analysis.
8 The Information Commissioner may publish the report on the
9 Information Commissioner's website.
- 10 *Commission may recommend that an instrument be made*
- 11 (3) The Commission may, in writing, recommend to the Minister that
12 the Minister make an instrument under subsection 56AC(2):
13 (a) designating a particular sector of the Australian economy; or
14 (b) varying or revoking an instrument designating a sector under
15 that subsection.
16 The Commission must publish the recommendation on its website.
- 17 (4) However, before making a recommendation under subsection (3),
18 the Commission must:
19 (a) analyse the likely effect of the proposed instrument on the
20 matters in paragraphs 56AD(1)(a) and (b); and
21 (b) undertaken public consultation about those matters in relation
22 to the proposed instrument.
- 23 (5) Neither paragraph 56AD(2)(a), nor subsection (1) of this section,
24 applies in relation to a response to a recommendation under
25 subsection (3) of this section.
- 26 *How these matters affect the validity of an instrument*
- 27 (6) A failure to comply with this section by the Commission, or by the
28 Information Commissioner, does not invalidate an instrument made
29 under subsection 56AC(2).

30 **56AF Meaning of CDR data, directly or indirectly derived, associated** 31 **with and CDR consumer**

- 32 (1) **CDR data** is information that:
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- 1 (a) is specified in, or is within a class of information specified in,
2 an instrument designating a sector under subsection 56AC(2);
3 or
4 (b) is derived from information covered by:
5 (i) paragraph (a); or
6 (ii) a previous application of this paragraph.

7 Note: Information covered by paragraph (b) includes information derived
8 from information covered by paragraph (a), information derived from
9 that derived information, and so on.

- 10 (2) CDR data is *directly or indirectly derived* from other CDR data if
11 the first-mentioned CDR data is wholly or partly derived from the
12 other CDR data after one or more applications of paragraph (1)(b).
13 (3) CDR data is *associated with* other CDR data if:
14 (a) the first-mentioned CDR data is directly or indirectly derived
15 from the other CDR data; or
16 (b) the other CDR data is directly or indirectly derived from the
17 first-mentioned CDR data.
18 (4) A *CDR consumer*, for CDR data, is a person to whom the CDR
19 data relates if:
20 (a) the person is identifiable, or reasonably identifiable, from the
21 CDR data; and
22 (b) the CDR data is held by, or on behalf of, either:
23 (i) a data holder of the CDR data; or
24 (ii) an accredited data recipient of the CDR data.
25 (5) Section 4B(1) (about consumers) does not apply to this Part.

26 **56AG Meaning of *data holder*, *accredited data recipient* and *CDR*** 27 ***participant***

- 28 (1) A person is a *data holder*, of particular CDR data, if:
29 (a) the person, or a class of persons to which the person belongs,
30 is specified in an instrument designating a sector under
31 subsection 56AC(2); and
32 (b) the CDR data:
33 (i) is information specified in, or is information within a
34 class of information specified in, the instrument; or
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- 1 (ii) is directly or indirectly derived from information
2 covered by subparagraph (i); and
3 (c) the CDR data is held by, or on behalf of, the person; and
4 (d) the CDR data is being so held not because of a disclosure to
5 the person under the consumer data rules of:
6 (i) the CDR data; or
7 (ii) any other CDR data from which it was directly or
8 indirectly derived.

9 (2) Paragraph (1)(d) does not apply if the conditions specified in the
10 consumer data rules for the purposes of this subsection are met.

11 (3) A person is an *accredited data recipient*, of particular CDR data,
12 if:

- 13 (a) the person holds an accreditation under subsection 56CE(1);
14 and
15 (b) the CDR data is held by, or on behalf of, the person; and
16 (c) the CDR data, or any other CDR data from which it was
17 directly or indirectly derived, was disclosed to the person
18 under the consumer data rules; and
19 (d) the person is not a data holder of the CDR data.

20 Note: For paragraph (d), the person could be a data holder of the CDR data
21 if paragraph (1)(d) does not apply because of subsection (2).

22 (4) A *CDR participant*, for particular CDR data, is a data holder, or an
23 accredited data recipient, for the CDR data.

24 **56AH Geographical application of this Part**

25 (1) This Part applies to:

- 26 (a) CDR data generated or collected in Australia or an external
27 Territory; or
28 (b) CDR data generated or collected outside of Australia, and
29 outside of the external Territories, by or on behalf of any of
30 the following entities:
31 (i) a company registered under Part 2A.2 or Part 5B.1 of
32 the *Corporations Act 2001*;
33 (ii) an Australian citizen, or a permanent resident (within
34 the meaning of the *Australian Citizenship Act 2007*);

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1 whether or not a recipient of the CDR data under the consumer
2 data rules is an entity covered by subparagraph (b)(i) or (ii).

3 Note 1: Paragraph (a) means, for example, that a foreign company generating
4 or collecting CDR data in Australia can be a data holder of the CDR
5 data.

6 Note 2: A recipient of the CDR data under the consumer data rules could, for
7 example, be a foreign company that holds an accreditation under
8 subsection 56CE(1). See also subsection 56CE(2).

9 (2) Paragraph (1)(b) does not apply to CDR data generated or collected
10 by, or on behalf of, any of those entities as a CDR consumer.

11 (3) This Part extends to acts, omissions, matters and things outside
12 Australia (and the external Territories) in relation to CDR data
13 covered by subsection (1).

14 **Division 2—Consumer data right**

15 **Subdivision A—Power to make consumer data rules**

16 **56BA Commission may make consumer data rules**

17 (1) The Commission may, by legislative instrument, make rules (the
18 *consumer data rules*) for designated sectors in accordance with
19 this Division.

20 Note: Subdivision C deals with the process for making consumer data rules.

21 (2) Without limiting subsection (1), the consumer data rules may set
22 out:

23 (a) different rules for different designated sectors; or

24 (b) different rules for different classes of CDR data relating to a
25 particular designated sector; or

26 (c) different rules for different classes of persons specified under
27 subsection 56AC(2) for a particular designated sector; or

28 (d) different rules for different classes of persons who are able to
29 be disclosed CDR data under the consumer data rules.

30 **56BB Matters that the consumer data rules may deal with**

31 The consumer data rules may deal with the following matters:

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- 1 (a) disclosure, use, accuracy, storage, security or deletion of
2 CDR data for which there are CDR consumers (see
3 section 56BC);
4 (b) disclosure, use, accuracy, storage, security or deletion of
5 CDR data for which there are no CDR consumers (see
6 section 56BD);
7 (c) accreditation of data recipients (see section 56BF);
8 (d) reporting and record keeping (see section 56BG);
9 (e) matters incidental or related to any of the above matters (see
10 section 56BH).

11 **56BC Disclosure, use, accuracy, storage, security or deletion of CDR** 12 **data for which there are CDR consumers**

13 Without limiting paragraph 56BB(a), the consumer data rules may
14 include the following:

- 15 (a) requirements on a CDR participant for CDR data to disclose
16 all or part of the CDR data:
17 (i) in response to a valid request by a CDR consumer for
18 the CDR data; and
19 (ii) to the CDR consumer, or to a person who holds an
20 accreditation under subsection 56CE(1);
21 (b) rules about:
22 (i) how a CDR consumer for the CDR data may make a
23 valid request of the kind described in paragraph (a); and
24 (ii) what must be included in a request for it to be valid,
25 what disclosures or other matters a valid request may
26 cover, and when a request ceases to be a valid request;
27 (c) requirements on a person (other than a CDR consumer for
28 CDR data) to satisfy in order to be disclosed the CDR data in
29 the way described in paragraph (a);
30 (d) rules enabling a fee to be charged for:
31 (i) the disclosure of specified classes of CDR data in the
32 way described in paragraph (a); or
33 (ii) the use of those classes of CDR data by a recipient of
34 such a disclosure;
35 (e) a power for the Commission to determine the following:
36 (i) the amount of a fee described in paragraph (d);
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- 1 (ii) the person who is liable to pay that fee;
2 (f) rules relating to the privacy safeguards;
3 (g) other requirements or rules affecting one or more of the
4 following kinds of persons:
5 (i) data holders of CDR data;
6 (ii) persons who hold accreditations under
7 subsection 56CE(1);
8 (iii) accredited data recipients of CDR data;
9 (iv) CDR consumers for CDR data;
10 that relate to the disclosure, use, accuracy, storage, security
11 or deletion of CDR data for which there are one or more
12 CDR consumers.

13 Note 1: The requirements described in paragraph (a) could, for example,
14 include a requirement that the disclosure be in accordance with the
15 relevant data standards.

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

19 **56BD Disclosure, use, accuracy, storage, security or deletion of CDR** 20 **data for which there are no CDR consumers**

21 Without limiting paragraph 56BB(b), the consumer data rules may
22 include the following for CDR data for which there are no CDR
23 consumers:

- 24 (a) requirements on a CDR participant for the CDR data to
25 disclose all or part of the CDR data to a person in response to
26 a valid request by the person;
27 (b) rules about:
28 (i) how a person may make a valid request of the kind
29 described in paragraph (a); and
30 (ii) what must be included in a request for it to be valid,
31 what disclosures or other matters a valid request may
32 cover, and when a request ceases to be a valid request;
33 (c) requirements on a person to satisfy in order to be disclosed
34 the CDR data in the way described in paragraph (a);
35 (d) rules enabling a fee to be charged for disclosing specified
36 classes of CDR data in the way described in paragraph (a);

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- 1 (e) a power for the Commission to determine the following:
2 (i) the amount of a fee described in paragraph (d);
3 (ii) the person who is liable to pay that fee;
4 (f) other requirements or rules affecting:
5 (i) CDR participants for the CDR data; or
6 (ii) persons wishing to be disclosed the CDR data;
7 that relate to the disclosure, use, accuracy, storage, security
8 or deletion of the CDR data.

9 Note 1: A request for this CDR data could be made, for example, to assist the
10 development of a product or service.

11 Note 2: The privacy safeguards do not apply to this CDR data (see
12 subsection 56EB(1)).

13 Note 3: The requirements described in paragraph (a) could, for example,
14 include a requirement that the disclosure be in accordance with the
15 relevant data standards.

16 **56BE Matters relating to the disclosure, use, accuracy, storage,** 17 **security or deletion of CDR data**

- 18 (1) A fee described in paragraph 56BC(d) or 56BD(d) must not be
19 such as to amount to taxation.
- 20 (2) If a determination described in paragraph 56BC(e) or 56BD(e) is to
21 apply to:
22 (a) a class of persons; or
23 (b) a class of CDR data, but not in a way that the determination
24 is to apply only to a particular person;
25 the consumer data rules must require the determination to be made
26 as a legislative instrument.
- 27 (3) If a determination described in paragraph 56BC(e) or 56BD(e) is to
28 apply only to a particular person, the consumer data rules must
29 enable applications to be made to the Administrative Appeals
30 Tribunal for review of the determination.

31 **56BF Accreditation of data recipients**

- 32 (1) Without limiting paragraph 56BB(c), the consumer data rules may
33 include the following:
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- 1 (a) rules conferring functions or powers on the Data Recipient
2 Accreditor;
- 3 (b) the criteria for a person to be accredited under
4 subsection 56CE(1);
- 5 (c) rules providing that accreditations may be granted subject to
6 conditions, and that conditions may be imposed on an
7 accreditation after it has been granted;
- 8 (d) rules providing that accreditations may be granted at different
9 levels corresponding to different risks, including the risks
10 associated with:
- 11 (i) specified classes of CDR data; or
12 (ii) specified classes of activities; or
13 (iii) specified classes of applicants;
- 14 (e) rules for the period, renewal, transfer, variation, suspension,
15 revocation or surrender of accreditations;
- 16 (f) notification requirements on persons whose accreditations
17 have been varied, suspended, revoked or surrendered;
- 18 (g) transitional rules for when an accreditation is varied, is
19 suspended or ends, including about the disclosure, use,
20 accuracy, storage, security or deletion of CDR data;
- 21 (h) rules about a matter referred to in subsection 56CK(4) (about
22 the Register of Accredited Data Recipients).

