



Australian Government

Office of the Australian Information Commissioner

Our reference: D2021/021764

Senator the Hon Jane Hume
Minister for Superannuation, Financial Services and the Digital Economy
PO Box 6100
Senate, Parliament House
Canberra ACT 2600

By email: c/o [REDACTED]

Re: Report on the draft Consumer Data Right (Telecommunications Sector) Designation 2021

Dear Minister

Thank you for consulting me as Australian Information Commissioner on the draft Consumer Data Right (Telecommunications Sector) Designation 2021 (the draft instrument), which would designate telecommunications as a sector under the Consumer Data Right (CDR).

I understand this consultation is occurring under section 56AD(3) of the *Competition and Consumer Act 2010* (Competition and Consumer Act), which requires you to consult with me about the likely effect of making the draft designation instrument on the privacy or confidentiality of consumers' information.

I have analysed the likely effect of making the draft designation instrument on the privacy or confidentiality of consumers' information. As required by section 56AF(1)(b) of the Competition and Consumer Act, I have prepared the enclosed report about that analysis. As required by s 56AF(2) of the Act, my report will be published on the Office of the Australian Information Commissioner (OAIC) website.

As a general comment, and as set out further in my report, I note that consumer information handled by telecommunications providers is inherently sensitive. To this end, I acknowledge the close consideration that has been given to the possible privacy impacts of extending the CDR to the telecommunications sector as represented by the telecommunications sectoral assessment final report and accompanying privacy impact assessment (PIA).

I also appreciate that the ultimate impact of designating information depends on relevant provisions of the Competition and Consumer Act and CDR rules which govern the disclosure and handling of designated data. As currently drafted, the draft instrument could capture a wide range of consumer information held by designated providers (carriers and carriage service providers), some of which may be unintended. These types of information can reveal rich insights about a consumer, and their inclusion in the designation instrument and the CDR more broadly could have a significant impact on the privacy or confidentiality of consumers' information. I am also conscious of the benefits that may be afforded to consumers through the expansion of the CDR to the telecommunications sector, including increased innovation and competition in the sector.

On balance, I have concluded that the privacy and confidentiality impacts of designating telecommunications as a CDR sector can be appropriately mitigated and managed within the CDR framework. My report makes 12 recommendations to this effect, with the aim of ensuring that the identified privacy and confidentiality impacts of designation are reasonable, necessary and proportionate. Noting the role of the designation instrument in the broader CDR framework, my recommendations highlight opportunities to address privacy risk via the designation instrument, rules, explanatory materials and primary legislation as appropriate. A summary of my recommendations is on pages 4 – 5 of my report.

Should you decide to proceed with designating telecommunications as a CDR sector, I am able to consider and report further on any significant changes to the instrument as appropriate. I also look forward to considering related privacy matters that may arise in the context of new CDR rules, as required by section 56BR of the Competition and Consumer Act. At that point, I will make any further recommendations required to ensure that the expansion of the CDR to the telecommunications sector is underpinned by strong privacy and security protections.

Please advise if you would like to discuss any aspect of this letter or my report. For your staff, the contact officer for this letter and my report is Claire Schwager, Director, Regulation & Strategy Branch, who can be contacted on [REDACTED].

Yours sincerely

Angelene Falk
Australian Information Commissioner
Privacy Commissioner

23 December 2021