

Chapter A: Introductory matters

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Purpose

- A.1 The Australian Information Commissioner issues these Privacy Safeguard guidelines under s 56EQ(1)(a) of the *Competition and Consumer Act 2010* (Cth) (Competition and Consumer Act). These guidelines are not a legislative instrument.¹
- A.2 The Privacy Safeguard guidelines are made in order to guide entities on avoiding acts or practices that may breach the privacy safeguards, which are set out in Division 5 of Part IVD of the Competition and Consumer Act.
- A.3 Part IVD of the Competition and Consumer Act is the legislative base for the Consumer Data Right (CDR) regime.
- A.4 The Privacy Safeguard guidelines outline:
- the mandatory requirements in the privacy safeguards and related Consumer Data Rules — generally indicated by ‘must’ or ‘is required to’
 - the Information Commissioner’s interpretation of the privacy safeguards and Consumer Data Rules — generally indicated by ‘should’
 - examples that explain how the privacy safeguards and Consumer Data Rules may apply to particular circumstances. Any examples given are not intended to be prescriptive or exhaustive of how an entity may comply with the mandatory requirements in the privacy safeguards; the particular circumstances of an entity will also be relevant
 - good privacy practice to supplement minimum compliance with the mandatory requirements in the privacy safeguards and Consumer Data Rules — generally indicated by ‘could’
- A.5 The Privacy Safeguard guidelines are not legally binding and do not constitute legal advice about how an entity should comply with the privacy safeguards and Consumer Data Rules in particular circumstances. An entity may wish to seek independent legal advice where appropriate.

About the Consumer Data Right

- A.6 The CDR aims to provide greater choice and control for Australians over how their data is used and disclosed. It allows consumers to access particular data in a usable form and to direct a business to securely transfer that data to an accredited person.
- A.7 Individual consumers and small, medium and large business customers will all be able to exercise the Consumer Data Right in relation to data that is covered by the CDR regime.
- A.8 The CDR will be rolled out in stages starting with the banking sector (known as ‘Open Banking’). Next, CDR will be implemented in the energy and telecommunication sectors. It will then be introduced sector by sector across the broader economy.

¹ 56EQ(5).

About the privacy safeguards

- A.9 These guidelines should be read together with the full text of Division 5 of Part IVD of the Competition and Consumer Act and the Consumer Data Rules.
- A.10 The privacy safeguards are legally binding statutory provisions, which ensure the security and integrity of the CDR regime, supplemented by Consumer Data Rules.
- A.11 The privacy safeguards set out standards, rights and obligations in relation to collecting, using, disclosing and correcting CDR data for which there are one or more consumers.
- A.12 The privacy safeguards only apply to CDR data for which there are one or more consumers.² This means that if there is no person that is identifiable or reasonably identifiable from the CDR data,³ because, for instance, it is product data for which there is no consumer, the privacy safeguards do not apply.
- A.13 The privacy safeguards are structured to reflect the CDR data lifecycle. They are grouped into five subdivisions within Division 5 of Part IVD of the Competition and Consumer Act:
- Subdivision B — Consideration of CDR data privacy (privacy safeguards 1 and 2)
 - Subdivision C — Collecting CDR data (privacy safeguards 3, 4 and 5)
 - Subdivision D — Dealing with CDR data (privacy safeguards 6, 7, 8, 9 and 10)
 - Subdivision E — Integrity of CDR data (privacy safeguards 11 and 12)
 - Subdivision F — Correction of CDR data (privacy safeguard 13)
- A.14 The requirements in each of these privacy safeguards interact with and complement each other.
- A.15 In developing the Privacy Safeguard guidelines, the Australia Information Commissioner has had regard to the objects of Part IVD of the Competition and Consumer Act, stated in s 56AA:
- to enable consumers in certain sectors of the Australian economy to require information relating to themselves in those sectors to be disclosed safely, efficiently and conveniently:
 - to themselves for use as they see fit, or
 - to accredited persons for use subject to privacy safeguards
 - to enable any person to efficiently and conveniently access information in those sectors that is about goods (such as products) or services and does not relate to any identifiable, or reasonably identifiable, consumers, and
 - to create more choice and competition, or to otherwise promote the public interest.
- A.16 The structure of the Privacy Safeguard guidelines reflects the structure of the privacy safeguards: privacy safeguards 1 to 13 are each dealt with in separate chapters.
- A.17 The number of the chapter corresponds to the number of the privacy safeguard.
- A.18 Chapter B contains guidance on general matters, including an explanation of key concepts that are used throughout the privacy safeguards and the Privacy Safeguard guidelines.