23 Note: The rules described in paragraph (g) could, for example, include a
24 requirement that the CDR data be disclosed in accordance with the
25 relevant data standards to an accredited person.

- 26 (2) Without limiting paragraph (1)(b):
- 27 (a) the criteria may differ for different classes of persons; and
28 (b) the criteria may include the payment of a fee.
29 Any fee must not be such as to amount to taxation.
- 30 (3) Without limiting paragraph (1)(e), each of the following could be a
31 ground for varying, suspending or revoking an accreditation:
- 32 (a) a failure to comply with a requirement in this Part or in the
33 consumer data rules;
- 34 (b) a failure to comply with a requirement in the privacy
35 safeguards.

36 Note: An example of a variation could be the imposition of a condition.

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1 **56BG Reporting and record keeping**

2 Without limiting paragraph 56BB(d), the consumer data rules may
3 include the following:

- 4 (a) a power for a CDR consumer for CDR data to direct a CDR
5 participant for the CDR data to give reports to the consumer
6 about:
- 7 (i) the consumer's valid requests, of the kind described in
8 paragraph 56BC(a), for the CDR data; and
9 (ii) disclosures made in response to such requests;
- 10 (b) requirements for CDR participants for CDR data to give
11 reports to the Commission or the Information Commissioner;
- 12 (c) requirements for persons who hold accreditations under
13 subsection 56CE(1) to give reports to the Commission or the
14 Information Commissioner;
- 15 (d) requirements for the keeping of records relating to the
16 operation of the consumer data rules;
- 17 (e) requirements for each of the following entities:
- 18 (i) the Data Recipient Accreditor;
19 (ii) the Accreditation Registrar;
20 (iii) the Data Standards Chair;
- 21 to give reports to the Commission or the Information
22 Commissioner about that entity's functions or powers.

23 Note: Information or documents relating to compliance with the consumer
24 data rules may also be required to be given (see subsections 155(1)
25 and (2)).

26 **56BH Incidental or related matters**

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

- 29 (a) requirements or other rules that refer to the data standards;
30 (b) the circumstances in which persons are, or may be, relieved
31 from complying with requirements in the rules that would
32 otherwise apply to them;
- 33 (c) a requirement, rule or matter that depends on a person or
34 body being satisfied of one or more specified matters;

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- 1 (d) rules for the making of applications for internal review, or of
2 applications to the Administrative Appeals Tribunal for
3 review, of decisions of a person or body under the consumer
4 data rules;
- 5 (e) rules about the manner or form in which persons:
6 (i) may exercise powers under the rules; or
7 (ii) must comply with requirements imposed by the rules;
8 which could include requiring the use of a form approved by
9 the Commission or by the Information Commissioner;
- 10 (f) rules requiring CDR participants for CDR data to have
11 internal or external dispute resolution processes:
12 (i) that relate to the operation of the consumer data rules or
13 this Part; and
14 (ii) that meet specified criteria;
- 15 (g) rules relating to an external dispute resolution scheme
16 recognised under Division 4, including about access to such a
17 scheme;
- 18 (h) transitional rules for the external resolution of disputes:
19 (i) described in subsection 56DA(1); and
20 (ii) not covered by a scheme recognised under that
21 subsection;
- 22 (i) any other matters that the provisions of this Part provide may
23 be specified, or otherwise dealt with, in the consumer data
24 rules.

25 **56BI Limitations on the consumer data rules**

- 26 (1) The consumer data rules cannot:
27 (a) require a CDR participant for CDR data to disclose the CDR
28 data before 1 July 2019; or
29 (b) impose on a person a requirement that has a retrospective
30 commencement or application.
- 31 Example: The rules cannot require a data holder to disclose CDR data on a day
32 before the rules are registered, or on a day before the registration of a
33 variation to the rules that includes the requirement.
- 34 (2) To avoid doubt, the consumer data rules may require a person to do
35 something on a particular day, in relation to CDR data generated or
36 collected on an earlier day, if the person:
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- 1 (a) is a data holder of the CDR data; or
2 (b) holds an accreditation under subsection 56CE(1); or
3 (c) is a person who has given a valid request under the consumer
4 data rules relating to the CDR data.

5 Example: A data holder is given a valid request to disclose CDR data that was
6 generated before the rules are registered. The rules can require that
7 disclosure.

- 8 (3) The regulations may provide that the consumer data rules:
9 (a) cannot deal with specified matters, or cannot impose
10 specified requirements, in relation to:
11 (i) specified classes of CDR data; or
12 (ii) specified classes of persons; or
13 (b) can only deal with specified matters, or can only impose
14 specified requirements, in relation to:
15 (i) specified classes of CDR data; or
16 (ii) specified classes of persons.
- 17 (4) Subsections (1) and (3) apply despite sections 56BB to 56BH.

18 **Subdivision B—Compliance with consumer data rules**

19 **56BJ Obligation to comply with consumer data rules**

20 The consumer data rules may provide that specified provisions of
21 the rules are civil penalty provisions.

22 Note: Sections 76 to 77 deal with enforcing the civil penalty provisions,
23 including the maximum penalties payable for contraventions of the
24 civil penalty provisions.

25 **56BK Infringement notices**

26 Each of the following:

- 27 (a) Division 2A of Part IVB;
28 (b) any other provision of this Act to the extent that it relates to
29 that Division;

30 applies to a civil penalty provision of the consumer data rules in a
31 corresponding way to the way that it applies to a civil penalty
32 provision of an industry code.

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1 Note: That Division is about infringement notices issued for alleged
2 contraventions of civil penalty provisions of industry codes.

3 **56BL Failure to comply with consumer data rules does not**
4 **invalidate transactions etc.**

- 5 (1) A failure, in relation to a transaction, to comply with:
6 (a) a civil penalty provision of the consumer data rules; or
7 (b) any other requirement of the consumer data rules;
8 does not invalidate the transaction or affect any rights or
9 obligations arising under, or relating to, the transaction.
- 10 (2) However, subsection (1) does not apply in the circumstances (if
11 any) specified in the consumer data rules for the purposes of this
12 subsection.

13 **56BM Misleading or deceptive conduct towards CDR participants**

14 *Offence*

- 15 (1) A person commits an offence if:
16 (a) the person engages in conduct; and
17 (b) the person does so knowing that the conduct:
18 (i) is misleading or deceptive; or
19 (ii) is likely to be misleading or deceptive; and
20 (c) the conduct misleads or deceives, or is likely to mislead or
21 deceive, another person (the *second person*) into believing
22 that:
23 (i) a person is a CDR consumer for CDR data; or
24 (ii) a person is making a valid request, or has satisfied other
25 criteria, for the disclosure of CDR data under the
26 consumer data rules.

27 Note: The person mentioned in subparagraph (c)(i) or (ii) could be the
28 first-mentioned person, the second person or a third person.

29 Penalty: Imprisonment for 5 years.

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Civil penalty

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- (2) A person must not engage in conduct that misleads or deceives, or is likely to mislead or deceive, another person (the *second person*) into believing that:

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- (a) a person is a CDR consumer for CDR data; or

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- (b) a person is making a valid request, or has satisfied other criteria, for the disclosure of CDR data under the consumer data rules.

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Note: The person mentioned in paragraph (a) or (b) could be the first-mentioned person, the second person or a third person.

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Civil penalty: 1,000 penalty units.

12

Defence

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- (3) Subsections (1) and (2) do not apply if the conduct is not misleading or deceptive in a material particular.

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Note: A defendant bears an evidential burden in relation to the matter in subsection (3) for a contravention of subsection (1) (see subsection 13.3(3) of the *Criminal Code*).

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- (4) A person who wishes to rely on subsection (3) in relation to a contravention of subsection (2) bears the burden of adducing or pointing to evidence that suggests a reasonable possibility that the conduct is not misleading or deceptive in a material particular.

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Subdivision C—Process for making consumer data rules

23

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56BN Matters to which Commission must have regard when making the rules

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Before making consumer data rules under subsection 56BA(1), the Commission must consider the kinds of matters referred to in subsection 56AD(1).

28

56BO Commission to consult before making the rules

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- (1) Before making consumer data rules under subsection 56BA(1), the Commission must consult all of the following about the proposed rules:
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- 1 (a) the public;
2 (b) the Information Commissioner;
3 (c) if the proposed rules relate to a particular designated sector—
4 the person or body (if any) that the Commission believes to
5 be the primary regulator of that sector;
6 (d) any person or body prescribed by the regulations for the
7 purposes of this paragraph.

8 Note: In some situations, consultation beyond the Information
9 Commissioner is not required (see section 56BQ).

- 10 (2) Without limiting subsection (1), when consulting the public it is
11 sufficient if the Commission, on its website:
12 (a) makes available the proposed rules or a description of the
13 content of the proposed rules; and
14 (b) invites the public to comment on the proposed rules.
15 (3) A failure to consult as required by subsection (1) does not
16 invalidate the consumer data rules.

17 **56BP Ministerial consent to rules required**

18 The Commission must not make consumer data rules under
19 subsection 56BA(1) unless the Minister has consented, in writing,
20 to the making of the rules.

21 Note: In some situations, consent is not required (see section 56BQ).

22 **56BQ Emergency rules: consultation and consent not required**

23 *Rules can be made in an emergency*

- 24 (1) The Commission may make consumer data rules under
25 subsection 56BA(1):
26 (a) after consulting the Information Commissioner, but without
27 otherwise complying with section 56BO; and
28 (b) without the consent of the Minister as required by
29 section 56BP;
30 if the Commission is of the opinion that it is necessary, or in the
31 public interest, to do so in order:

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- 1 (c) to protect the efficiency, integrity and stability of any aspect
2 of the Australian economy; or
3 (d) to avoid imminent risk of serious harm to consumers.

4 *Consequences for rules made in an emergency*

- 5 (2) However, if the Commission does so, the Commission must:
6 (a) provide the Minister, on the following day, with a written
7 explanation of the need for those consumer data rules; and
8 (b) vary or repeal those consumer data rules in accordance with
9 any written directions of the Minister.
- 10 (3) A failure to consult the Information Commissioner as required by
11 paragraph (1)(a) does not invalidate the consumer data rules.
- 12 (4) However, if:
13 (a) on a particular day consumer data rules are made without
14 consulting the Information Commissioner, but otherwise in
15 accordance with subsection (1); and
16 (b) the Minister does not make a direction under paragraph (2)(b)
17 about those rules;
18 those rules, to the extent that they were so made, cease to be in
19 force 6 months after that day.

20 Note: If emergency consumer data rules were made to vary other consumer
21 data rules, and this subsection applies to those emergency rules, this
22 subsection will only cause those emergency rules to cease to be in
23 force.

- 24 (5) A direction under paragraph (2)(b) is not a legislative instrument.
- 25 (6) Despite subsections 33(3) and (3AA) of the *Acts Interpretation Act*
26 *1901*, the requirements of sections 56BN, 56BO and 56BP do not
27 apply in relation to a variation or repeal of a consumer data rule
28 pursuant to a direction by the Minister under paragraph (2)(b) of
29 this section.

30 Note: This subsection alters the requirement in subsections 33(3) and (3AA)
31 of the *Acts Interpretation Act 1901* that variations or repeals must be
32 made in a like manner and subject to like conditions.

