

## EXPLANATORY MATERIALS

### *Treasury Laws Amendment (Consumer Data Right) Bill 2018*

#### *Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2018*

The *Treasury Laws Amendment (Consumer Data Right) Bill 2018* (the Bill) will amend the *Competition and Consumer Act 2010* (the Act) to establish a consumer data right (CDR).

The CDR will provide individuals and businesses with a right to efficiently and conveniently access specified data that relates to them held by businesses; and to authorise secure access to this data by accredited third parties.

The CDR will also require businesses to provide public access to information on specified products they have on offer. CDR is designed to give customers more control over their information leading, for example to more choice in where they take their business, or more convenience in managing their money and services.

The sectors of the Australian economy that are covered by the CDR and the type of information consumers can request are limited to designations made under the Bill by the Minister.

Banking is the first sector of the Australian economy to which the CDR is applied. The Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2018 (the Designation) sets out the classes of information that are subject to the CDR and the persons that hold this information, authorised deposit-taking institutions. Consistent with the findings of the Review into Open Banking, the banking data included in the designation is customer-provider data, transaction data and product data.

This designation does not reflect the proposed approach to fees set out in Proposal 5 of the *Proposals Paper: Treasury Laws Amendment (Consumer Data Right) Bill 2018: Provisions for further consultation*. That is, the Designation does not distinguish between a data set that is fee free or a data set where a charge can be imposed. This will be incorporated following feedback received on Proposal 5 and this Designation. However, as per the Open Banking Report it is expected that in the majority of cases banking data sets will be fee free.

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

The Designation will commence on the day after it is registered following the commencement of the Bill.

**Details of the Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2018**

**Section 1—Name**

This section provides that the title of the Designation is the *Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2018*.

**Section 2—Commencement**

This section provides that the Designation will commence on the day after this instrument is registered.

**Section 3—Authority**

This section states that the Designation is made under subsection 56AC(2) of the Act.

**Section 4 —Definitions**

The designation includes a number of definitions. These are:

**Act** means the *Competition and Consumer Act 2010*.

**Associate** has the same meaning as section 318 of the *Income Tax Assessment Act 1936*, which includes a person's relatives such as spouse, children or siblings. This definition of associate is also included in the Bill. Including an associate in the designation as a potential customer reflects that for banking products there can be more than one account holder or the primary account holder may give access to a relative or spouse.

**Product** means a product that is or has been offered or supplied to someone in connection with a banking business, or one or more specified activities. Banking business is defined with reference to the *Banking Act 1959*. The specified activities are:

- taking money on deposit, for example a savings account;
- making advances of money, for example a mortgage or credit card; or
- another financial activity prescribed by regulations for the purposes of the definition of a banking business. For example, a purchased payment facility within the meaning of the *Payment Systems (Regulation) Act 1998*.

These activities are separately defined to capture the offer or supply of a product by an entity that is not an authorised deposit-taking institution (and, therefore, does not carry on a 'banking business' within the meaning of the *Banking Act 1959*).

**Authorised deposit-taking institution** have the same meaning as it would under the *Banking Act 1959*. An authorised deposit-taking institution is a body corporate that has been authorised by the Australian Prudential Regulation Authority to carry on a banking business.

## **Section 5 — Designation of sector subject to the CDR**

This section sets out:

- The classes of information that are prescribed and therefore subject to the designation (see the detailed explanation for sections 6, 7 and 8 of the Designation);
- That authorised deposit-taking institutions are specified as the persons that hold this information, or who the information is held for; and
- That the earliest date that the classes of information can become subject to the CDR is 1 January 2017.

## **Sections 6 to 8 — Classes of information**

Sections 6 to 8 specify the three types of information.

The first type of information is customer information that was generated or collected as part of the customer, or the customer's associate, using or acquiring banking services or banking products (Section 6).

The second type of information is information about the use of the product by the customer or the customer's associate (Section 7).

The third type of information is information about a product (Section 8).

### Customer Information

Customer information is included in the designation and is subject to the CDR.

This information is information held by the data holder describing the person or their associate who is acquiring or using a product.

The information could be about the identity and contact details for the person or their associate, such as name and address, or their eligibility to receive a product.

### Product use information

Information about a customer's use of a product, commonly referred to transaction information, is included in the designation and will be subject to the CDR.

This includes the type of information that a customer would typically see on a statement, such as the balance of their account, debits and credits on the account and when these occurred, and to whom payments were made.

The designation also includes information on the existing direct debit arrangements with third parties or scheduled payments on an account.

It will also include information on the persons authorised to use and access the account.

Including payment authorisation information and use and access information in the designation is intended to assist a customer move banking providers.

### Information on the product

Product information that is public is included in the designation and subject to the CDR.

This information includes fees and charges, interest rates, terms and conditions and eligibility criteria that a customer needs to meet to be provided with the product.

The product information can be about a certain type of product for a particular customer or group of customers, such as savings accounts for students or retirees.