



Guidance for applicants seeking exemption under section 56GD

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1. Purpose

- 1.1. These guidelines reflect the approach the Australian Competition and Consumer Commission (ACCC) will take in relation to applications for exemption under section 56GD of the *Competition and Consumer Act 2010* (Cth) (CCA).
- 1.2. The ACCC is provided with a broad discretionary power under section 56GD to exempt a person from one or more of the provisions of the Consumer Data Right (CDR) regime, which includes the provisions in Part IVD in the CCA, regulations made for the purposes of Part IVD and the consumer data rules.¹
- 1.3. These guidelines set out how the ACCC proposes to interpret section 56GD and describe the general approach the ACCC will take in deciding whether or not to grant an exemption and under what conditions (if any). These guidelines also set out the information that CDR participants should include in their exemption application. These guidelines are for the general guidance of CDR participants and their advisors and should not be used as a substitute for legal advice.

¹ See section 56GD(1) of the CCA.

2. Exemptions under section 56GD

What does section 56GD of the CCA provide?

2.1. Section 56GD provides that:

- (1) The *provisions covered by this section* are:
 - (a) the following provisions:
 - (i) the provisions of this Part;
 - (ii) the provisions of regulations made for the purposes of the provisions of this Part;
 - (iii) the provisions of the consumer data rules; and
 - (b) definitions in this Act, or in the regulations or consumer data rules, as they apply to references in provisions referred to in paragraph (a).
- (2) The Commission may, by written notice given to a person, exempt the person, in relation to particular CDR data or one or more classes of CDR data, from all or specified provisions covered by this section.
- (3) An exemption under subsection (2):
 - (a) may or may not be limited to a specified period; and
 - (b) may apply unconditionally or subject to specified conditions.
- (4) The Commission must publish on its website the details of each exemption under subsection (2).
- (5) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Commission exempting, or refusing to exempt, a person under subsection (2).

- 2.2. The Explanatory Memorandum to the *Treasury Laws Amendment (Consumer Data Right) Bill 2019* sets out that the power to grant exemptions ‘provides the ACCC with the ability to ensure that the CDR system does not operate in unintended or perverse ways in exceptional circumstances’ and also provides ‘the ACCC with scope to ensure that the CDR system works in the best way possible for consumers and the designated industry.’
- 2.3. An application for exemption is a formal process. An exemption (if granted) will be made in a written form and details of the exemption will be published on the ACCC’s website on a [section 56GD public register](#).
- 2.4. The ACCC may exempt a person in relation to particular CDR data, or one or more classes of CDR data, from all CDR obligations or from certain CDR obligations.
- 2.5. An exemption may or may not be time limited. It may apply unconditionally or be subject to conditions. The ACCC also may revoke or amend an exemption.
- 2.6. The factors the ACCC may consider in assessing a section 56GD exemption application are outlined below at section 3.
- 2.7. The ACCC cannot retrospectively grant exemption for conduct that has occurred. CDR participants are encouraged to contact the ACCC if they have any concerns about ongoing conduct.

