

## EXPLANATORY STATEMENT

### *Competition and Consumer Act 2010*

#### *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019*

#### *Competition and Consumer (Industry Code – Electricity Retail) (Model Annual Usage and Total Annual Prices) Determination 2020*

Issued by authority of the Australian Energy Regulator

### **Purpose and operation**

The Australian Competition and Consumer Commission (ACCC) recommended the Australian Energy Regulator (AER) be given power to set maximum standing offer prices for electricity supplied to small customers. It also recommended electricity retailers be required to discount all their offers from a reference price set by the AER. The *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019* (the Regulations) give effect to these recommendations.

Part 2 of the Regulations prescribes a mandatory industry code for the purposes of Part IVB of the *Competition and Consumer Act 2010*. Under the code:

- standing offer prices for small customers must not exceed a price determined by the AER
- small customers must be told how a retailer's prices compare with the AER-determined annual price
- the most prominent price-related feature in an advertisement must not be a conditional discount, and any conditions on other discounts must be clearly displayed.

Part 3 of the Regulations confer price setting functions to the AER. Specifically, the AER is required to determine:

- how much electricity a broadly-representative small customer of a particular type in a particular distribution region would consume in a year and the pattern of that consumption (the model annual usage)
- a reasonable total annual price for supplying electricity (in accordance with the model annual usage) to small customers of that type in that region (the DMO price).

This Legislative Instrument sets out the AER's determinations under Part 3 of the Regulations:

- Clause 5 sets out the AER determined per-customer amount of electricity supplied in specified distribution regions to small customers.
- Clause 6 sets out the AER determined timing or pattern of the supply of electricity in specified distribution regions to small customers.

- Clause 7 sets out the AER determined reasonable per-customer annual price for supplying electricity in specified distribution regions to small customers.

The determinations made by the AER under the Legislative Instrument commence on 1 July 2020.

## **Background**

In the final report of its Retail Electricity Pricing Inquiry (REPI), the ACCC noted that standing offers, which were originally intended as a default protection for customers who were not engaged in the market, were unjustifiably high and have been used by retailers as a high priced benchmark from which their advertised market offers are derived. The ACCC found that the standing offer is no longer working as it was intended and is causing financial harm to customers.

The ACCC recommended that, in non-price regulated jurisdictions, the standing offer and standard retail contract should be abolished and replaced with a default offer. Designated retailers, as defined in the National Energy Retail Law (NERL), should be required to supply electricity to customers under a default offer on request, or in circumstances where the customer otherwise does not take up a market offer.

The ACCC further recommended the AER be given the power to set the maximum price for the default offer in each jurisdiction.

The ACCC noted the default offer price will have two benefits:

- to act as a cap on the price of standing offers to limit the 'loyalty tax' that is levied on disengaged customers.
- to be used to set a reference bill amount, which all discounts must be calculated from.

In April 2019, the AER published its first DMO prices determination, covering the period 1 July 2019 to 30 June 2020.

## **Consultation**

In making this Legislative Instrument, the AER undertook a number of steps in consulting with affected stakeholders.

- On 19 September 2019 it published a Position Paper and received 13 submissions.
- It held a stakeholder forum in Sydney on 26 November 2019 that was attended by around 35 stakeholders.
- It published a Draft Determination for public consultation on 10 February 2020 and received 13 submissions.
- It held a webinar attended by about 60 stakeholders on 2 March 2020.
- It published its Consultant, ACIL Allen's report and modelling data, as well as the AER's price index and cost assessment model.

- On 1 April 2020 it published an open letter to stakeholders seeking views on how we should take account of COVID-19 impacts in making our Final Determination. We received 22 submissions.

In addition, the AER held numerous bilateral meetings with a range of stakeholders throughout the process.

It has had regard to the submissions and information received through consultations and the advice from the consultant in making the determination.

The consultation documents and all public submissions to this process are available on the AER's website at <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/retail-electricity-prices-review-determination-of-default-market-offer-prices-2020-21>

### **Statement of Compatibility with Human Rights**

This Legislative Instrument has been prepared in accordance with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*: see Appendix A.

## Appendix A

### STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

*Competition and Consumer (Industry Code – Electricity Retail) (Model Annual Usage and Total Annual Prices) Determination 2020*

The Determination is compatible with the human rights and freedom recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### Overview of legislative instrument

This Legislative Instrument sets out the AER's determinations under Part 3 of the *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019* (the Regulations). Specifically:

- Clause 5 sets out the AER determined per-customer amount of electricity supplied in specified distribution regions to small customers.
- Clause 6 sets out the AER determined timing or pattern of the supply of electricity in specified distribution regions to small customers.
- Clause 7 sets out the AER determined reasonable per-customer annual price for supplying electricity in specified distribution regions to small customers.

The determinations made by the AER under the Legislative Instrument commence on 1 July 2020.

The Regulations confer price setting functions on the AER.

#### Human rights implications

The Legislative Instrument is prepared under the Regulations. The Regulations regulate business conduct and do not engage any of the applicable rights or freedoms.

#### Conclusion

The Legislative Instrument is compatible with human rights as it does not raise any human rights issues.