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1 **Division 3—Accredited data recipients**

2 **Subdivision A—Data Recipient Accreditor**

3 **56CA Appointment of the Data Recipient Accreditor**

4 (1) The Minister may, by written instrument, appoint a person or body
5 to be the Data Recipient Accreditor.

6 Note: For variation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

7 (2) The Minister may, at any time by written instrument, terminate an
8 appointment made under subsection (1).

9 **56CB Functions and powers etc.**

10 (1) The functions of the Data Recipient Accreditor are:

11 (a) to accredit persons under subsection 56CE(1); and

12 (b) such other functions as are specified in the consumer data
13 rules.

14 (2) The Data Recipient Accreditor has the power to do all other things
15 necessary or convenient to be done for or in connection with the
16 performance of the Accreditor's functions.

17 (3) The appointment of a person or body as the Data Recipient
18 Accreditor does not of itself make the person or body a
19 Commonwealth entity for the purposes of the finance law.

20 (4) If the person or body appointed as the Data Recipient Accreditor is
21 not a Commonwealth entity for the purposes of the finance law, the
22 Minister may, on behalf of the Commonwealth, make a payment to
23 that person or body in relation to:

24 (a) that appointment; or

25 (b) other matters of a kind prescribed by the regulations for the
26 purposes of this subsection.

27 **56CC Acting appointments**

28 The Minister may, by written instrument, appoint a person or body
29 to act as the Data Recipient Accreditor:

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- 1 (a) during a vacancy in the office of the Data Recipient
2 Accreditor (whether or not an appointment has previously
3 been made to the office); or
4 (b) during any period, or during all periods, when the Data
5 Recipient Accreditor is, for any reason, unable to perform the
6 duties of the office.

7 Note 1: For rules that apply to acting appointments, see sections 33AB and
8 33A of the *Acts Interpretation Act 1901*.

9 Note 2: The Commission will be the Data Recipient Accreditor in the absence
10 of:

- 11 (a) an appointment under subsection 56CA(1); and
12 (b) an appointment under this section;
13 (see the definition of *Data Recipient Accreditor* in subsection 4(1)).

14 **56CD Delegation**

15 (1) If the person or body who is the Data Recipient Accreditor is a
16 Commonwealth entity for the purposes of the finance law, the
17 Commonwealth entity may delegate its functions or powers as the
18 Data Recipient Accreditor to:

- 19 (a) an SES employee, or an acting SES employee, in the
20 Commonwealth entity; or
21 (b) an APS employee who is holding or performing the duties of
22 a specified office or position that:
23 (i) is in the Commonwealth entity; and
24 (ii) is an office or position that the Commonwealth entity is
25 satisfied is sufficiently senior for the APS employee to
26 perform the function or exercise the power.

27 Note: The Commission is a Commonwealth entity for the purposes of the
28 finance law (see subsection 6A(1A)).

29 (2) In doing anything under a delegation under this section, the
30 delegate must comply with any directions of the Commonwealth
31 entity.

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1 **Subdivision B—Accreditation process**

2 **56CE Granting accreditations**

- 3 (1) The Data Recipient Accreditor may, in writing, accredit a person if
4 the person satisfies the criteria specified in the consumer data rules
5 for accreditation.
- 6 (2) To avoid doubt, a person may be accredited even if the person:
7 (a) is not registered under Part 2A.2 or Part 5B.1 of the
8 *Corporations Act 2001*; and
9 (b) is neither an Australian citizen, nor a permanent resident
10 (within the meaning of the *Australian Citizenship Act 2007*).
- 11 (3) An accreditation is granted on the basis that no compensation is
12 payable if the accreditation is varied, transferred, suspended,
13 revoked or surrendered in any way.

14 **56CF Review of decisions refusing to accredit**

15 Applications may be made to the Administrative Appeals Tribunal
16 for review of decisions of the Data Recipient Accreditor under
17 subsection 56CE(1) refusing to accredit persons.

18 Note: The consumer data rules can include provisions dealing with the
19 variation, suspension or revocation of accreditations (see
20 section 56BF). Those rules can also provide for AAT review of
21 decisions to vary, suspend or revoke accreditations (see
22 section 56BH).

23 **56CG Prohibition on holding out**

- 24 (1) A person commits an offence if the person holds out that the
25 person:
26 (a) holds an accreditation under subsection 56CE(1); or
27 (b) holds an accreditation under subsection 56CE(1) that has
28 been granted at a particular level (see paragraph 56BF(1)(d));
29 or
30 (c) is an accredited data recipient of CDR data;
31 if that is not the case.

32 Penalty: Imprisonment for 5 years.

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- 1 (2) A person must not hold out that the person:
2 (a) holds an accreditation under subsection 56CE(1); or
3 (b) holds an accreditation under subsection 56CE(1) that has
4 been granted at a particular level (see paragraph 56BF(1)(d));
5 or
6 (c) is an accredited data recipient of CDR data;
7 if that is not the case.
8 Civil Penalty: 1,000 penalty units.

9 **Subdivision C—Accreditation Registrar**

10 **56CH Appointment of the Accreditation Registrar**

- 11 (1) The Minister may, by written instrument, appoint a person or body
12 to be the Accreditation Registrar.
13 Note: For variation, see subsection 33(3) of the *Acts Interpretation Act 1901*.
14 (2) The Minister may, at any time by written instrument, terminate an
15 appointment made under subsection (1).
16 (3) The appointment of a person or body as the Accreditation Registrar
17 does not of itself make the person or body a Commonwealth entity
18 for the purposes of the finance law.
19 (4) If the person or body appointed as the Accreditation Registrar is
20 not a Commonwealth entity for the purposes of the finance law, the
21 Minister may, on behalf of the Commonwealth, make a payment to
22 that person or body in relation to:
23 (a) that appointment; or
24 (b) other matters of a kind prescribed by the regulations for the
25 purposes of this subsection.

26 **56CI Acting appointments**

- 27 The Minister may, by written instrument, appoint a person or body
28 to act as the Accreditation Registrar:
29 (a) during a vacancy in the office of the Accreditation Registrar
30 (whether or not an appointment has previously been made to
31 the office); or
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1 (b) during any period, or during all periods, when the
2 Accreditation Registrar is, for any reason, unable to perform
3 the duties of the office.

4 Note 1: For rules that apply to acting appointments, see sections 33AB and
5 33A of the *Acts Interpretation Act 1901*.

6 Note 2: The Commission will be the Accreditation Registrar in the absence of:
7 (a) an appointment under subsection 56CH(1); and
8 (b) an appointment under this section;
9 (see the definition of *Accreditation Registrar* in subsection 4(1)).

10 **56CJ Delegation**

11 (1) If the person or body who is the Accreditation Registrar is a
12 Commonwealth entity for the purposes of the finance law, the
13 Commonwealth entity may delegate its functions or powers as the
14 Accreditation Registrar to an SES employee, or an acting SES
15 employee, in the Commonwealth entity.

16 Note 1: For the Registrar's functions and powers, see section 56CK.

17 Note 2: The Commission is a Commonwealth entity for the purposes of the
18 finance law (see subsection 6A(1A)).

19 (2) In doing anything under a delegation under this section, the
20 delegate must comply with any directions of the Commonwealth
21 entity.

22 **Subdivision D—Register of Accredited Data Recipients**

23 **56CK Register of Accredited Data Recipients**

24 (1) The Accreditation Registrar must establish and maintain a register
25 for the purposes of this Part, to be known as the Register of
26 Accredited Data Recipients.

27 (2) The Accreditation Registrar must maintain the register by
28 electronic means.

29 (3) The register is not a legislative instrument.

30 (4) The consumer data rules may make provision for or in relation to
31 the following:

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- 1 (a) the inclusion in the register of entries for persons who hold
2 accreditations under subsection 56CE(1);
3 (b) the correction of entries in the register;
4 (c) the publication or availability of all or part of the register, or
5 of specified information in the register;
6 (d) any other matter relating to the content, administration or
7 operation of the register.

8 **Division 4—External dispute resolution**

9 **56DA Commission may recognise external dispute resolution** 10 **schemes**

11 *Recognising an external dispute resolution scheme*

- 12 (1) The Commission may, by notifiable instrument, recognise an
13 external dispute resolution scheme for the resolution of disputes:
14 (a) relating to the operation of the consumer data rules, or this
15 Part, in relation to one or more designated sectors; and
16 (b) involving one or more CDR participants for CDR data, or
17 CDR consumers for CDR data or other persons, relating to
18 any of those designated sectors.

19 Note 1: The consumer data rules may require internal dispute resolution
20 schemes, see paragraph 56BH(f).

21 Note 2: For variation and repeal, see subsection 33(3) of the *Acts*
22 *Interpretation Act 1901*.

- 23 (2) The Commission may, in the instrument under subsection (1):
24 (a) specify a period for which the recognition of the external
25 dispute resolution scheme is in force; and
26 (b) make the recognition of the external dispute resolution
27 scheme subject to specified conditions, including conditions
28 relating to the conduct of an independent review of the
29 operation of the scheme.

30 *Before recognising an external dispute resolution scheme*

- 31 (3) Before recognising an external dispute resolution scheme under
32 subsection (1), the Commission must consider:
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- 1 (a) the accessibility of the scheme; and
2 (b) the independence of the scheme; and
3 (c) the fairness of the scheme; and
4 (d) the accountability of the scheme; and
5 (e) the efficiency of the scheme; and
6 (f) the effectiveness of the scheme; and
7 (g) any other matters the Commission considers relevant.
- 8 (4) Before recognising an external dispute resolution scheme under
9 subsection (1), the Commission must consult the Information
10 Commissioner about the scheme.
- 11 (5) A failure to consult as required by subsection (4) does not
12 invalidate an instrument made under subsection (1).

13 **Division 5—Privacy safeguards**

14 **Subdivision A—Preliminary**

15 **56EA Simplified outline**

16 This Division sets out privacy safeguards that apply to data
17 holders, and accredited data recipients, of CDR data in relation to
18 their handling of that CDR data.

19 A person's failure to comply with any of these safeguards may lead
20 to consequences, including liability to a civil penalty (see
21 Subdivision G) or the suspension or revocation of the person's
22 accreditation (see subsection 56BF(3)).

23 **56EB Kinds of CDR data to which the privacy safeguards apply**

- 24 (1) The privacy safeguards only apply to CDR data for which there are
25 one or more CDR consumers.

26 Note: For CDR data to have a CDR consumer, there needs to be at least one
27 person to whom the information relates who is identifiable, or
28 reasonably identifiable, from the CDR data (see subsection 56AF(4)).

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- 1 (2) The privacy safeguards apply to that CDR data whether that CDR
2 data is true or not.

3 **56EC Relationship with other laws**

4 *Relationship with the consumer data rules*

- 5 (1) If there is an inconsistency between the privacy safeguards and the
6 consumer data rules, those safeguards prevail over the rules to the
7 extent of the inconsistency.

- 8 (2) However, the consumer data rules are taken to be consistent with
9 the privacy safeguards to the extent that they are capable of
10 operating concurrently.

11 Note: This means that the privacy safeguards do not cover the field that they
12 deal with.

13 *Relationship with Part IIIA of the Privacy Act 1988*

- 14 (3) Subject to the regulations, this Division does not limit Part IIIA
15 (about credit reporting) of the *Privacy Act 1988*.

16 **Subdivision B—Consideration of CDR data privacy**

17 **56ED Privacy safeguard 1—open and transparent management of** 18 **CDR data**

19 *Object and CDR participants to which this safeguard applies*

- 20 (1) The object of this section is to ensure that certain CDR participants
21 for CDR data manage the CDR data in an open and transparent
22 way.