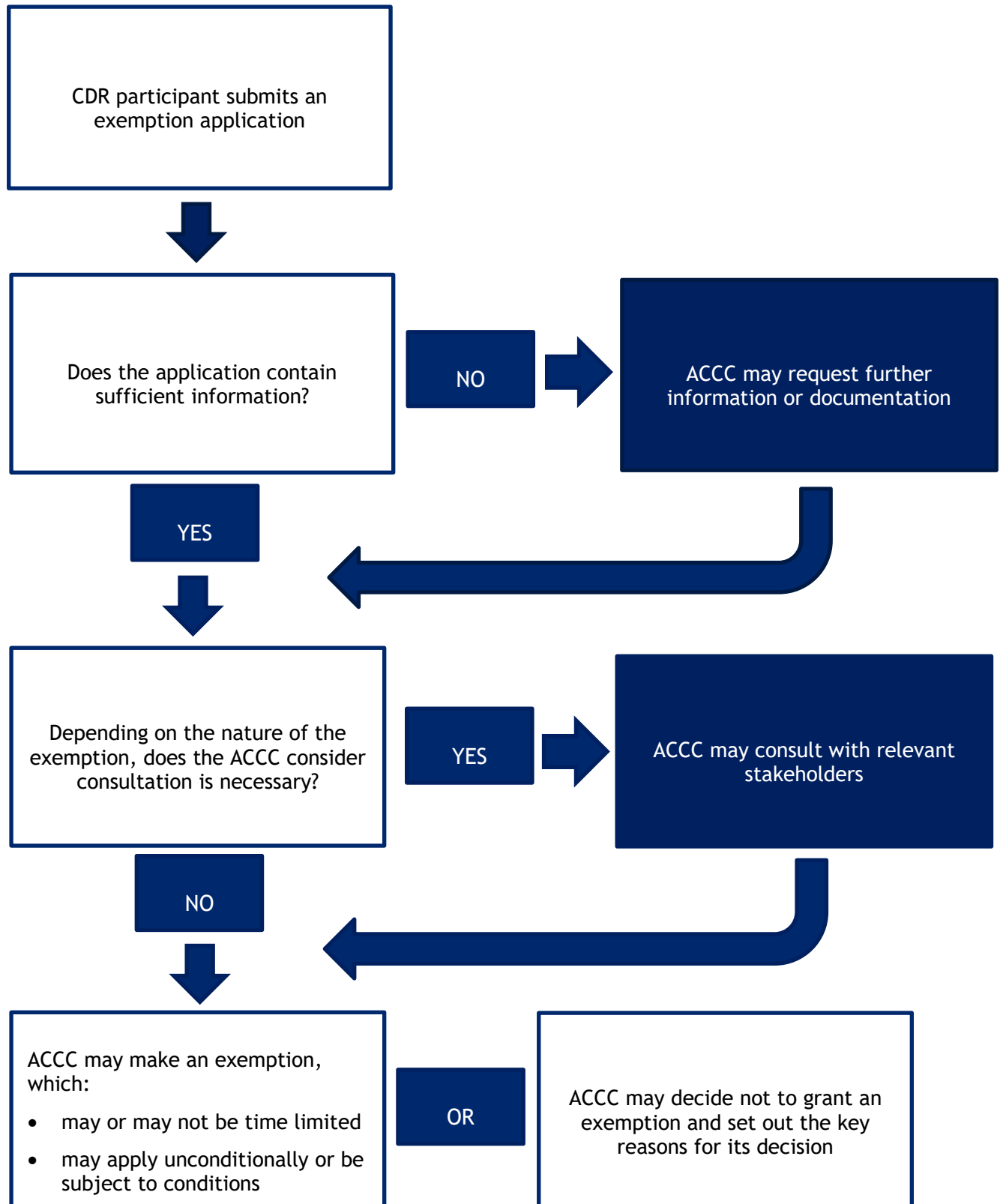
What other types of exemptions are available?

- 2.8. The CCA also allows for exemptions to be made by regulations (see section 56GE). The regulations may exempt a particular person or a class of persons. In contrast, under section 56GD the ACCC does not have the power to grant class-based exemptions (that is, the ACCC cannot exempt a whole class or group of entities).
- 2.9. Regulations under section 56GE can also declare that provisions apply in a modified or varied manner.
- 2.10. Parliament will have oversight over any regulation made as part of the CDR regime. The Explanatory Memorandum notes that ‘regulations will only seek to declare that provisions of the CDR are modified or varied in exceptional circumstances.’

3. Making an exemption application

3.1. The following sections provide further information about the potential stages of the ACCC's exemption assessment process. **Figure 1** shows how each stage may typically interact.

Figure 1 - Stages of an ACCC exemption assessment process



Stage 1: Preparing to submit an exemption application

- 3.2. Prior to applying for an exemption under section 56GD (an exemption application), a CDR participant should contact the ACCC via email at acc-cdr@acc.gov.au to discuss the potential application. Prospective applicants may also contact the ACCC via this email address with any queries about the application processes or assessment stages.
- 3.3. When considering making an exemption application, a participant should carefully consider which obligations it requires an exemption from. If there are multiple obligations, a participant should lodge a single application rather than multiple separate applications, to the extent possible.

