



Consumer Data Right (Energy Sector) Designation 2020

I, Josh Frydenberg, Treasurer, make the following instrument.

Dated 26 June 2020

Josh Frydenberg
Treasurer

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1 Name

This instrument is the *Consumer Data Right (Energy Sector) Designation 2020*.

2 Commencement

This instrument commences on the day after it is registered.

3 Authority

This instrument is made under subsection 56AC(2) of the *Competition and Consumer Act 2010*.

4 Definitions

Note: Some expressions used in this instrument are defined in the Act, including:

- (a) Australian Energy Regulator; and
- (b) Australian law.

In this instrument, unless the contrary intention appears:

Act means the *Competition and Consumer Act 2010*.

AEMO means Australian Energy Market Operator Limited (ACN 072 010 327).

arrangement has the meaning given by paragraph 5(1)(a).

associate has the meaning given by section 318 of the *Income Tax Assessment Act 1936*.

Note: The meaning of 'associate' is also affected by paragraph 5(1)(c).

customer has the meaning given by paragraph 5(1)(b).

DER register information has the meaning given by the National Electricity Rules.

materially enhanced information has the meaning given by section 11.

metering data has the meaning given by the National Electricity Rules.

National Electricity Rules means:

- (a) the National Electricity Rules, as in force from time to time, made under the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* (SA); or
- (b) those Rules as they apply as a law of another State; or
- (c) those Rules as they apply as a law of a Territory; or
- (d) those Rules as they apply as a law of the Commonwealth.

Note: Section 56GB of the Act allows this instrument to make provision in relation to a matter by applying, adopting or incorporating (with or without modification) any matter contained in any other instrument or writing as in force or existing from time to time.

National Energy Retail Law means the National Energy Retail Law set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011 (SA)*, as amended from time to time.

NMI Standing Data has the same meaning as in the National Electricity Rules.

retailer means:

- (a) a person who is the holder of a retailer authorisation issued under the National Energy Retail Law (as it applies in a State or Territory) in respect of the sale of electricity; or
- (b) a retailer within the meaning of the *Electricity Industry Act 2000 (Vic)*.

type 7 metering installation has the same meaning as in the National Electricity Rules.

5 Definitions relating to arrangements

- (1) In this instrument, other than in section 10:
 - (a) a reference to an **arrangement** is a reference to an arrangement under which electricity is sold by a retailer, or supplied in respect of connection points, for the premises of a person; and
 - (b) a reference to a **customer** is a reference to a person who purchases electricity under the arrangement, or to whom electricity is supplied in connection with the arrangement; and
 - (c) a reference to an **associate** is a reference to an associate of the customer, to whom electricity is supplied in connection with the arrangement.

Note: An arrangement mentioned in paragraph (a) will always involve the sale or supply of electricity. However, a retailer may also supply other related goods or services under such an arrangement. Further, an arrangement may be bundled with an arrangement for the supply of natural gas – see subsection 9(4).

- (2) To avoid doubt, an arrangement that deals only with the sale or supply of electricity by a customer back to the grid is not an arrangement within the meaning of paragraph (1)(a).

6 Designation of sector subject to the consumer data right

- (1) For paragraph 56AC(2)(a) of the Act, information to which section 7, 8, 9 or 10 applies is specified as a class of information.
- (2) For paragraph 56AC(2)(b) of the Act, the persons to whom section 12 applies are specified as persons who hold such information, or on whose behalf such information is held.
- (3) For paragraph 56AC(2)(c) of the Act, 1 July 2018 is specified as the earliest day applicable to the sector for beginning to hold such information.

Note: Paragraph 56AC(2)(d) of the Act provides that an instrument designating a sector may specify the classes of information for which a person may, in certain circumstances, charge a fee. This instrument does not specify any such classes of information. The information specified in this instrument will, therefore, not constitute chargeable CDR data within the meaning of subsection 56AM(1) of the Act.

- (4) For paragraph 56AC(2)(e) of the Act, AEMO is specified as the gateway for information covered by this instrument that is held by or on behalf of a retailer.

Note: Section 12 specifies retailers as persons who hold certain information, or on whose behalf that information is held.

