

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Industry, Energy and Emissions Reduction

Competition and Consumer Act 2010

*Competition and Consumer (Industry Code – Electricity Retail) Amendment (Determination)
Regulations 2022*

Purpose and Operation

Part 2 of the *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019* (the Principal Regulations) prescribes the Electricity Retail Code of Conduct (the Code) as a mandatory industry code. The Code came into effect on 1 July 2019 and operates in New South Wales, south east Queensland, and South Australia with the effect of:

- capping standing offer prices for electricity supplied to small customers in a distribution region during a financial year to the relevant price determined by the Australian Energy Regulator (AER) for that region and year;
- requiring electricity retailers to compare their prices for small customers with the relevant reference price determined by the AER; and
- prohibiting the use of headline conditional discounts and requires retailers to state the terms of any non-headline conditional discounts clearly and conspicuously in any advertising material.

The AER is currently required to determine the price cap for a distribution region and financial year by 1 May of the previous financial year. In doing so, the AER must have regard to the matters set out in subsection 16(4) of the Principal Regulations, including the cost of distributing and transmitting electricity in the region.

The *Competition and Consumer (Industry Code – Electricity Retail) Amendment (Determination) Regulations 2022* (the Regulations) extends the date by which the AER must determine the price cap for a distribution region and financial year to the first business day after 25 May of the previous financial year. This allows the AER to take into account electricity network pricing information that is finalised through other AER regulatory processes during that month.

Authority

The Regulations are made under section 172 of the *Competition and Consumer Act 2010*.

Consultation

A review of the Principal Regulations was conducted between September 2021 and March 2022 and included two rounds of consultation and consideration of submissions from retailers, industry associations, community organisations, and regulators.

The Minister finalised the outcomes of the review and these Regulations implement one of the five outcomes. Stakeholders were generally supportive of extending the date the AER must determine the price cap to a later date in May. Other outcomes from the review requiring regulatory change require further consultation before being finalised.

Details of the Regulations are set out at **Attachment A**.

Regulatory Impact

It is estimated that the regulatory impact of the Regulations is likely to be minor (Office of Best Practice Reference number OBPR22-01726).

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at **Attachment B**.

Details of the *Competition and Consumer (Industry Code – Electricity Retail) Amendment (Determination) Regulations 2022*

Section 1 – Name

This section provides that the name of the Regulations is the *Competition and Consumer (Industry Code – Electricity Retail) Amendment (Determination) Regulations 2022*.

Section 2 – Commencement

This section provides that the Regulations commence on the day after registration.

Section 3 – Authority

This section provides that the Regulations are made under the *Competition and Consumer Act 2010*.

Section 4 – Schedules

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

SCHEDULE 1 - AMENDMENTS

Item [1] – Paragraph 17(2)(c)

Paragraph 17(2)(c) of the Principal Regulations prevents the AER from making a determination under section 16 of the Principal Regulations for a particular distribution region and financial year after 1 May of the previous financial year. Item 1 changes this date to the first business day after 25 May. This will enable the AER to take into account electricity network pricing information that is finalised when determining the price cap for standing offer prices in the region for the following financial year.

Item [2] – Subsection 17(3)

Subsection 17(3) of the Principal Regulations provides that a determination made under section 16 of the Principal Regulations must not commence earlier than 56 days after the day the determination is registered to give retailers time to prepare for changes to the price cap that applies to standing offer prices in a distribution region during the relevant financial year. Item 2 changes this period to 30 days, to accommodate the change made to paragraph 17(2)(c).

For example, the effect of the amendments is that the AER must determine the price cap for standing offer prices for a distribution region for the 2022-23 financial year by 26 May 2022, and the determination must be registered by 31 May 2022 in order for the price cap to apply to standing offer prices in the region from 1 July 2023.

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) Amendment (Determination) Regulations 2022

These Regulations are 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 Regulations

Under the Electricity Retail Code of Conduct, set out in Part 2 of the *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019* (the Principal Regulations), standing offer prices for electricity supplied to small customers in a particular distribution region during a financial year must not exceed the price determined by the Australian Energy Regulator (AER) for that region and year.

The AER is currently required to determine the price cap for a distribution region and financial year by 1 May of the previous financial year. In doing so, the AER must have regard to the matters set out in subsection 16(4) of the Principal Regulations, including the cost of distributing and transmitting electricity in the region.

The purpose of the *Competition and Consumer (Industry Code – Electricity Retail) Amendment (Determination) Regulations 2022* is to extend the date by which the AER must determine the price cap for a distribution region and financial year to the first business day after 25 May of the previous financial year. This is to enable the AER to take into account electricity network pricing information that is finalised through other AER regulatory processes during that month.

Human rights implications

These Regulations do not engage any of the applicable rights or freedoms.

Conclusion

These Regulations are compatible with human rights as they do not raise any human rights issues.

The Hon Angus Taylor MP
Minister for Industry, Energy and Emissions Reduction