- 23 (2) This section applies to the following CDR participants for CDR
24 data:

25 (a) an accredited data recipient of the CDR data;

26 (b) a data holder of the CDR data who has been requested under
27 the consumer data rules by a CDR consumer for the CDR
28 data:

29 (i) to disclose the CDR data; or

30 (ii) to disclose any CDR data associated with the CDR data.

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Compliance with this Part etc.

- (3) The CDR participant must take such steps as are reasonable in the circumstances to implement practices, procedures and systems that:
- (a) will ensure that the participant complies with this Part and the consumer data rules; and
 - (b) will enable the participant to deal with inquiries or complaints from a CDR consumer for CDR data about the participant’s compliance with this Part or the consumer data rules.

Policy about the management of CDR data

- (4) The CDR participant must have a clearly expressed and up-to-date policy about the participant’s management of CDR data.

Civil penalty: 1,000 penalty units.

- (5) Without limiting subsection (4), the CDR participant’s policy must contain the following information:
- (a) the classes of CDR data held by, or on behalf of, the participant, and how that CDR data is so held;
 - (b) the purposes for which the participant collects, holds, uses and discloses CDR data;
 - (c) how a CDR consumer for CDR data may access the CDR data and seek the correction of the CDR data;
 - (d) how a CDR consumer for CDR data may complain about a failure of the participant to comply with this Part or the consumer data rules, and how the participant will deal with such a complaint;
 - (e) whether the participant is likely to disclose CDR data to persons who hold accreditations under subsection 56CE(1) and who are based overseas;
 - (f) if the participant is likely to disclose CDR data to persons who hold accreditations under subsection 56CE(1) and who are based overseas—the countries in which such persons are likely to be based if it is practicable to specify those countries in the policy.

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1

Availability of policy etc.

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(6) The CDR participant must make the participant's policy available:

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(a) free of charge; and

4

(b) in accordance with the consumer data rules.

5

Note: One way the consumer data rules could require the policy to be made available is to require the policy to be made available in accordance with a data standard.

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(7) If a copy of the CDR participant's policy is requested by a CDR

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consumer for the CDR data, the participant must give the CDR

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consumer a copy in accordance with the consumer data rules.

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56EE Privacy safeguard 2—anonymity and pseudonymity

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(1) A CDR participant for CDR data (the *subject data*) who:

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(a) is a data holder of the subject data who has been requested under the consumer data rules by a CDR consumer for the subject data:

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(i) to disclose the subject data; or

16

(ii) to disclose any CDR data associated with the subject data; or

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18

(b) is an accredited data recipient of the subject data;

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must give each CDR consumer for the subject data the option of using a pseudonym, or not identifying themselves, when dealing with the CDR participant in relation to the subject data.

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(2) Subsection (1) does not apply in the circumstances specified in the consumer data rules.

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Subdivision C—Collecting CDR data

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56EF Privacy safeguard 3—collecting solicited CDR data

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A person who holds an accreditation under subsection 56CE(1)

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must not collect CDR data by soliciting the CDR data unless:

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(a) the person collects the CDR data as the result of a disclosure to the person under the consumer data rules in response to a

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valid request from a CDR consumer for the CDR data; or

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- 1 (b) the person's collection of the CDR data is required or
2 authorised by or under:
3 (i) an Australian law, other than the Australian Privacy
4 Principles; or
5 (ii) a court/tribunal order.

6 Civil penalty: 2,000 penalty units.

7 **56EG Privacy safeguard 4—dealing with unsolicited CDR data**

8 If a person:

- 9 (a) holds an accreditation under subsection 56CE(1); and
10 (b) receives, but did not solicit, CDR data; and
11 (c) is not required to retain the CDR data by or under:
12 (i) an Australian law, other than the Australian Privacy
13 Principles; or
14 (ii) a court/tribunal order;

15 the person must destroy the CDR data as soon as practicable.

16 Civil penalty: 1,000 penalty units.

17 **56EH Privacy safeguard 5—notifying of the collection of CDR data**

18 If a person collects CDR data in accordance with section 56EF, the
19 person must:

- 20 (a) take the steps specified in the consumer data rules to notify
21 each CDR consumer for the CDR data of the collection; and
22 (b) ensure that this notification:
23 (i) covers the matters specified in the consumer data rules
24 for the purposes of this subparagraph; and
25 (ii) is given at or before the time specified in the consumer
26 data rules for the purposes of this subparagraph.

27 Civil penalty: 1,000 penalty units.

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1 **Subdivision D—Dealing with CDR data**

2 **56EI Privacy safeguard 6—use or disclosure of CDR data**

3 *Disclosure by a data holder*

4 (1) If a CDR consumer for CDR data has given a data holder of the
5 CDR data a request under the consumer data rules for the CDR
6 data to be disclosed under those rules, the data holder must not
7 disclose the CDR data, or any CDR data associated with the CDR
8 data, unless:

- 9 (a) the disclosure is required or authorised under the consumer
10 data rules; or
11 (b) the disclosure is required or authorised by or under:
12 (i) an Australian law, other than the Australian Privacy
13 Principles; or
14 (ii) a court/tribunal order;
15 and the person makes a written note of the other disclosure.

16 Civil penalty: 2,000 penalty units.

17 *Use or disclosure by an accredited data recipient*

18 (2) If a person collects CDR data in accordance with
19 paragraph 56EF(a), the person must not use or disclose it, or any
20 CDR data associated with it, unless:

- 21 (a) the use or disclosure:
22 (i) is in accordance with a valid consent received, in
23 accordance with the consumer data rules, from a CDR
24 consumer for the CDR data; and
25 (ii) is required or authorised under those rules; or
26 (b) the use or disclosure is required or authorised by or under:
27 (i) an Australian law, other than the Australian Privacy
28 Principles; or
29 (ii) a court/tribunal order;
30 and the person makes a written note of the use or disclosure.

31 Civil penalty: 2,000 penalty units.

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1 (3) Subsection (2) does not apply to the use or disclosure of CDR data
2 for the purposes of direct marketing.

3 Note: Section 56EJ deals with the use or disclosure of CDR data for the
4 purposes of direct marketing.

5 **56EJ Privacy safeguard 7—use or disclosure of CDR data for direct** 6 **marketing by accredited data recipients**

7 If a person collects CDR data in accordance with
8 paragraph 56EF(a), the person must not use or disclose it, or any
9 CDR data associated with it, for direct marketing unless:

- 10 (a) the use or disclosure:
- 11 (i) is in accordance with a valid consent received, in
12 accordance with the consumer data rules, from a CDR
13 consumer for the CDR data; and
 - 14 (ii) is required or authorised under those rules; or
- 15 (b) the use or disclosure is required or authorised by or under:
- 16 (i) an Australian law, other than the Australian Privacy
17 Principles; or
 - 18 (ii) a court/tribunal order.

19 Civil penalty: 2,000 penalty units.

20 **56EK Privacy safeguard 8—cross-border disclosure of CDR data**

21 If:

- 22 (a) a proposed disclosure of CDR data by a person would be
23 covered by subsection 56EI(1) or (2) were the disclosure to
24 be made; and
- 25 (b) the recipient of the proposed disclosure is another person:
- 26 (i) who is not in Australia or an external Territory; and
 - 27 (ii) who is not the CDR consumer for the CDR data;
- 28 the first-mentioned person must not make the disclosure unless:
- 29 (c) that recipient holds an accreditation under
30 subsection 56CE(1); or
- 31 (d) the conditions specified in the consumer data rules for the
32 purposes of this paragraph are met.

33 Note: This subsection applies in addition to the disclosure restrictions in
34 subsection 56EI(1) or (2).

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1 Civil penalty: 2,000 penalty units.

2 **56EL Privacy safeguard 9—adoption or disclosure of government**
3 **related identifiers**

4 (1) Subsection (2) applies to a person if the person:

5 (a) is a data holder of CDR data who has been requested under
6 the consumer data rules by a CDR consumer for the CDR
7 data to disclose the CDR data; or

8 (b) is an accredited data recipient of CDR data;

9 and the CDR data, or any CDR data associated with the CDR data,
10 includes a government related identifier (within the meaning of the
11 *Privacy Act 1988*) of the CDR consumer for the CDR data.

12 (2) The person must not adopt the government related identifier as the
13 person's own identifier of the CDR consumer, or otherwise use the
14 government related identifier, unless the adoption or use is required
15 or authorised by or under:

16 (a) an Australian law, other than the consumer data rules and
17 other than the Australian Privacy Principles; or

18 (b) a court/tribunal order.

19 Civil penalty: 2,000 penalty units.

20 (3) If:

21 (a) a proposed disclosure of CDR data by a person would be
22 covered by subsection 56EI(1) or (2) were the disclosure to
23 be made; and

24 (b) the CDR data includes a government related identifier
25 (within the meaning of the *Privacy Act 1988*) of a CDR
26 consumer for the CDR data;

27 the person must not include the government related identifier in the
28 disclosure unless this is required or authorised by or under:

29 (c) an Australian law, other than the consumer data rules and
30 other than the Australian Privacy Principles; or

31 (d) a court/tribunal order.

32 Note: This subsection applies in addition to the disclosure restrictions in
33 subsection 56EI(1) or (2).

34 Civil penalty: 2,000 penalty units.

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1 **Subdivision E—Integrity of CDR data**

2 **56EM Privacy safeguard 10—quality of CDR data**

3 (1) A CDR participant for CDR data must take reasonable steps to
4 ensure that the CDR data is, having regard to the purpose for which
5 it is held, accurate, up-to-date and complete when the CDR
6 participant discloses the CDR data in accordance with
7 subsection 56EI(1) or (2).

8 Civil penalty: 2,000 penalty units.

9 (2) If:

10 (a) a CDR participant for CDR data discloses the CDR data as
11 described in subsection (1); and

12 (b) later, the CDR participant would reasonably be expected to
13 be aware that some or all of the CDR data was incorrect
14 because, having regard to the purpose for which it was held,
15 it was inaccurate, out of date, incomplete or irrelevant;

16 the CDR participant must advise each CDR consumer for the CDR
17 data accordingly, and do so in writing.

18 Civil penalty: 2,000 penalty units.

19 (3) If:

20 (a) a CDR consumer for CDR data is advised under
21 subsection (2) by a CDR participant for the CDR data that
22 some or all of the CDR data was incorrect when the CDR
23 participant had earlier disclosed it; and

24 (b) the CDR consumer requests the CDR participant to disclose
25 the corrected CDR data to the recipient of that earlier
26 disclosure;

27 the CDR participant must comply with the request.

28 Civil penalty: 2,000 penalty units.

29 **56EN Privacy safeguard 11—security of CDR data**

30 (1) If a person collects CDR data in accordance with
31 paragraph 56EF(a), the person must take the steps specified in the
32 consumer data rules for the purposes of this subsection to protect

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- 1 the CDR data, and any CDR data associated with the CDR data,
2 from:
- 3 (a) misuse, interference and loss; and
4 (b) unauthorised access, modification or disclosure.
- 5 Civil penalty: 2,000 penalty units.
- 6 (2) If:
- 7 (a) a person collects CDR data in accordance with
8 paragraph 56EF(a); and
- 9 (b) any of the CDR data, or any CDR data associated with the
10 CDR data, is no longer needed by the person:
- 11 (i) for the purposes permitted under the consumer data
12 rules for the purposes of this paragraph; or
- 13 (ii) for any purpose for which the person is able to use or
14 disclose that data in accordance with this Division; and
- 15 (c) the person is not required by or under:
- 16 (i) an Australian law, other than the Australian Privacy
17 Principles; or
- 18 (ii) a court/tribunal order.
- 19 to retain the data for which paragraph (b) is satisfied (the
20 *redundant data*);
- 21 the person must take the steps specified in the consumer data rules
22 for the purposes of this subsection to destroy the redundant data or
23 to ensure that the redundant data is de-identified.
- 24 Civil penalty: 2,000 penalty units.

