

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer and Minister for Financial Services

Competition and Consumer Act 2010

Competition and Consumer Amendment (Consumer Data Right Measures No. 2) 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.

Under section 12 of the *Consumer Data Right (Energy Sector) Designation 2020*, retailers in the energy sector are specified as data holders for specified types of CDR data relating to energy customers. Under the *Competition and Consumer (Consumer Data Right) Rules 2020* (the Rules) in their current form, disclosure of this information pursuant to a valid request will only be possible after 15 November 2022.

The Rules were intended to allow data holders to voluntarily disclose CDR data before 15 November 2022 in response to a valid request if they choose to do so, but a drafting error in the Rules meant that the provision that should allow this to happen cannot operate as intended. The provision will be corrected when the Rules are next amended. However, the data holders with the earliest deadlines for mandatory data sharing (initial and larger retailers) need to be able to access this option sooner in order to conduct systems testing to ensure they are ready to provide timely and accurate energy sector CDR data by the compliance date. The *Competition and Consumer Amendment (Consumer Data Right Measures No. 2) Regulations 2022* (the Regulations) modifies the Rules to allow this to happen.

The Regulations modify the operation of the relevant provision of the Rules so that initial and larger retailers in the energy sector may voluntarily disclose CDR data pursuant to a valid request prior to 15 November 2022.

The Regulations correct a lack of functionality that the Rules were intended to provide, to enable the CDR regime to operate securely and efficiently, but inadvertently do not currently allow. Stakeholder representations on this issue were considered in the development of the Regulations, including in relation to the

obstacles faced by initial and larger retailers if the Regulations were not made. Formal consultation on the making of the Regulations was not considered practicable, nor necessary given the Regulations are only acting to clarify a functionality the Rules were intended to provide. The Office of the Australian Information Commissioner, Australian Competition and Consumer Commission and Data Standards Body have been consulted as affected agencies, and support the Regulations being made. 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 commenced 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. 2) 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. 2) Regulations 2022* (the Regulations).

Section 2 – Commencement

This section provides that the Regulations commence on the day after the instrument is registered on the Federal Register of Legislation.

Section 3 – Authority

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

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to this instrument will be 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

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

Regulation 28RAA modifies the application of clause 8.7 of Schedule 4 to the *Competition and Consumer (Consumer Data Right) Rules 2020* (the Rules) to declare that it applies to initial and larger retailers, within the meaning of Part 8 of that Schedule, as if that clause were modified by omitting paragraph (1)(a) of that clause.

The unintended effect of current paragraph 8.7(1)(a) of Schedule 4 to the Rules is to prevent these retailers voluntarily disclosing CDR data before 15 November 2022. Subclause 8.6(2) sets that as the compliance date for initial retailers except in relation to a complex request. That is, initial retailers must participate in CDR data sharing from 15 November 2022.

Removing paragraph 8.7(1)(a) would allow these retailers to disclose the data pursuant to a valid request prior to 15 November 2022, including to conduct systems testing. Such systems testing would ensure they are ready to provide timely and accurate energy sector CDR data by their respective dates for mandatory data sharing.

There is no change for small retailers. It remains the case that they cannot respond to requests before the 'tranche 1 date' specified in the Rules.

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. 2) 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 a minor technical amendment to the *Competition and Consumer Regulations 2010*. It modifies the operation of the relevant provision of the *Competition and Consumer (Consumer Data Right) Rules 2020* (the Rules) to correct a lack of functionality the Rules were intended to provide so that initial and larger retailers in the energy sector may voluntarily disclose CDR data pursuant to a valid request prior to the date from which mandatory data sharing obligations will apply to them as specified in the Rules.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms as it is only making a minor technical amendment to ensure the Rules operate as they were intended. Any consumer data would only be shared with the consumer's consent.

Conclusion

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