

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Treasurer**

#### *Competition and Consumer Act 2010*

#### *Competition and Consumer Amendment (AER Functions) Regulations 2020*

The *Competition and Consumer Act 2010* (the CC Act) establishes a regime to regulate Consumer Data Rights across sectors of the Australian economy (the CDR regime).

The CC Act provides that the “CDR provisions” apply to bodies established under a law of the Commonwealth (section 56AR(1)(c)). The Australian Energy Regulator (AER) is such a body, being established under section 44AE of the CC Act. The “CDR provisions” are defined as including specified provisions of the CC Act and the *Competition and Consumer Regulations 2010* (the CC Regulations) and provisions of the Consumer Data Right Rules (CDR rules). These provisions mean that government entities established by the Commonwealth may be “accredited data recipients”, “data holders”, or “designated gateways” under the CDR regime.

Section 172(1) of the CC Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters that are required or permitted by the Act to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 44AH(1)(b) of the CC Act provides that the AER has any functions prescribed by regulations made under the Act. To date, the only functions conferred on the AER under this provision are in regulation 7AA of the CC Regulations and do not relate to functions under the CDR regime.

The AER is currently a data holder by virtue of section 56AJ of the CC Act, and section 12 of the *Consumer Data Right (Energy Sector) Designation 2020* (the Energy Designation). Accordingly, provisions of the CDR rules that apply to data holders will apply, in accordance with their terms, to the AER. However, because the CDR rules do not currently impose any obligations, or confer any rights on the AER as a data holder, it is not clear that the AER’s functions extend to it being able to undertake actions to ensure that it will be ready to comply with CDR rules that impose obligations, and confer rights on it in the future.

The purpose of the *Competition and Consumer Amendment (AER Functions) Regulations 2020* (the Regulations) is to confer additional functions on the AER, as a designated data holder under the CDR regime, to ensure its functions and powers extend to undertaking all work necessary to fulfil its obligations as such a data holder.

The Regulations make a minor, technical amendment to the CC Regulations to give effect to the AER’s role as a data holder by virtue of the Energy Designation.

Public consultation on the Energy Designation took place from 6 May 2020 to 31 May 2020, during which period, 19 submissions were received. The stakeholder

feedback was considered in the finalisation of the Energy Designation. No additional consultation was necessary in relation to the Regulations because the consultation on the Energy Designation addressed the issues around the designation of the AER as a data holder under the CDR regime.

Details of the Regulations are set out in Attachment A.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commenced on the day after they were registered on the Federal Register of Legislation.

A statement of Compatibility with Human Rights is at Attachment B.

**Details of the *Competition and Consumer Amendment (AER Functions) Regulations 2020***

**Section 1 – Name**

Section 1 provides that the name of the Regulations is the *Competition and Consumer Amendment (AER Functions) Regulations 2020* (the Regulations).

**Section 2 – Commencement**

Section 2 provides that the Regulations commence on the day after the instrument was registered on the Federal Register of Legislation.

**Section 3 – Authority**

Section 3 provides that the Regulations are made under the *Competition and Consumer Act 2010*.

**Section 4 – Schedules**

Section 4 provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

**Schedule 1 – Amendments**

Item 1 of Schedule 1 amends regulation 7AA of the CC Regulations by adding paragraph (c) at the end of the regulation, which provides that the AER has such functions as are necessary to enable it to operate as a data holder of CDR data in accordance with the CDR provisions as those provisions apply as described in section 56AR(4) of the CC Act.

The effect of this addition is to clarify that the AER has all the functions required to enable it to operate as a data holder of CDR data, including being able to undertake actions to ensure that it will be ready to comply with CDR rules that impose obligations and confer rights on it.

**Statement of Compatibility with Human Rights**

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

***Competition and Consumer Amendment (AER Functions) Regulations 2020***

This Legislative Instrument is compatible 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*.

**Overview of the Legislative Instrument**

The Legislative Instrument makes a minor, technical amendment to the *Competition and Consumer Regulations 2010* needed to confer additional functions on the Australian Energy Regulator, as a designated data holder under the Consumer Data Right regime established under the *Competition and Consumer Act 2010*, to ensure its functions and powers extend to undertaking all work necessary to fulfil its obligations as such a data holder.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

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