25 Subdivision F—Correction of CDR data

26 56EO Privacy safeguard 12—correction of CDR data

- 27 (1) If a CDR consumer for CDR data (the *subject data*) requests any of
28 the following persons to correct the subject data:
- 29 (a) a data holder of the subject data who has been requested
30 under the consumer data rules by the CDR consumer:
- 31 (i) to disclose the subject data; or
- 32 (ii) to disclose any CDR data associated with the subject
33 data;

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1 (b) an accredited data recipient of the subject data;
2 that person must respond to the request by taking such steps as are
3 specified in the consumer data rules for the purposes of this
4 subsection to deal with each of the matters in subsection (2).

5 Civil penalty: 2,000 penalty units.

6 (2) The matters are as follows:

7 (a) either:

8 (i) to correct the subject data; or

9 (ii) to include a statement with the subject data, to ensure
10 that, having regard to the purpose for which the subject
11 data is held, the subject data is accurate, up to date,
12 complete, relevant and not misleading;

13 (b) to give notice of any correction or statement, or notice of
14 why a correction or statement is unnecessary or
15 inappropriate.

16 **Subdivision G—Compliance with the privacy safeguards**

17 **56EP Information Commissioner to promote compliance etc.**

18 (1) The Information Commissioner has the following functions:

19 (a) making guidelines for the avoidance of acts or practices that
20 may breach the privacy safeguards;

21 (b) promoting an understanding and acceptance of the privacy
22 safeguards;

23 (c) undertaking educational programs for the purposes of
24 promoting the protection of CDR data.

25 Note: The Information Commissioner also has functions that relate to this
26 Part more broadly (see section 56GA).

27 *Extra matters about guidelines under paragraph (1)(a)*

28 (2) Before making guidelines under paragraph (1)(a), the Information
29 Commissioner must consult the Commission about the proposed
30 guidelines.

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- 1 (3) The Information Commissioner may publish guidelines made
2 under paragraph (1)(a) in such manner as the Information
3 Commissioner considers appropriate.
- 4 (4) If there is an inconsistency between the guidelines made under
5 paragraph (1)(a), and the consumer data rules, those rules prevail
6 over the guidelines to the extent of the inconsistency.
- 7 (5) Guidelines made under paragraph (1)(a) are not a legislative
8 instrument.

9 *Extra matters about educational programs under paragraph (1)(c)*

- 10 (6) The educational programs referred to in paragraph (1)(c) may be
11 undertaken by:
12 (a) the Information Commissioner; or
13 (b) a person or authority acting on behalf of the Information
14 Commissioner.

15 **56EQ Information Commissioner may conduct an assessment** 16 **relating to the management and handling of CDR data**

- 17 (1) The Information Commissioner may assess whether a CDR
18 participant for CDR data is maintaining and handling the CDR data
19 in accordance with the privacy safeguards.
- 20 (2) The Information Commissioner may conduct the assessment in
21 such manner as the Information Commissioner considers fit.
- 22 (3) The Information Commissioner may report to the Minister, the
23 Commission or the Data Standards Chair about the assessment.

24 **56ER Notification of CDR data security breaches**

25 *Object*

- 26 (1) The object of this section is for Part IIIC of the *Privacy Act 1988* to
27 apply to an accredited data recipient that holds a CDR consumer's
28 CDR data in a corresponding way to the way that Part applies to an
29 entity that holds an individual's personal information.

30 Note: That Part is about notification of eligible data breaches.

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Extended application of Part IIIC of the Privacy Act 1988

- (2) Part IIIC of the *Privacy Act 1988*, and any other provision of that Act that relates to that Part, applies in relation to an accredited data recipient of CDR data as if the substitutions in the following table, and the modification in subsection (3), were made.

Substitutions to be made

Item	For a reference in Part IIIC to:	substitute a reference to:
1	(a) personal information; or (b) information	CDR data
2	(a) entity; or (b) APP entity; or (c) APP entity, credit reporting body, credit provider or file number recipient, as the case may be	accredited data recipient
3	(a) individual to whom information relates; or (b) individual	CDR consumer for CDR data

- (3) For the purposes of subsection (2), assume that:
- (a) sections 26WB to 26WD of the *Privacy Act 1988* were not enacted; and
 - (b) subsection 26WE(1) of that Act were replaced with the following:

“Scope

- (1) This section applies if:
- (a) CDR data of one or more CDR consumers is held by, or on behalf of, an accredited data recipient of the CDR data; and
 - (b) section 56EN (about privacy safeguard 11) of the *Competition and Consumer Act 2010* applies to the accredited data recipient in relation to the CDR data.”.

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56ES Investigating breaches of the privacy safeguards

Object

- (1) The object of this section is for Part V of the *Privacy Act 1988* to apply to an act or practice:
- (a) of a CDR participant that holds a CDR consumer's CDR data; and
 - (b) that may be a contravention (a ***privacy safeguard contravention***) of any of the following provisions in relation to the CDR data:
 - (i) the privacy safeguards;
 - (ii) section 26WH, 26WK or 26WL or subsection 26WR(10) of the *Privacy Act 1988*, as they apply because of section 56ER of this Act;
- in a corresponding way to the way that Part applies to an act of practice of an organisation, person or entity that may be an interference with the privacy of an individual.

Note: That Part is about investigations of interferences with privacy.

Extended application of Part V of the Privacy Act 1988

- (2) Part V of the *Privacy Act 1988*, and any other provision of that Act that relates to that Part, applies in relation to a CDR participant for CDR data as if the substitutions in the following table, and the modification in subsection (3), were made.

Substitutions to be made

Item	For a reference in Part V to:	substitute a reference to:
1	interference with the privacy of an individual	a privacy safeguard contravention relating to a CDR consumer's CDR data
2	individual	CDR consumer for the CDR data to which the privacy safeguard contravention (or possible privacy safeguard contravention) relates
3	occupied by an agency, an organisation, a file number recipient, a credit reporting body or a credit	occupied by, or on behalf of, a CDR participant for CDR data

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Substitutions to be made

Item	For a reference in Part V to:	substitute a reference to:
	provider	

1 Note: Table item 3 relates to subsection 68(1) of that Act.

2 (3) For the purposes of subsection (2), assume that:

3 (a) references in that Part to a breach of Australian Privacy
4 Principle 1 were disregarded; and

5 (b) section 36 of the *Privacy Act 1988* also stated that in the case
6 of a complaint about an act or practice of a CDR participant,
7 the CDR participant is the respondent; and

8 (c) subsections 36(6) to (8), section 37, subsections 40(1B),
9 43(1A) and (9) and 48(2), section 50A,
10 sub-subparagraph 52(1)(b)(i)(A), and sections 53A and 53B
11 of that Act were not enacted; and

12 (d) the paragraphs in each of subsections 55B(1) and (3) of that
13 Act were replaced by a single paragraph that states that an act
14 or practice of a specified CDR participant for CDR data is a
15 privacy safeguard contravention relating to that CDR data;
16 and

17 (e) Division 4 of Part V, and subsection 63(2A), of that Act were
18 not enacted.

19 **56ET Civil penalty provisions**

20 *Enforceable civil penalty provisions*

21 (1) Each provision of this Division that is a civil penalty provision
22 (within the meaning of the Regulatory Powers Act) is enforceable
23 under Part 4 of that Act.

24 Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to
25 be enforced by obtaining an order for a person to pay a pecuniary
26 penalty for the contravention of the provision.

27 *Authorised applicant*

28 (2) For the purposes of Part 4 of the Regulatory Powers Act, the
29 Information Commissioner is an authorised applicant in relation to
30 each civil penalty provision referred to in subsection (1).

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1

Relevant court

2

- (3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to each civil penalty provision referred to in subsection (1):

3

4

5

(a) the Federal Court of Australia;

6

(b) the Federal Circuit Court of Australia;

7

(c) a court of a State or Territory that has jurisdiction in relation to the matter.

8

9

Conduct also contravening a civil penalty provision of the consumer data rules

10

11

- (4) If conduct constitutes:

12

(a) a contravention of one or more civil penalty provisions referred to in subsection (1); and

13

14

(b) a contravention of one or more civil penalty provisions of the consumer data rules;

15

16

proceedings may be instituted against a person in relation to the contravention of any one or more of those provisions.

17

18

Note 1: The proceedings for a contravention referred to in paragraph (a) would be instituted under Part 4 of the Regulatory Powers Act.

19

20

Note 2: The proceedings for a contravention referred to in paragraph (b) would be instituted under Part VI of this Act.

21

22

- (5) However, the person is not liable to more than one pecuniary penalty under:

23

24

(a) Part 4 of the Regulatory Powers Act for a contravention referred to in paragraph (4)(a) of this section; and

25

26

(b) Part VI of this Act for a contravention referred to in paragraph (4)(b) of this section;

27

28

in relation to the same conduct.

29

Note: This means the person cannot be liable for a pecuniary penalty for a contravention of the privacy safeguards, and for a pecuniary penalty for a contravention of the consumer data rules, in relation to the same conduct.

30

31

32

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1 **56EU Enforceable undertakings**

2 *Enforceable provisions*

- 3 (1) Each provision of Subdivision B to F of this Division is
4 enforceable under Part 6 of the Regulatory Powers Act.

5 Note: Part 6 of the Regulatory Powers Act creates a framework for accepting
6 and enforcing undertakings relating to compliance with provisions.

7 *Authorised person*

- 8 (2) For the purposes of Part 6 of the Regulatory Powers Act, the
9 Information Commissioner is an authorised person in relation to
10 each provision referred to in subsection (1).

11 *Relevant court*

- 12 (3) For the purposes of Part 6 of the Regulatory Powers Act, each of
13 the following courts is a relevant court in relation to each provision
14 referred to in subsection (1):
15 (a) the Federal Court of Australia;
16 (b) the Federal Circuit Court of Australia;
17 (c) a court of a State or Territory that has jurisdiction in relation
18 to the matter.

19 **56EV Injunctions**

20 *Enforceable provisions*

- 21 (1) Each provision of Subdivision B to F of this Division is
22 enforceable under Part 7 of the Regulatory Powers Act.

23 Note: Part 7 of the Regulatory Powers Act creates a framework for using
24 injunctions to enforce provisions.

25 *Authorised person*

- 26 (2) For the purposes of Part 7 of the Regulatory Powers Act, the
27 Information Commissioner is an authorised person in relation to
28 each provision referred to in subsection (1).

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1

Relevant court

2

(3) For the purposes of Part 7 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to each provision referred to in subsection (1):

3

4

5

(a) the Federal Court of Australia;

6

(b) the Federal Circuit Court of Australia;

7

(c) a court of a State or Territory that has jurisdiction in relation to the matter.

8

9

56EW Delegation to the Commission etc.

10

(1) This section applies in relation to the following functions or powers (the *safeguard enforcement functions or powers*):

11

12

(a) the Information Commissioner's functions or powers under section 56EQ;

13

14

(b) the Information Commissioner's functions or powers under Part IIIC or V of the *Privacy Act 1988*, to the extent that those Parts apply because of sections 56ER and 56ES of this Act;

15

16

17

(c) the Information Commissioner's functions or powers under Part 4, 6 or 7 of the Regulatory Powers Act, that are conferred because of this Division.