Stage 2: Submitting an exemption application

- 3.4. To make an exemption application, a CDR participant should submit a written request to the ACCC including supporting information and documentation relevant to the ACCC's assessment. Exemption applications should be sent via email to acc-cdr@acc.gov.au, with the subject line '*Section 56GD exemption application from [name of applicant]*'. The ACCC prefers that exemption applications be sent in Microsoft Word format (although other text readable document formats will be accepted). Applicants are strongly encouraged to apply for an exemption using the template section 56GD exemption application form at **Attachment A**.
- 3.5. An applicant should submit an exemption application well in advance of a compliance date. The ACCC cannot guarantee it will assess and finalise the outcome of an exemption application before any relevant CDR compliance date, especially if applications are received close to or on a compliance date.
- 3.6. The ACCC will make a decision on each application for exemption on a case-by-case basis, having regard to the facts and circumstances relevant to the particular entity. The ACCC is unlikely to grant an exemption in the absence of anomalous outcomes, or uncommon or exceptional circumstances affecting a person's ability to comply.
- 3.7. **Table 1** below details the factors the ACCC may consider in its assessment of section 56GD exemption applications. These factors may assist applicants when considering whether to make an exemption application or, if choosing to make an application, what information and documentation to provide to support the application.

Table 1: Exemption assessment factors the ACCC may consider include

Factors	Key considerations
Impact on the CDR objectives - to enable safe, efficient and convenient disclosure of consumer data and efficient and convenient access to product data, so as to create more choice, competition and to promote the public interest	Has the applicant provided a clear justification why the proposed exemption should be granted?

<p>The nature and scope of the proposed exemption sought</p>	<p>Is the scope of the proposed exemption (in relation to particular data, classes of data, compliance phases or products) proportionate and reasonable in the circumstances?</p> <p>Is the period of the proposed exemption sought proportionate and reasonable in the circumstances?</p>
<p>Potential for any unintended or perverse consequences to arise if the proposed exemption were not granted</p>	<p>What would be the consequences for the applicant, consumers, and the CDR ecosystem if the exemption were not granted?</p> <p>If not granted, would this result in inefficient or unreasonable use of resources?</p> <p>Has the applicant explored alternative options to facilitate compliance?</p>
<p>Impact of the proposed exemption on the CDR ecosystem</p>	<p>To what extent would consumers be impacted by the proposed exemption?</p> <p>To what extent would other CDR stakeholders be impacted by the proposed exemption?</p>
<p>The extent to which the applicant has previously met its CDR obligations and the level of engagement on CDR matters (including with the ACCC)</p>	<p>Has the applicant demonstrated a history of CDR compliance?</p> <p>Has the applicant commenced planning for its CDR compliance at an early stage?</p> <p>Has the applicant proactively engaged with the ACCC?</p>
<p>Evidence provided to support exemption</p>	<p>To what extent has there been senior management involvement in preparing the proposed exemption, alternative options to facilitate compliance and proposed resolutions?</p> <p>To what extent has the applicant provided documentation to substantiate issues and proposed resolutions?</p>

3.8. Confidential or commercially sensitive information

The information and documentation provided with an application for exemption may include information that is commercially sensitive or confidential in nature. It is important that any confidential information provided to the ACCC is clearly marked. The ACCC will accept confidential information on the following basis:

- there is no restriction on the internal use, including future use, that the ACCC may make of the confidential information consistent with the ACCC's statutory functions;

- confidential information may be disclosed to the ACCC's external advisors and consultants on condition that each such advisor or consultant will be informed of the obligation to treat the information as confidential; and
- the ACCC may disclose the confidential information to third parties (in addition to its external advisors or consultants) if compelled by law or in accordance with section 155AAA of the CCA.

Stage 3: The ACCC may request further information

- 3.9. The ACCC may need to request further information or documentation from the exemption applicant to properly assess whether or not an exemption should be granted and if so under what conditions (if any). In these circumstances the ACCC will issue a written information request via email to the exemption applicant requesting additional information and/or documentation.