² 56EB(1).

³ 56AI(3)(c).

A.19 Chapter C contains guidance on consent, which is the basis for collecting and using CDR data under the CDR regime.

Who must comply with the privacy safeguards?

- A.20 The privacy safeguards apply to entities who are authorised or required under the CDR regime to collect, use or disclose CDR data for which there is at least one consumer. This includes accredited persons, accredited data recipients, data holders and designated gateways. Each of these types of entities are defined in the Competition and Consumer Act and discussed in Chapter B (Key Concepts).
- A.21 Each privacy safeguard chapter specifies the type of entity to which it applies.
- A.22 The privacy safeguards extend to acts, omissions, matters and things outside Australia.⁴
- A.23 In respect of CDR data held within Australia, the privacy safeguards apply to all persons, including foreign persons.⁵
- A.24 In respect of an act or omission relating to CDR data held outside Australia, the privacy safeguards only apply if the act or omission:⁶
- is done by or on behalf of an Australian person
 - occurs wholly or partly in Australia, or wholly or partly on board an Australian aircraft or an Australian ship, or
 - occurs wholly outside Australia, and an Australian person suffers, or is likely to suffer, financial or other disadvantage as a result of the act or omission.

Which privacy safeguards apply to each entity?

CDR entity	Privacy Safeguards that apply
Accredited person	Privacy Safeguards 1, 3, 4 and 5
Accredited data recipient	Privacy Safeguards 1 to 13 inclusive
Data holders	Privacy Safeguards 1, 10, 11 and 13
Designated gateways	Privacy Safeguards 1, 6, 7 and 12

Do the privacy safeguards apply instead of the Privacy Act and the APPs?

A.25 Generally, the privacy safeguards apply in respect of an entity's handling of CDR data instead of the *Privacy Act 1988* (Cth) (Privacy Act) and the Australian Privacy Principles (APPs).⁷

⁴ 56AO(1).

⁵ 56AO(2).

⁶ 56AO(3).

⁷ 56EC(4).

A.26 In each chapter in these guidelines, the interaction between the privacy safeguard and corresponding APP is discussed.

What happens if an entity breaches the privacy safeguards?

A.27 The Information Commissioner has powers to investigate possible breaches of the privacy safeguards, either following a complaint by a consumer who is an individual or small business or on the Information Commissioner's own initiative.

A.28 Where a consumer makes a complaint, the Information Commissioner will generally attempt to conciliate the complaint.

A.29 The Information Commissioner has a range of enforcement powers and other remedies available. These powers include those available under:

- Part V of the Privacy Act,⁸ for example the power to make a determination,⁹ and
- Part IVD of the Competition and Consumer Act, for example the privacy safeguards attract a range of civil penalties enforceable by the Information Commissioner.¹⁰

A.30 The Australian Competition and Consumer Commission will also have a general strategic enforcement role where there are repeated or serious breaches.

Where do I get more information?

A.31 The Office of the Australian Information Commissioner (OAIC) has further information about the CDR and its role on the OAIC website, see www.oaic.gov.au/consumer-data-right.

⁸ 56ET(4) extends the application of Part V of the Privacy Act to a privacy safeguard breach relating to the CDR data of a consumer who is an individual or small business

⁹ s 52 of the Privacy Act

¹⁰ 56EU