18

19

20

21

(2) The Information Commissioner may delegate, in writing, any of the safeguard enforcement functions or powers to:

22

23

(a) the Commission; or

24

(b) a member of the Commission; or

25

(c) a member of the staff of the Commission referred to in section 27 of this Act.

26

27

(3) However, the Information Commissioner must not delegate a safeguard enforcement function or power under subsection (2) unless:

28

29

30

(a) the Commission has agreed to the delegation in writing; and

31

(b) in the case of a delegation to a staff member referred to in paragraph (2)(c)—the Commission is satisfied that the staff member:

32

33

34

(i) is an SES employee or acting SES employee; or

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- 1 (ii) is holding or performing the duties of a sufficiently
2 senior office or position for the function or power.

3 **Division 6—Data standards**

4 **Subdivision A—Data Standards Body and Chair**

5 **56FA Appointments**

6 *Appointments*

- 7 (1) The Minister may, by written instrument, appoint:
8 (a) a person to be the Data Standards Chair; and
9 (b) a body to be the Data Standards Body to assist the Data
10 Standards Chair.

11 Note 1: For variation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

12 Note 2: The Chair and Body may be reappointed (see section 33AA of the
13 *Acts Interpretation Act 1901*).

- 14 (2) The Data Standards Chair holds office for the period specified in
15 the Chair's instrument of appointment. The period must not exceed
16 3 years.

- 17 (3) The following provisions:
18 (a) Subdivision A of Division 3 of Part 2-2 of the *Public*
19 *Governance, Performance and Accountability Act 2013*
20 (about the general duties of officials);
21 (b) any rules made under that Act for the purposes of that
22 Subdivision;

23 apply to the Data Standards Chair in a corresponding way to the
24 way they apply to an official (within the meaning of that Act) of a
25 Commonwealth entity (within the meaning of that Act).

26 Note: The duties of officials under the *Public Governance, Performance and*
27 *Accountability Act 2013* include:

- 28 (a) the duty of care and diligence; and
29 (b) the duty to act honestly, in good faith and for a proper purpose;
30 and
31 (c) the duties relating to the use of information and position; and
32 (d) the duty to disclose interests.

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- 1 *Termination of appointments*
- 2 (4) The Minister may terminate the appointment of the Data Standards
3 Chair:
4 (a) for misbehaviour; or
5 (b) if the Data Standards Chair is unable to perform the duties of
6 the Chair's office because of physical or mental incapacity.
- 7 (5) The Minister may terminate the appointment of the Data Standards
8 Chair if:
9 (a) the Data Standards Chair:
10 (i) becomes bankrupt; or
11 (ii) applies to take the benefit of any law for the relief of
12 bankrupt or insolvent debtors; or
13 (iii) compounds with the Chair's creditors; or
14 (iv) makes an assignment of the Chair's remuneration for
15 the benefit of the Chair's creditors; or
16 (b) the Data Standards Chair contravenes a provision referred to
17 in subsection (3) that applies to the Data Standards Chair
18 because of that subsection; or
19 (c) the Data Standards Chair requests the Minister to do so.
- 20 (6) The Minister may, at any time, terminate the appointment of the
21 Data Standards Body.
- 22 (7) A termination under subsection (4), (5) or (6) must be in writing
23 and may repeal the relevant instrument of appointment.

24 **56FB Functions and powers etc.**

- 25 (1) The functions of the Data Standards Chair are:
26 (a) to make standards under Subdivision B; and
27 (b) to review those standards regularly; and
28 (c) such other functions as are prescribed by the regulations for
29 the purposes of this paragraph.
- 30 (2) The Data Standards Chair has the following powers:
31 (a) the power to establish committees, advisory panels and
32 consultative groups;

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- 1 (b) the power to do all other things necessary or convenient to be
2 done for or in connection with the performance of the Chair's
3 functions.
- 4 (3) For the purposes of the *Public Governance, Performance and*
5 *Accountability Act 2013*, neither of the following of itself:
6 (a) the appointment of a person as the Data Standards Chair;
7 (b) the appointment of a body as the Data Standards Body;
8 makes the person or body a Commonwealth entity for the purposes
9 of the finance law.
- 10 (4) If the person appointed as the Data Standards Chair is not a
11 Commonwealth entity for the purposes of the finance law, the
12 Minister may, on behalf of the Commonwealth, make a payment to
13 that person in relation to:
14 (a) that appointment; or
15 (b) other matters of a kind prescribed by the regulations for the
16 purposes of this subsection.

17 **56FC Acting appointments**

18 The Minister may, by written instrument, appoint a person to act as
19 the Data Standards Chair:

- 20 (a) during a vacancy in the office of the Data Standards Chair
21 (whether or not an appointment has previously been made to
22 the office); or
23 (b) during any period, or during all periods, when the Data
24 Standards Chair is, for any reason, unable to perform the
25 duties of the office.

26 Note 1: For rules that apply to acting appointments, see sections 33AB and
27 33A of the *Acts Interpretation Act 1901*.

28 Note 2: The Commission will be the Data Standards Chair in the absence of:
29 (a) an appointment under subsection 56FA(1); and
30 (b) an appointment under this section;
31 (see the definition of *Data Standards Chair* in subsection 4(1)).

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1 **56FD Delegation**

2 *Delegations to staff of the Data Standards Body*

- 3 (1) The Data Standards Chair may delegate, in writing, all or any of
4 the Chair's functions or powers to a person:
5 (a) who holds an office or position in the Data Standards Body
6 that the Chair considers is sufficiently senior for the person to
7 perform the function; and
8 (b) who the Chair considers has appropriate qualifications or
9 expertise to perform the function.

- 10 (2) Subsection (1) does not apply to the function referred to in
11 paragraph 56FB(1)(a) (about making standards).

12 Note: This subsection does not prevent a person who is acting as the Data
13 Standards Chair from making a standard.

14 *Delegations if the Data Standards Chair is a Commonwealth entity*

- 15 (3) If the person who is the Data Standards Chair is a Commonwealth
16 entity for the purposes of the finance law, the Commonwealth
17 entity may delegate its functions or powers as the Data Standards
18 Chair to an SES employee, or an acting SES employee, in the
19 Commonwealth entity.

20 Note: The Commission is a Commonwealth entity for the purposes of the
21 finance law (see subsection 6A(1A)).

- 22 (4) Subsection (3) does not apply to the function referred to in
23 paragraph 56FB(1)(a) (about making standards).

24 Note: This subsection does not prevent a person who is acting as the Data
25 Standards Chair from making a standard.

26 *Directions to delegates*

- 27 (5) In performing a delegated function or exercising a delegated
28 power, the delegate under subsection (1) or (3) must comply with
29 any directions of the Data Standards Chair.

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1 **Subdivision B—Data standards**

2 **56FE Data standards**

- 3 (1) The Data Standards Chair must, by writing, make one or more data
4 standards about each of the following:
5 (a) the format and description of CDR data;
6 (b) the disclosure of CDR data;
7 (c) the use, accuracy, storage, security and deletion of CDR data;
8 (d) other matters prescribed by the regulations for the purposes
9 of this paragraph.

10 Note 1: The Data Standards Chair will need to comply with the consumer data
11 rules when doing so (see subsection (4)). The rules could, for
12 example, require a proposed data standard to be approved by the
13 Commission before it is made.

14 Note 2: For variation and repeal, see subsection 33(3) of the *Acts*
15 *Interpretation Act 1901*.

- 16 (2) Without limiting subsection (1), a single data standard could set
17 out:
18 (a) different provisions for different designated sectors; or
19 (b) different provisions for different classes of CDR data relating
20 to a particular designated sector; or
21 (c) different provisions for different classes of persons specified
22 under subsection 56AC(2) for a particular designated sector;
23 or
24 (d) different provisions for different classes of persons holding
25 accreditations under subsection 56CE(1).
- 26 (3) Without limiting subsection (1), a separate data standard could deal
27 with:
28 (a) each of the different designated sectors referred to in
29 paragraph (2)(a); or
30 (b) each of the different classes referred to in paragraph (2)(b),
31 (c) or (d).

- 32 (4) The Data Standards Chair must comply with the consumer data
33 rules when:
34 (a) making a data standard; or
-

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- 1 (b) varying or revoking a data standard;
2 including complying with any related requirements specified in
3 those rules about approval, consultation and the formation of
4 committees, advisory panels and consultative groups.
- 5 (5) A data standard made under subsection (1) is not a legislative
6 instrument.
- 7 (6) The Data Standards Chair must publish on the internet a copy of
8 each data standard made under subsection (1).
- 9 Note: Once published the data standards will be freely available.

10 **56FF Legal effect of data standards**

- 11 (1) A contract is taken to be in force between:
12 (a) each data holder of CDR data to which a data standard
13 applies; and
14 (b) each person holding an accreditation under
15 subsection 56CE(1);
16 under which each of those persons:
17 (c) agrees to observe the standard to the extent that the standard
18 applies to the person; and
19 (d) agrees to engage in conduct that the person is required by the
20 standard to engage in.
- 21 (2) However, if there is an inconsistency between a data standard, and
22 the consumer data rules, those rules prevail over the standard to the
23 extent of the inconsistency.

24 **56FG Enforcement of data standards**

- 25 (1) If a person who is under an obligation to comply with a data
26 standard fails to meet that obligation, an application to the Court
27 may be made by:
28 (a) the Commission; or
29 (b) a person aggrieved by the failure.
- 30 (2) After giving an opportunity to be heard to the applicant and the
31 person against whom the order is sought, the Court may make an
32 order giving directions to:

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- 1 (a) the person against whom the order is sought; or
2 (b) if that person is a body corporate—the directors of the body
3 corporate;
4 about compliance with, or enforcement of, the data standard.
- 5 (3) Without limiting subsection (1), an obligation to comply with a
6 data standard includes an obligation arising under a contract
7 referred to in subsection 56FF(1).

8 **Division 7—Other matters**

9 **56GA CDR functions of the Information Commissioner**

- 10 (1) The Information Commissioner has the following functions:
11 (a) the functions conferred on the Information Commissioner by
12 another provision of this Part, or by an instrument made
13 under this Part;
14 (b) advising the Minister, Commission or Data Standards Chair
15 about any matter relevant to the operation of this Part (or the
16 operation of instruments made under this Part).

17 **Note:** The Commission may also delegate to the Information Commissioner
18 any of the Commission's functions under this Part or related
19 information gathering powers under section 155 (see
20 subsection 26(3)).

- 21 (2) The functions referred to in subsection (1) may be performed by
22 the Information Commissioner on request or on the Information
23 Commissioner's own initiative.

24 **56GB Referring to instruments as in force from time to time**

- 25 (1) This section applies to the following instruments:
26 (a) designations under section 56AC (about designated sectors);
27 (b) regulations made for the purposes of a provision of this Part;
28 (c) the consumer data rules;
29 (d) data standards.
- 30 (2) An instrument to which this section applies may make provision in
31 relation to a matter by applying, adopting or incorporating (with or

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1 without modification) any matter contained in any other instrument
2 or writing:

- 3 (a) as in force or existing at a particular time; or
4 (b) as in force or existing from time to time.

5 (3) Subsection (2) has effect despite subsection 14(2) of the
6 *Legislation Act 2003*.

7 **56GC Complying with requirements to provide CDR data: 8 protection from liability**

9 (1) If:

- 10 (a) a CDR participant for CDR data:
11 (i) provides the CDR data to another person; or
12 (ii) otherwise allows another person access to the CDR
13 data; and
14 (b) the CDR participant does so in compliance with:
15 (i) this Part; and
16 (ii) regulations made for the purposes of this Part; and
17 (iii) the consumer data rules;

18 the CDR participant is not liable to an action or other proceeding,
19 whether civil or criminal, for or in relation to that conduct.