7 Specified classes of information—information about customer or associate

- (1) This section applies to information about a person or other entity who is, or at any time was, a customer or associate in relation to an arrangement, where the information was:
- (a) provided by the customer or associate in connection with the arrangement; or
 - (b) otherwise obtained, in connection with the arrangement, by or on behalf of the entity that holds the information, or on whose behalf the information is held.
- (2) The information mentioned in subsection (1) includes, but is not limited to, the following:
- (a) information identifying the customer or associate;
 - (b) information relevant to the eligibility of the customer or associate to enter or remain in an arrangement, or take advantage of a feature of an arrangement;
 - (c) the contact details of the customer or associate;
 - (d) information indicating that, or relevant to establishing whether, the customer or associate:
 - (i) is the holder of a particular account held with the retailer in connection with the arrangement; or
 - (ii) is authorised to operate, or disclose data from, such an account.

Example: For subsection 7(1), where the customer or associate is a business, information about that customer or associate might include the type of the business or organisation.

For paragraph 7(2)(a), information identifying an individual might, among other things, include their name. Where the customer or associate is a business, that information might include the customer or associate's business name and business number (such as an ABN or ACN).

For paragraph 7(2)(b), where the customer or associate is an individual, this class of information might include whether the customer or associate is a pensioner, or has essential medical equipment that relies on electricity to operate.

8 Specified classes of information—information about sale or supply of electricity

- (1) This section applies to:
- (a) information about the sale or supply of electricity to a person or other entity who is, or at any time was, a customer or associate in relation to an arrangement; and
 - (b) information about the sale or supply of related goods or services (if any) under such an arrangement to such a customer or associate.

Example: A retailer might offer a customer a free energy efficiency assessment of their home if they enter an arrangement for the sale or supply of electricity. Paragraph 8(1)(b) would capture information about the supply of that service.

- (2) Without limiting subsection (1), the information mentioned that subsection includes the following:
- (a) NMI Standing Data that relates to the arrangement;
 - (b) metering data that relates to the arrangement, other than metering data for a type 7 metering installation;
 - (c) DER register information that relates to the arrangement.
- (3) Without limiting subsection (1), the information mentioned in that subsection includes billing information relating to the arrangement, which includes:
- (a) information about the following:
 - (i) a bill issued under the arrangement;
 - (ii) a payment or transaction made in relation to the arrangement;
 - (iii) an account held by the customer with the retailer in connection with the arrangement;
 - (iv) an authorisation given by the customer or associate in connection with an account mentioned in subparagraph (iii), including information about the persons who are authorised to use or access, or view information relating to, the account;
 - (v) a payment method used in respect of an account mentioned in subparagraph (iii);
 - (vi) a concessional measure put in place in respect of a customer experiencing hardship;
 - (vii) any other payment or concession provided to a customer in connection with the arrangement;
 - (viii) a discount applied in respect of the arrangement; and
 - (b) a breakdown of an amount charged under the arrangement; and
 - (c) information used to calculate a bill.
- (4) This section does not apply to materially enhanced information.

Note: Subsection (4) means that materially enhanced information does not form part of the class of information specified by section 8. However, materially enhanced information may nonetheless be 'CDR data' due to paragraph 56AI(1)(b) of the Act, which captures information that is wholly or partly derived from information that falls within a class of information specified in this instrument.

9 Specified classes of information—information about retail arrangements

- (1) Subject to subsection (3), this section applies to information about an arrangement, including, but not limited to, the following:
- (a) information identifying or describing the arrangement;
 - (b) all costs associated with the arrangement, including each:
 - (i) charge (including a standing charge or usage charge); and
 - (ii) tariff (including a solar feed-in tariff); and
 - (iii) fee;
 - (c) a feature or benefit of the arrangement, including:
 - (i) a discount or rebate (including a discount or rebate offered under a law of the Commonwealth, a State or a Territory); and
 - (ii) a non-monetary benefit;

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- (d) the terms and conditions associated with the arrangement;
 - (e) the eligibility criteria a person must meet in order to enter or remain in the arrangement, or to take advantage of a particular feature of the arrangement.
- (2) Without limiting subsection (1), the information may relate to an arrangement:
 - (a) as offered or provided to particular classes of person; or
 - (b) as tailored to a particular person.
 - (3) Subsection (1) applies to an arrangement that:
 - (a) is available to a new prospective customer; or
 - (b) is currently in use by one or more existing customers, but is no longer available to a new prospective customer.
 - (4) An arrangement mentioned in subsection (1) includes an arrangement that relates to the sale or supply of both electricity and natural gas.