Stage 4: The ACCC may consult with relevant stakeholders

- 3.10. The nature and complexity of the exemption sought will influence what consultation (if any) is required. The ACCC may elect to consult with persons it considers reasonable and appropriate for the purposes of assessing the potential effects of the exemption. This may include the Office of the Australian Information Commissioner, the Australian Securities and Investments Commission, Treasury (including the Data Standards Body), the approved external dispute resolution body for the relevant sector (e.g. the Australian Financial Complaints Authority for banking), government bodies or other affected stakeholders (e.g. consumers).
- 3.11. The length of any consultation process will vary depending on the nature and complexity of the exemption request. Consultation may be in the form of a public consultation notice calling for written submissions, meetings with interested parties and/or targeted correspondence with key stakeholders.

Stage 5: Consideration of the exemption application

- 3.12. Once the ACCC has obtained sufficient information or evidence, it will assess whether or not the exemption should be granted, and if so whether any conditions should be applied.
- 3.13. If the preliminary recommendation is to not grant the exemption as requested, the ACCC will contact the applicant prior to a decision being made. Applicants will be afforded a further opportunity to make any final submissions to support their application for exemption.

Stage 6: Outcome of decision

- 3.14. If an exemption is granted, the ACCC must provide a written notice to the applicant which will specify the provisions of the CDR regime, regulations made for the purposes of the CDR regime or the provisions of the consumer data rules a CDR participant is exempt from. The written notice to the applicant will specify if the exemption applies unconditionally or if it is subject to conditions, and the duration of the exemption.
- 3.15. General details of the exemption (including the applicant's name and provisions of the CDR regime they are exempt from) will be published on the ACCC's website in a [section 56GD exemptions public register](#).

- 3.16. If an exemption is not granted, the applicant will receive written notification (by email) of the ACCC's decision and the ACCC's key reasons for not granting an exemption. Details of the exemption sought do not appear on the section 56GD exemptions public register.

Right to appeal

- 3.17. Applications may be made to the Administrative Appeals Tribunal (AAT) for review of a decision of the ACCC to exempt, or refuse to exempt, a person from the CDR. Similarly, if a person is dissatisfied with any conditions attached to an exemption, they may bring an application to the AAT.
- 3.18. Details on how to apply for a review or contact the AAT are available on the following website: <https://www.aat.gov.au/>

Timeframe for exemption assessments

- 3.19. The time taken to assess an application for exemption will depend on whether the applicant has provided a comprehensive application and responds to information requests from the ACCC in a timely manner. It will also likely depend on the complexity of the exemption sought and other issues relevant to consideration of whether an exemption is necessary and appropriate in the circumstances.
- 3.20. Applicants are advised to lodge an application for exemption as early as possible to give the ACCC sufficient time to consider it. Failure to provide sufficient information at the time of the application is likely to increase processing times.

4. Commonly asked questions

4.1. Below are answers to commonly asked questions about exemptions under section 56GD.

Are there limits on who can apply for exemption?

Any person, including a prospective or current CDR participant is able to apply for an exemption.

Monetary thresholds do not apply.

How long does an exemption last?

The ACCC may grant exemption for any period considered appropriate in the circumstances. The exemption may, or may not, be time limited.

Can the ACCC approval be subject to conditions?

Yes. The exemption can apply unconditionally or be subject to conditions.

What is the lodgement fee?

No fee applies.

Can I dispute the ACCC's decision?

Yes. Applications may be made to the Administrative Appeals Tribunal for a review of a decision of the ACCC to exempt or refuse to exempt a person from provisions of the CDR regime.

5. Further information

- 5.1. The ACCC has published a range of information and guidelines relevant to its role under the CDR. These are available on the CDR [website](#).

Attachment A: Section 56GD exemption application form

Use this form to apply for an exemption under section 56GD of the *Competition and Consumer Act 2010* (Cth) for Consumer Data Right (CDR) related obligations.

Where possible, each question should be answered fully and be substantiated with evidence (e.g. project plans). If a question is not relevant or where information is not available and cannot be reasonably estimated, please provide a brief explanation.

Before completing the form below, please read the guidance above.

