



**Australian Government**

**Office of the Australian Information Commissioner**

# Report on the draft designation instrument – Consumer Data Right – (Authorised Deposit- Taking Institutions) Amendment 2022

*A report by the Australian Information Commissioner, pursuant to section  
56AF of the Competition and Consumer Act 2010*

29 September 2022

OAIC

I welcome the opportunity to provide this report on the *Consumer Data Right – Open Banking sectoral assessment and draft designation instrument – minor and technical amendment* (the draft instrument). The draft instrument and its explanatory material are available at (<https://treasury.gov.au/consultation/c2022-300402-ob>), having been published by the Department of the Treasury (Treasury) for a period of public consultation from 19 August – 16 September 2022.

As Australian Information Commissioner (Information Commissioner) this report is produced in fulfilment of my obligation under s 56AF of the *Competition and Consumer Act 2010* (CC Act). Section 56AF requires me, as Information Commissioner, to:

- a) analyse the likely effect of making the draft instrument on the privacy or confidentiality of consumers' information, and
- b) report to the Minister about that analysis.

As required by s 56AF(2) of the CC Act, this report will be published on the Office of the Australian Information Commissioner (OAIC) website. This report also constitutes evidence of the consultation required by section 56AD(3) of the CC Act, which provides that the Minister must consult the Information Commissioner before making an instrument designating a new sector as subject to the CDR.

If made, the amendment to the draft instrument would have the effect of amending the definition of 'product' in the existing *Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2019* (Banking Designation Instrument) to include goods and services that have been supplied in connection with the letting on hire of goods, including on hire purchase.<sup>1</sup> The amendment seeks to clarify, for the avoidance of doubt, that leases are included in the Banking Designation Instrument.

It is my understanding the proposed change does not seek to broaden the CDR system beyond what was recommended in the Final Report of the Review into Open Banking in Australia (Final Report).<sup>2</sup> In considering the type of banking data that should be in scope for the CDR, the Final Report expressly recommended that consumer leases and asset finance (and leases) be included.<sup>3</sup> Lease products are also included in the prescribed list of banking products in the *Competition and Consumer (Consumer Data Right) Rules 2020* (CDR Rules).<sup>4</sup>

In producing this report, I have had the benefit of reviewing publicly available submissions to the Review into Open Banking in Australia<sup>5</sup>. I have also reviewed the Final Report<sup>6</sup> and the privacy impact assessment (PIA)<sup>7</sup> which examined the impact of Open Banking on the privacy of individuals. I have not considered datasets which are outside the scope of the draft instrument. OAIC staff have also had ongoing engagement with Treasury to ensure a common understanding of the matters at hand and applicable privacy and confidentiality implications.

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<sup>1</sup> <https://treasury.gov.au/sites/default/files/2022-07/c2022-300402-ob-exposedraft.pdf>.

<sup>2</sup> <https://treasury.gov.au/consultation/c2018-t247313>.

<sup>3</sup> Table 3.1, Final Report of the Review into Open Banking in Australia [https://treasury.gov.au/sites/default/files/2019-03/Review-into-Open-Banking-\\_For-web-1.pdf](https://treasury.gov.au/sites/default/files/2019-03/Review-into-Open-Banking-_For-web-1.pdf).

<sup>4</sup> See clause 1.4 of Schedule 3 to the *Competition and Consumer (Consumer Data Right) Rules 2020*.

<sup>5</sup> <https://treasury.gov.au/consultation/c2018-t247313>

<sup>6</sup> <https://treasury.gov.au/consultation/c2018-t247313>.

<sup>7</sup> [https://treasury.gov.au/sites/default/files/2019-12/p2019-41016\\_PIA\\_final.pdf](https://treasury.gov.au/sites/default/files/2019-12/p2019-41016_PIA_final.pdf).

I have conducted my analysis of ‘the likely effect of making the instrument on the privacy or confidentiality of consumers’ information (per s 56AF, CC Act) by reference to whether the applicable privacy and confidentiality implications are reasonable, necessary and proportionate. As such, my analysis has been informed by a variety of factors, including:

- the inclusion of leases in the proposed list of banking products in the Final Report
- the inclusion of lease products in the currently operational CDR Rules
- the privacy and confidentiality protections afforded by the privacy safeguards in the CC Act and CDR Rules
- the importance of ensuring the CDR is easily understood and operationalised, so as to protect against risk of error in the application of privacy safeguards and protections
- the role of the designation instrument in the broader CDR framework, noting that the ultimate impact of the designation instrument depends on provisions of the CC Act and CDR rules which govern the handling and protection of designated data, and
- the benefits of a flexible and future-focussed CDR which can readily adapt to embrace new and emerging use-cases, supported by robust privacy protections and safeguards.

Having considered the above factors, I have concluded that, on balance, the privacy and confidentiality impacts of the proposed amendment to the banking designation instrument can be appropriately mitigated and managed within the CDR framework.