20 Note: A defendant bears an evidential burden in relation to the matter in
21 subsection (1) for a criminal action or criminal proceeding (see
22 subsection 13.3(3) of the *Criminal Code*).

23 (2) A person who wishes to rely on subsection (1) in relation to a civil
24 action or civil proceeding bears an evidential burden in relation to
25 that matter.

26 (3) In this section:

27 *evidential burden*, in relation to a matter, means the burden of
28 adducing or pointing to evidence that suggests a reasonable
29 possibility that the matter exists or does not exist.

30 **56GD Exemptions by the Commission**

- 31 (1) The *provisions covered by this section* are:
32 (a) the following provisions:
-

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- 1 (i) the provisions of this Part;
2 (ii) the provisions of regulations made for the purposes of
3 the provisions of this Part;
4 (iii) the provisions of the consumer data rules; and
5 (b) definitions in this Act, or in the regulations or consumer data
6 rules, as they apply to references in provisions referred to in
7 paragraph (a).
- 8 (2) The Commission may, by written instrument, exempt a particular
9 person, in relation to particular CDR data or one or more classes of
10 CDR data, from all or specified provisions covered by this section.
- 11 (3) The Commission may, by legislative instrument, exempt a class of
12 persons, in relation to particular CDR data or one or more classes
13 of CDR data, from all or specified provisions covered by this
14 section.
- 15 (4) An exemption under subsection (2) or (3):
16 (a) may or may not be limited to a specified period; and
17 (b) may apply unconditionally or subject to specified conditions.
- 18 (5) The Commission must publish on its website the details of each
19 exemption under subsection (2) or (3).

20 **56GE Exemptions and modifications by regulations**

- 21 (1) The *provisions covered by this section* are:
22 (a) the following provisions:
23 (i) the provisions of this Part;
24 (ii) the provisions of regulations made for the purposes of
25 the provisions of this Part;
26 (iii) the provisions of the consumer data rules; and
27 (b) definitions in this Act, or in the regulations or consumer data
28 rules, as they apply to references in provisions referred to in
29 paragraph (a).
- 30 (2) The regulations may:
31 (a) exempt a particular person, in relation to particular CDR data
32 or one or more classes of CDR data, from all or specified
33 provisions covered by this section; or

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- 1 (b) exempt a class of persons, in relation to particular CDR data
2 or one or more classes of CDR data, from all or specified
3 provisions covered by this section; or
4 (c) declare that provisions covered by this section apply in
5 relation to:
6 (i) a particular person in relation to particular CDR data or
7 one or more classes of CDR data; or
8 (ii) a class of persons in relation to particular CDR data or
9 one or more classes of CDR data;
10 as if specified provisions were omitted, modified or varied as
11 specified in the declaration.
- 12 (3) An exemption under paragraph (2)(a) or (b), or a declaration under
13 paragraph (2)(c):
14 (a) may or may not be limited to a specified period; and
15 (b) may apply unconditionally or subject to specified conditions.

16 **56GF Alternative constitutional basis**

- 17 (1) Without limiting its effect apart from this section, this Part also has
18 effect as provided by this section.
- 19 (2) This Part also has the effect it would have if:
20 (a) subsections (3) and (4) had not been enacted; and
21 (b) this Part did not apply except to the extent to which it relates
22 to data holders of CDR data, persons who hold accreditations
23 under subsection 56CE(1), or recipients of CDR data, that
24 are:
25 (i) corporations to which paragraph 51(xx) of the
26 Constitution applies; or
27 (ii) bodies corporate that are incorporated in a Territory.
- 28 (3) This Part also has the effect it would have if:
29 (a) subsections (2) and (4) had not been enacted; and
30 (b) this Part did not apply except to the extent to which it relates
31 to data holders of CDR data, persons who hold accreditations
32 under subsection 56CE(1), or recipients of CDR data, that
33 are:

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- 1 (i) providers of postal, telegraphic, telephonic or other like
2 services; or
3 (ii) providers of banking services; or
4 (iii) providers of insurance services.

- 5 (4) This Part also has the effect it would have if:
6 (a) subsections (2) and (3) had not been enacted; and
7 (b) this Part did not apply except to the extent to which it relates
8 to data holders of CDR data, persons who hold accreditations
9 under subsection 56CE(1), or recipients of CDR data, that are
10 engaging in any of the following:
11 (i) trade or commerce between Australia and places outside
12 Australia;
13 (ii) trade or commerce among the States;
14 (iii) trade or commerce within a Territory, between a State
15 or Territory or between 2 Territories.

16 **56GG Compensation for acquisition of property**

- 17 (1) This section applies if the operation of this Part would result in an
18 acquisition of property (within the meaning of paragraph 51(xxxi)
19 of the Constitution) from a person otherwise than on just terms
20 (within the meaning of that paragraph).
- 21 (2) The person who acquires the property is liable to pay a reasonable
22 amount of compensation to the first-mentioned person.
- 23 (3) If the 2 persons do not agree on the amount of the compensation,
24 the person to whom compensation is payable may institute
25 proceedings in:
26 (a) the Federal Court of Australia; or
27 (b) the Supreme Court of a State or Territory;
28 for the recovery from the other person of such reasonable amount
29 of compensation as the Court determines.

30 **56GH Review of the operation of this Part**

- 31 (1) The Minister must cause an independent review to be conducted of
32 the operation of this Part.

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1 (2) The persons who conduct the review must complete it, and give the
2 Minister a written report of the review, before 1 January 2023.

3 (3) The Minister must cause copies of the report to be tabled in each
4 House of the Parliament within 15 sitting days of that House after
5 the report is given to the Minister.

6 **2 Transitional—banking sector**

7 *Designating the banking sector*

- 8 (1) Subsections 56AD(2) and 56AE(1) and (2) of the *Competition and*
9 *Consumer Act 2010* do not apply in relation to an instrument under
10 subsection 56AC(2) of that Act that:
- 11 (a) is to designate information, or classes of information, held by
12 or on behalf of:
 - 13 (i) one or more authorised deposit-taking institutions
14 (within the meaning of the *Banking Act 1959*); or
 - 15 (ii) one or more classes of authorised deposit-taking
16 institutions (within the meaning of the *Banking Act*
17 *1959*); and
 - 18 (b) is to be made before 1 July 2019.

19 *Consumer data rules for the banking sector*

- 20 (2) Section 56BO of the *Competition and Consumer Act 2010* does not
21 apply in relation to consumer data rules to be made under
22 subsection 56BA(1) of that Act to the extent that those rules:
- 23 (a) relate to a designated sector consisting of information, or
24 classes of information, held by or on behalf of:
 - 25 (i) one or more authorised deposit-taking institutions
26 (within the meaning of the *Banking Act 1959*); or
 - 27 (ii) one or more classes of authorised deposit-taking
28 institutions (within the meaning of the *Banking Act*
29 *1959*); and
 - 30 (b) are made before 1 July 2019.

1 **Part 2—Other amendments**

2 *Australian Information Commissioner Act 2010*

3 **3 Section 4**

4 After “the privacy functions, which are”, insert “mainly”.

5 **4 Subsection 9(1)**

6 Repeal the subsection.

7 (1) The *privacy functions* are functions conferred on the Information
8 Commissioner by an Act (or an instrument under an Act), if:

9 (a) the functions:

10 (i) relate to the privacy of an individual; and

11 (ii) are not freedom of information functions; or

12 (b) the functions are conferred by:

13 (i) Part IVD (about the consumer data right) of the
14 *Competition and Consumer Act 2010*; or

15 (ii) an instrument made under that Part.

16 **5 After paragraph 29(2)(a)**

17 Insert:

18 (aa) if the information was acquired in the course of performing a
19 function conferred as described in paragraph 9(1)(b) (about
20 the consumer data right), or in the exercise of a related
21 power—the person records, discloses or otherwise uses the
22 information in the course of:

23 (i) performing a function also conferred as described in that
24 paragraph; or

25 (ii) exercising a related power; or

26 (iii) providing information to the Minister, the Department,
27 the Minister administering the *Competition and*
28 *Consumer Act 2010*, the Department administered by
29 the Minister administering that Act, or the Australian
30 Competition and Consumer Commission; or

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1 ***Competition and Consumer Act 2010***

2 **6 Subsection 4(1)**

3 Insert:

4 ***Accreditation Registrar*** means:

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

8 ***accredited data recipient*** has the meaning given by
9 subsection 56AG(3).

10 ***associated with***, in relation to CDR data, has the meaning given by
11 subsection 56AF(2).

12 ***Australian law*** has the same meaning as in the *Privacy Act 1988*.

13 ***CDR consumer*** has the meaning given by subsection 56AF(4).

14 ***CDR data*** has the meaning given by subsection 56AF(1).

15 ***CDR participant*** has the meaning given by subsection 56AG(4).

16 ***civil penalty provision of the consumer data rules*** means a
17 provision of the consumer data rules that is a civil penalty
18 provision (within the meaning of the Regulatory Powers Act).

19 ***Commonwealth entity for the purposes of the finance law*** means
20 a person or body that is a Commonwealth entity (within the
21 meaning of the *Public Governance, Performance and*
22 *Accountability Act 2013*) for the purposes of the finance law
23 (within the meaning of that Act).

24 ***consumer data rules*** means rules made under section 56BA.

25 ***court/tribunal order*** has the same meaning as in the *Privacy Act*
26 *1988*.

27 ***data holder*** has the meaning given by subsection 56AG(1).

28 ***Data Recipient Accreditor*** means:

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- 1 (a) if a person or body holds an appointment under
2 subsection 56CA(1)—that person or body; or
3 (b) otherwise—the Commission.

4 *data standards* means the data standards made under section 56FE.

5 *Data Standards Body* means the body holding an appointment
6 under paragraph 56FA(1)(b).

7 *Data Standards Chair* means:

- 8 (a) if a person holds an appointment under
9 paragraph 56FA(1)(a)—that person; or
10 (b) otherwise—the Commission.

11 *designated sector* has the meaning given by subsection 56AC(1).

12 *directly or indirectly derived* has the meaning given by
13 subsection 56AF(2).

14 *privacy safeguards* are set out in Division 5 of Part IVD (about the
15 consumer data right).

16 *Regulatory Powers Act* means the *Regulatory Powers (Standard*
17 *Provisions) Act 2014*.

18 **7 Before subsection 26(1)**

19 Insert:

20 *Delegation to staff members of ASIC*

21 **8 At the end of section 26**

22 Add:

23 *Delegation to staff of the OAIC etc.*

- 24 (3) The Commission may, by resolution and in accordance with
25 subsection (4), delegate any of its functions and powers under:
26 (a) Division 2A of Part IVB; or
27 (b) Part VI; or
28 (c) section 155;

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1 to the extent that the function or power relates to Part IVD or the
2 consumer data rules.

3 Note: Division 2A of Part IVB relates to the consumer data rules in the way
4 described in section 56BK.

5 (4) A delegation under subsection (3) of a function or power may be:

6 (a) to the Information Commissioner; or

7 (b) to a member of the staff of the Office of the Australian
8 Information Commissioner referred to in section 23 of the
9 *Australian Information Commissioner Act 2010*;

10 if:

11 (c) the Information Commissioner agrees to the delegation in
12 writing; and

13 (d) in the case of a delegation to a staff member referred to in
14 paragraph (b)—the Information Commissioner is satisfied
15 that the staff member:

16 (i) is an SES employee or acting SES employee; or

17 (ii) is holding or performing the duties of a sufficiently
18 senior office or position for the function or power.

