

EXPLANATORY STATEMENT

Issued by authority of the Minister for Superannuation, Financial Services and the Digital Economy

Competition and Consumer Act 2010

Competition and Consumer Amendment (Consumer Data Right Measures No. 1) Regulations 2022

Section 172 of the *Competition and Consumer Act 2010* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Part IVD of the Act establishes the Consumer Data Right (CDR), with the Minister empowered to make consumer data rules for designated sectors, by legislative instrument, in accordance with Division 2 of that Part. The CDR is an economy-wide reform that gives consumers the ability to safely, efficiently and conveniently access specified data about them.

Paragraph 56GE(2)(c) of the Act provides that regulations may modify the operation of the CDR obligations for a class of persons in relation to particular CDR data, or one or more classes of CDR data.

The *Competition and Consumer Amendment (Consumer Data Right Measures No. 1) Regulations 2022* (the Regulations) modify the date from which CDR obligations in relation to joint accounts will apply to non-major authorised deposit taking institutions (ADIs).

The new commencement date of 1 October 2022 gives non-major ADIs sufficient time to build the information technology infrastructure required to comply with obligations that had been scheduled to commence on 1 July 2022.

Non-major ADIs have outlined significant difficulties in meeting these obligations for a range of reasons including:

- the need for careful design to ensure compliance with the requirements;
- skills shortages in this specialised field; and
- a high dependency on external suppliers who have also been impacted by skills shortages exacerbated by the pandemic.

The Regulations apply only to non-major ADIs, and amend the timetable for the roll-out of CDR obligations only in relation to joint accounts.

The Regulations replace the current commencement table with a new table, which would provide that non-major ADIs will be subject to CDR obligations in relation to joint accounts from 1 October 2022.

Stakeholder representations were considered during the development of the Regulations, including in relation to the obstacles faced by non-major ADIs in complying with the 1 July 2022 commencement date. Further consultation on the making of this instrument was not considered practicable. This reflected the short period of time between the impracticability of compliance becoming apparent and the planning required to implement systems changes to meet the obligations.

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 only legal effect of the Regulations is to amend the *Competition and Consumer Regulations 2010*. Section 48A of the *Legislation Act 2003* provides that where a legislative instrument only repeals or amends another instrument, without making any application, saving or transitional provisions relating to the amendment or repeal, that instrument is automatically repealed. By virtue of section 48A, if the Regulations are not disallowed, the Regulations will automatically repeal when the disallowance period ends. Once repealed, the sunseting regime set out in Part 4 of Chapter 3 of the *Legislation Act 2003* is no longer relevant to the Regulations.

The Competition and Consumer Regulations 2010 are exempt from sunseting due to the operation of sub-item 16(e) of the table in section 12 of the *Legislation (Exemptions and Other Matters) Regulations 2015*. The *Competition and Consumer Regulations 2010* are exempt from sunseting as they are integral to the operation of the various intergovernmental schemes that establish the Australian Consumer Law.

The Regulations commence on the day after registration.

Regulation Impact Statement

The Regulations support implementation of recommendations of the 2017 Review into Open Banking, which was previously certified by Treasury as having undertaken a process and analysis equivalent to a Regulation Impact Statement. The amendments made by the Regulations are not considered to significantly impact on the estimate of annual regulatory costs assessed for the implementation of the CDR Rules. The Office of Best Practice Regulation (OBPR) considers the proposal is unlikely to have a more than minor regulatory impact, and therefore the preparation of a Regulation Impact Statement is not required (OBPR reference ID OBPR22-02072).

A statement of Compatibility with Human Rights is at [Attachment B](#).

Details of the *Competition and Consumer Amendment (Consumer Data Right Measures No. 1) Regulations 2022*

Section 1 – Name of the Regulations

This section provides that the name of the Regulations is the *Competition and Consumer Amendment (Consumer Data Right Measures No. 1) Regulations 2022* (the Regulations).

Section 2 – Commencement

The Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

The Regulations are made under the *Competition and Consumer Act 2010* (the Act).

Section 4 – Schedule

This section provides that each instrument that is specified in the Schedule to this instrument will be amended or repealed as set out in the applicable items in the Schedule, and any other item in the Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Schedule 1 to the Regulations amends the *Competition and Consumer Regulations 2010* by inserting new regulation 28RB, which is made for the purposes of section 56GE of the Act.

The new regulation modifies the application of certain Consumer Data Right (CDR) provisions as they relate to joint accounts. New regulation 28RB declares that subclause 6.6(1) of Schedule 3 to the *Competition and Consumer (Consumer Data Right) Rules 2020* applies in relation to:

- (a) the classes of data holders referred to in that subclause; and
- (b) the classes of CDR data referred to in that subclause;

as if that subclause were modified by replacing the commencement table in that subclause with a new commencement table. The effect of this replacement table is that the commencement date for certain CDR obligations for non-major ADIs has been delayed from 1 July 2022 to 1 October 2022.

These obligations relate to bringing joint accounts in scope for data sharing under the CDR by default (a ‘pre-approval’ setting), with mechanisms by which a joint account holder may adjust or change the pre-approval option also provided. Any joint account holder may withdraw a consent for data sharing on an account at any time.

Statement of Compatibility with Human Rights

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

Competition and Consumer Amendment (Consumer Data Right Measures No. 1) Regulations 2022

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

This Legislative Instrument makes minor technical amendments to the *Competition and Consumer Regulations 2010*. It modifies the date from which CDR obligations in relation to joint accounts will apply to non-major authorised deposit taking institutions (ADIs).

The new commencement date of 1 October 2022 gives non-major ADIs sufficient time to build the information technology infrastructure required to comply with obligations that had been scheduled to commence on 1 July 2022.

The obligations being deferred were introduced by Schedule 4 to the *Competition and Consumer (Consumer Data Right) Amendment Rules (No. 1) 2021*. The Statement of Compatibility with Human Rights for that instrument explains that these obligations engage, but are consistent with, the right to protection from unlawful or arbitrary interference with privacy under Article 17 of the International Covenant on Civil and Political Rights.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms, as it only slightly defers the commencement of obligations that already exist under the Act and Regulations.

Conclusion

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