How to submit this form

Once you have completed this form, please submit it by email to accc-cdr@accc.gov.au, attaching any supporting documents. The ACCC will contact you to confirm receipt and if further information is required.

If you have any questions, or would like to discuss your matter before submitting an application, please contact the ACCC at accc-cdr@accc.gov.au.

Confidential information

The information and documentation provided with an application for exemption may include information that is commercially sensitive or confidential in nature. It is important that any confidential information provided to the ACCC is **clearly marked**.

The ACCC will accept confidential information on the following basis:

- there is no restriction on the internal use, including future use, that the ACCC may make of the confidential information consistent with the ACCC's statutory functions;
- confidential information may be disclosed to the ACCC's external advisors and consultants on condition that each such advisor or consultant will be informed of the obligation to treat the information as confidential; and
- the ACCC may disclose the confidential information to third parties (in addition to its external advisors or consultants) if compelled by law or in accordance with section 155AAA of the CCA.

BACKGROUND

Applicant's business identifiers	<i>[State your legal name, ABN and trading name (if applicable).]</i>
Size of applicant	<i>[State your total number of customers, number of customers who have used an online platform or app in the past 12 months, number of customers that are current CDR users, your estimated market share, market capitalisation (if listed) and net profit or loss after tax for the previous financial year.]</i>
Market(s) served and products/services offered	<i>[Briefly outline what markets you serve and the products and/or services you offer.]</i>
Circumstances giving rise to the exemption application	<i>[Outline the reasons, circumstances and justifications that led to this exemption application being submitted and why the proposed exemption should be granted.]</i>

THE EXEMPTION REQUEST

Scope of exemption sought	<i>[State the specific obligation/s you are seeking to be exempt from and for which products, specifying the relevant provisions of the CDR Rules and/or Standards.]</i>
Term of exemption sought	<i>[State the duration you are seeking the exemption for. Outline why you consider the requested duration of the exemption(s) is appropriate.]</i> <i>Note: Exemptions do not apply retrospectively. For this reason, it is recommended that you lodge the completed exemption application as soon as possible.]</i>
Impact on the CDR ecosystem and CDR objectives	<i>[The CDR objectives are to enable safe, efficient, and convenient disclosure of consumer data and efficient and convenient access to product data, so as to create more choice, competition and to promote the public interest.]</i> <i>If an exemption is granted:</i> <i>To what extent would your consumers be impacted by the proposed exemption? Please include the total number of customers impacted by each element of the exemption.</i> <i>To what extent would other CDR stakeholders, such as accredited persons and data holders, be impacted by the proposed exemption?]</i>

Potential for any unintended or perverse consequences to arise if the proposed exemption is not granted	<p><i>[What would be the consequences for you, your consumers, and the CDR ecosystem if the exemption is not granted?</i></p> <p><i>If not granted, would this result in an inefficient or unreasonable use of resources, or any redundant or duplicated costs?</i></p> <p><i>Have you explored alternative options to facilitate compliance? If so, outline why you chose not to pursue any of those options.]</i></p>
The extent to which the applicant has previously met its CDR obligations and level of engagement on CDR matters (including with the ACCC)	<p><i>[Have you commenced planning for your CDR compliance at an early stage? If so, can you demonstrate this? If not, why not?</i></p> <p><i>When did you first become aware that you would not be able to meet the obligation for which you are seeking an exemption?</i></p> <p><i>What steps did you take, if any, to mitigate against the risk of not meeting your compliance obligation(s)?]</i></p>
Other factors	<p><i>Provide detail about any other relevant factor(s) that contributed to your inability to meet the obligation(s) for which you are seeking an exemption, or that you consider may be relevant to the ACCC's assessment of the exemption application.</i></p>

Declaration by Applicant

Authorised persons of the applicant should complete the following declaration.

I am authorised to make this exemption application on behalf of the applicant.

To the best of my knowledge and belief, the information given in response to questions in this form and any supporting documentation is true, correct, and complete.

I will advise the ACCC immediately of any material change in circumstances relating to the application.

Signature of authorised person

Name

Position/Office held

Date