19 *Delegation to other persons*

20 (5) The Commission may, by resolution, delegate any of its functions
21 and powers under section 155 that relate to a matter that
22 constitutes, or may constitute, a contravention of:

23 (a) Part IVD; or

24 (b) the consumer data rules;

25 to any person who the Commission considers has appropriate
26 qualifications or expertise to perform that function or power.

27 **9 After subparagraph 76(1)(a)(ia)**

28 Insert:

29 (ib) subsection 56BM(2) or 56CG(2) or a civil penalty
30 provision of the consumer data rules;

31 **10 Paragraph 76(1A)(b)**

32 After “Part IV”, insert “, or that relates to a civil penalty provision of
33 the consumer data rules”.

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1 **11 After paragraph 76(1A)(ba)**

2 Insert:

3 (bb) for each act or omission to which this section applies that
4 relates to subsection 56BM(2) or 56CG(2)—5 times the
5 amount set out at the foot of that subsection; and

6 **12 After paragraph 76(1B)(aa)**

7 Insert:

8 (ab) for each act or omission to which this section applies that
9 relates to subsection 56BM(2) or 56CG(2)—the amount set
10 out at the foot of that subsection; and

11 **13 After paragraph 76(1B)(aaa)**

12 Insert:

13 (aab) for each act or omission to which this section applies that
14 relates to a civil penalty provision of the consumer data
15 rules—\$500,000; and

16 **14 Subsections 76B(2), (3), (4)**

17 After “Part IV”, insert “, subsection 56BM(2) or 56CG(2), a civil
18 penalty provision of the consumer data rules”.

19 **15 Paragraph 76B(5)(a)**

20 After “Part IV”, insert “, subsection 56BM(2) or 56CG(2), a civil
21 penalty provision of the consumer data rules”.

22 **16 After subparagraph 80(1)(a)(iia)**

23 Insert:

24 (iib) subsection 56BM(1) or (2) or 56CG(1) or (2) or a civil
25 penalty provision of the consumer data rules;

26 **17 Subsection 82(1)**

27 Repeal the subsection, substitute:

28 (1) A person who suffers loss or damage by conduct of another person
29 that was done in contravention of:

30 (a) a provision of Part IV or IVB; or

31 (b) section 55B, 60C or 60K; or

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1 (c) subsection 56BM(1) or (2) or 56CG(1) or (2) or a civil
2 penalty provision of the consumer data rules;
3 may recover the amount of the loss or damage by action against
4 that other person or against any person involved in the
5 contravention.

6 **18 Subparagraph 83(1)(a)(ii)**

7 After “45AG”, insert “or subsection 56BM(1) or 56CG(1)”.

8 **19 Paragraph 83(1)(b)**

9 Repeal the paragraph, substitute:

- 10 (b) in which that person has been found to have contravened, or
11 to have been involved in a contravention of:
- 12 (i) a provision of Part IV or IVB; or
 - 13 (ii) section 55B, 60C or 60K; or
 - 14 (iii) subsection 56BM(2) or 56CG(2) or a civil penalty
15 provision of the consumer data rules.

16 **20 Paragraph 84(1)(a)**

17 After “45AG”, insert “or subsection 56BM(1) or 56CG(1)”.

18 **21 Paragraph 84(1)(b)**

19 Omit “or Part V”, substitute “, Part V, subsection 56BM(1) or (2) or
20 56CG(1) or (2) or a civil penalty provision of the consumer data rules”.

21 **22 Subsection 84(2)**

22 After “this Act”, insert “and the consumer data rules”.

23 **23 Paragraph 84(3)(a)**

24 After “45AG”, insert “or subsection 56BM(1) or 56CG(1)”.

25 **24 Paragraph 84(3)(b)**

26 Omit “or Part V”, substitute “, Part V, subsection 56BM(1) or (2) or
27 56CG(1) or (2) or a civil penalty provision of the consumer data rules”.

28 **25 Subsection 84(4)**

29 After “this Act”, insert “and the consumer data rules”.

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1 **26 Subsection 86(1)**

2 After “this Act”, insert “or the consumer data rules”.

3 **27 Subsection 86C(4) (paragraph (a) of the definition of**
4 **contravening conduct)**

5 Repeal the paragraph, substitute:

6 (a) contravenes Part IV or IVB, section 55B,
7 subsection 56BM(1) or (2) or 56CG(1) or (2), section 60C,
8 60K or 92 or a civil penalty provision of the consumer data
9 rules; or

10 **28 Paragraph 86D(1)(b)**

11 After “or 45AG”, insert “or subsection 56BM(1) or 56CG(1)”.

12 **29 Subsection 86D(1A)**

13 After “or 45AG”, insert “or subsection 56BM(1) or 56CG(1)”.

14 **30 Paragraph 86E(1)(a)**

15 After “Part IV”, insert “, subsection 56BM(1) or (2) or 56CG(1) or (2)
16 or a civil penalty provision of the consumer data rules”.

17 **31 Paragraph 86E(1A)(a)**

18 After “45AG”, insert “, subsection 56BM(1) or (2) or 56CG(1) or (2) or
19 a civil penalty provision of the consumer data rules”.

20 **32 Subsection 86F(1)**

21 After “this Act”, insert “or the consumer data rules”.

22 **33 Subsection 87(1)**

23 After “offence against section 45AF or 45AG”, insert “or
24 subsection 56BM(1) or 56CG(1)”.

25 **34 Subsection 87(1)**

26 Omit “section 55B, 60C or 60K”, substitute “section 55B or
27 subsection 56BM(2) or 56CG(2) or section 60C or 60K or a civil
28 penalty provision of the consumer data rules”.

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1 **35 Paragraphs 87(1A)(a) and (b)**

2 Omit “or section 60C or 60K”, substitute “, subsection 56BM(1) or (2)
3 or 56CG(1) or (2), section 60C or 60K or a civil penalty provision of
4 the consumer data rules”.

5 **36 Paragraph 87(1A)(baa)**

6 After “section 55B”, insert “, subsection 56BM(1) or (2) or 56CG(1) or
7 (2) or a civil penalty provision of the consumer data rules”.

8 **37 Paragraph 87(1A)(ba)**

9 After “45AG”, insert “, subsection 56BM(1) or (2) or 56CG(1) or (2) or
10 a civil penalty provision of the consumer data rules”.

11 **38 Paragraph 87(1B)(a)**

12 Omit “Part IV (other than section 45D or 45E), Division 2 of Part IVB
13 or section 60C or 60K”, substitute “a provision referred to in that
14 paragraph”.

15 **39 Subsection 87(1BAA)**

16 Omit “(1A)(b)”, substitute “(1A)(baa)”.

17 **40 Subsection 87(1BAA)**

18 Omit “section 55B”, substitute “a provision referred to in that
19 paragraph”.

20 **41 Paragraph 87(1BA)(a)**

21 Omit “section 45AF or 45AG”, substitute “a provision referred to in
22 that paragraph”.

23 **42 Subsection 87(1C)**

24 Omit “or section 60C or 60K”, substitute “, subsection 56BM(1) or (2)
25 or 56CG(1) or (2), section 60C or 60K or a civil penalty provision of
26 the consumer data rules”.

27 **43 Section 154A (paragraph (a) of the definition of *evidential***
28 ***material*)**

29 After “contravention of this Act”, insert “or the consumer data rules”.

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1 **44 Paragraph 154V(2)(a)**

2 After “contravention of this Act”, insert “or the consumer data rules”.

3 **45 At the end of paragraph 155(2)(a)**

4 Add:

5 (iv) the consumer data rules; or

6 **46 After subparagraph 155(2)(b)(i)**

7 Insert:

8 (ia) a designated consumer data right matter (as defined by
9 subsection (9AA) of this section); or

10 **47 After subsection 155(9)**

11 Insert:

12 (9AA) A reference in this section to a *designated consumer data right*
13 *matter* is a reference to the performance of a function, or the
14 exercise of a power, conferred on the Commission by or under:

15 (a) Part IVD (other than Division 5); or

16 (b) regulations made under this Act for the purposes of that Part;
17 or

18 (c) the consumer data rules.

19 **48 Subsection 155AAA(21) (paragraph (a) of the definition of**
20 **core statutory provision)**

21 After “IV,”, insert “IVD (other than Division 5),”.

22 **49 Subsection 155AAA(21) (paragraph (a) of the definition of**
23 **core statutory provision)**

24 After “XIC”, insert “or of the consumer data rules”.

25 **50 Section 157A (heading)**

26 Repeal the heading, substitute:

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1 **157A Disclosure of energy-related information by Commission**

2 **51 After section 157A**

3 Insert:

4 **157AA Disclosure of CDR-related information by Commission**

5 *Disclosure to the Information Commissioner*

- 6 (1) The Commission or a Commission official may disclose to:
- 7 (a) the Information Commissioner; or
- 8 (b) any staff or consultant assisting the Information
- 9 Commissioner in performing that Commissioner's functions,
- 10 or exercising that Commissioner's powers, relating to
- 11 Part IVD or the consumer data rules;
- 12 any information that the Commission obtains under this Act, or the
- 13 consumer data rules, that is relevant to the functions or powers
- 14 referred to in paragraph (b).

15 Note: The *Privacy Act 1988* also contains provisions relevant to the use and

16 disclosure of information.

- 17 (2) The Information Commissioner or a person mentioned in
- 18 paragraph (1)(b) must only use the information:
- 19 (a) for a purpose connected with the performance of the
- 20 functions, or the exercise of the powers, referred to in
- 21 paragraph (1)(b); and
- 22 (b) in accordance with any conditions imposed under
- 23 subsection (4).

24 *Disclosure to a foreign agency*

- 25 (3) The Commission or a Commission official may disclose to:
- 26 (a) an agency having the function in a foreign country of
- 27 supervising or regulating the disclosure of similar
- 28 information to that covered by an instrument designating a
- 29 sector under subsection 56AC(2); or
- 30 (b) an agency, prescribed by the regulations for the purposes of
- 31 this paragraph, of a foreign country;
- 32 any information that the Commission obtains:

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- 1 (c) under this Act in relation to Part IVD or the consumer data
2 rules; or
3 (d) under the consumer data rules.

4 *Conditions*

- 5 (4) The Commission or a Commission official may impose conditions
6 to be complied with in relation to information disclosed under
7 subsection (1) or (3).

8 *Commission official*

- 9 (5) In this section:

10 *Commission official* means:

- 11 (a) a member, or associate member, of the Commission; or
12 (b) a person referred to in subsection 27(1); or
13 (c) a person engaged under section 27A.

14 *foreign country* includes a region where:

- 15 (a) the region is a colony, territory or protectorate of a foreign
16 country; or
17 (b) the region is part of a foreign country; or
18 (c) the region is under the protection of a foreign country; or
19 (d) a foreign country exercises jurisdiction or control over the
20 region; or
21 (e) a foreign country is responsible for the region's international
22 relations.

23 ***Privacy Act 1988***

24 **52 After subsection 6E(1C)**

25 Insert:

26 *Small business operator that is accredited for the consumer data*
27 *right regime*

- 28 (1D) If a small business operator holds an accreditation under
29 subsection 56CE(1) of the *Competition and Consumer Act 2010*,
-

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1 this Act applies, with the prescribed modifications (if any), in
2 relation to information that:

3 (a) is personal information; but

4 (b) is not CDR data (within the meaning of that Act);

5 as if the small business operator were an organisation.

6 Note: The regulations may prescribe different modifications of the Act for
7 different small business operators. See subsection 33(3A) of the *Acts*
8 *Interpretation Act 1901*.

9