10 Specified classes of information—information about retail arrangements (natural gas)

- (1) This section applies to information about an arrangement for the supply of natural gas, where the arrangement is available to a new prospective customer.

Note: This section does not include an arrangement covered by paragraph 5(a) – see section 5.
- (2) Without limiting subsection (1), the information mentioned in that subsection includes the following:
 - (a) information identifying or describing the arrangement;
 - (b) all costs associated with the arrangement;
 - (c) a feature or benefit of the arrangement, including:
 - (i) a discount or rebate; and
 - (ii) a non-monetary benefit;
 - (d) the terms and conditions associated with the arrangement;
 - (e) the eligibility criteria a person must meet in order to enter or remain in the arrangement, or to take advantage of a particular feature of the arrangement.
- (3) Subsection (1) does not apply to information about an arrangement as tailored to a particular person.

11 Exclusion—materially enhanced information

- (1) Information is *materially enhanced information* where:
 - (a) the information was wholly or partly derived through the application of insight or analysis to information to which section 8 applies (*source material*); and
 - (b) that insight or analysis:
 - (i) was applied by, or on behalf of, the entity that holds the information or on whose behalf the information is held; and

Section 12

- (ii) rendered the information significantly more valuable than the source material.

Note 1: The materially enhanced information may have been derived entirely from source material, or from a combination of source material and other information. It is only necessary for the application of insight or analysis to render the information significantly more valuable than the source material.

Note 2: The application of insight or analysis may have rendered the information more valuable than the source material by enhancing its usefulness, usability or commercial value.

- (2) Information is not **materially enhanced information** where:

- (a) the information is publicly available; or
- (b) an Australian law (other than the Act) requires the disclosure of the information to one or more of the following:
 - (i) the public;
 - (ii) a person who is, or at any time was, a customer or associate in relation to an arrangement;
 - (iii) a class of persons that includes a person mentioned in subparagraph (ii).

Note: Section 11 only operates to exclude information from the scope of section 8. As a result, information to which sections 6, 7, 9 and 10 apply is not excluded by virtue of this section. For instance, if materially enhanced information were to fall within the terms of section 7, that information would still form part of the class of information specified for the purposes of paragraph 56AC(2)(a) of the Act.

- (3) To avoid doubt, information is not **materially enhanced information** if it falls within the terms of subsection 8(2) or (3).

Example: Information that meets the definition of DER register information cannot, without more, constitute materially enhanced information. However, a relevant entity may apply insight or analysis to DER register information in a way that renders it significantly more valuable than the source material. The latter may still be materially enhanced information.

12 Specified data holders

This section applies to a person mentioned in column 2 of the table, to the extent that:

- (a) the person holds information mentioned in column 1; or
- (b) such information is held on the person's behalf.

Specified data holders		
Item	Column 1 Type of information	Column 2 Specified holder of information
1	Information covered by section 7 (information about user of electricity)	A retailer
2	Information covered by subsection 8(2)	AEMO
3	Information covered by section 8, except to the	A retailer

Specified data holders		
Item	Column 1 Type of information	Column 2 Specified holder of information
	extent dealt with in item 2 of this table	
4	Information to which section 9 applies, except to the extent that the information relates to an arrangement as tailored to a particular person	The following: (a) the Australian Energy Regulator; (b) all or a part of the Department of State administered by the Minister of Victoria administering the <i>National Electricity (Victoria) Act 2005 (Vic)</i>
5	Information to which section 9 applies, to the extent that the information relates to an arrangement as tailored to a particular person	A retailer
6	Information to which section 10 applies	The following: (a) the Australian Energy Regulator; (b) all or a part of the Department of State administered by the Minister of Victoria administering the <i>National Electricity (Victoria) Act 2005 (Vic)</i>

Note: Subsection 56AR(2) of the Act, subject to subsection (3), prevents the CDR provisions from applying in relation to certain State and Territory government entities unless a declaration under subsection 56AS(1) of the Act is in force in relation to the entity. Such a declaration can only be made with the agreement of the relevant State or Territory due to subsection 56AS(2). As such, the Department of State administered by the Minister of Victoria administering the *National Electricity (Victoria) Act 2005 (Vic)* will not be subject to the CDR provisions until such a declaration has been made (except so far as permitted by subsection 56AR(3)).