

## EXPLANATORY STATEMENT

### Issued by authority of the Data Standards Chair

#### *Competition and Consumer Act 2010*

#### *Competition and Consumer (Consumer Data Right) Data Standards (No. 1) 2023*

### **Introduction**

Section 56FA of the *Competition and Consumer Act 2010* provides that the Data Standards Chair may, by writing, make one or more data standards about matters specified in the section. The Chair must comply with the *Competition and Consumer (Consumer Data Right) Rules 2020* in making data standards.

Data standards have been made and are published at <https://consumerdatastandardsaustralia.github.io/standards>.

Section 56FA(3) of the Act provides that data standards are binding data standards if they are specified to be binding data standards. The Act provides a range of mechanisms for the enforcement of binding data standards.

A question has arisen about the extent to which the published data standards are binding in terms of the Act. Because of the significance of compliance with the data standards for the implementation of the consumer data right, the *Competition and Consumer (Consumer Data Right) Data Standards (No. 1) 2023* is made to remove doubt and confirm that obligations and prohibitions in the published data standards are binding data standards.

The instrument is not a legislative instrument for the purposes of the *Legislation Act 2003* (see *Competition and Consumer Act 2010* section 56FA(4)). Accordingly, it is not subject to disallowance or sunset. Under section 56GB of the *Competition and Consumer Act 2010* a data standard may incorporate, with or without modification, any other written matter, including as in force or existing from time to time.

The instrument commences the day after it is published on the Data Standards Body's website (<https://consumerdatastandards.gov.au/consumer-data-standards>).

### **Details of the *Competition and Consumer (Consumer Data Right) Data Standards (No. 1) 2023***

The purpose of this instrument is to confirm that obligations and prohibitions set out in the current published data standards are binding data standards for the purposes of the *Competition and Consumer Act 2010*. Guidance and other material in the current published data standards are not binding data standards.

#### ***Section 1 – Name***

This section provides that the name of the instrument is the *Competition and Consumer (Consumer Data Right) Data Standards (No. 1) 2023*.

#### ***Section 2 – Commencement***

This section provides that the instrument commences on the day after it is published on the internet at the website <https://consumerdatastandards.gov.au/consumer-data-standards>.

#### ***Section 3 – Authority***

This section states that the instrument is made under section 56FA of the *Competition and Consumer Act 2010* and rule 8.11 of the *Competition and Consumer (Consumer Data Right) Rules 2020*.

## ***Section 4 – Definitions***

This section defines expressions used in the instrument.

Generally, definitions in the Act are applied (see section 4(2) of the instrument).

However, the definition of ***CDR entity*** in the Act (see section 56AU(3)) is extended to include data recipients of CDR data that are not accredited data recipients. This is necessary because some obligations and prohibitions in the data standards expressly apply to them (for example, in relation to complying with data language standards to describe data clusters and permissions in consumer-facing interactions).

The expression ***reference text*** is defined as the statement of data standards currently published as data standards. It includes material linked through internet links. The text is found at <https://consumerdatastandardsaustralia.github.io/standards/>.

## ***Section 5 — Binding data standards***

The *Competition and Consumer (Consumer Data Right) Rules 2020* rule 8.11 requires the Data Standards Chair to make data standards about matters listed in the rule. These data standards must be specified as binding data standards.

Extensive and detailed material has been published as data standards at <https://consumerdatastandardsaustralia.github.io/standards/>.

Section 5(1), (2) and (3) of this instrument incorporate into the instrument the provisions of this material that are standards that CDR entities must comply with — that is, provisions that impose obligations and prohibitions on CDR entities — and declares that they are data standards. Material included merely by way of guidance is not incorporated.

Section 5(4) clarifies that these incorporated provisions are binding data standards, as required by the Act section 56FA(3) and the Rules rule 8.11(2).

Apart from the operation of sections 5(4) and 6, the provisions are incorporated without modification, and as existing from time to time. This means that amendments to the provisions, and new obligations and prohibitions, will be automatically incorporated into the binding standard. Any amendment or new provision will be made by a process that complies with the notification and consultation requirements of Division 8.3 of the Rules.

## ***Section 6 — Commencement of and full compliance with binding data standards***

Rule 8.11(2) requires each binding data standard to specify the date on which it commences and the date by which it must be fully complied with.

Section 6(1) of this instrument, which applies separately to each binding data standard under section 5, specifies that each binding data standard commences on the day this instrument commences (see section 2 of this instrument) and that it must be complied with fully on and after that date.

However, where the reference text specifies a later date for either of these purposes, section 6 gives effect to those later dates.

## **Consultation**

The processes required by the Act and the Rules for the preparation of data standards have been followed in respect of this instrument. In particular:

- the Australian Competition and Consumer Commission and the Information Commissioner have been notified of the proposal to make this instrument;
- the Data Standards Chair has consulted the Australian Competition and Consumer Commission, the Information Commissioner and the Data Standards Advisory Committee on the proposed instrument;

- the proposed instrument was published on 9 December 2022 on the Data Standards website.

Two submissions were received in relation to the proposed instrument from the publication of the draft. These were all carefully considered in the process of finalising the instrument.

---