

## EXPLANATORY MATERIALS

### *Competition and Consumer Act 2010*

#### *Consumer Data Right (Energy Sector) Designation 2020*

Subsection 56AC(2) of the *Competition and Consumer Act 2010* provides that the Minister may, by legislative instrument, designate a sector of the Australian economy to be subject to the consumer data right. The consumer data right is set out in Part IVD of the *Competition and Consumer Act 2010* (the Act).

The consumer data right provides individuals and businesses with a right to efficiently and conveniently access specified data that relates to them held by businesses, and to authorise secure access to this data by accredited third parties. The consumer data right also requires businesses to provide public access to information on specified products that they offer.

The consumer data right is designed to give customers more control over their information leading, for example to more choice in where they take their business, or more convenience in managing their money and services.

The sectors of the Australian economy that are covered by the consumer data right and the type of information consumers can request are limited to those specified in designations that will be made by the Treasurer.

Section 56AC(2) of the Act provides that the Treasurer may designate a sector of the Australian economy as subject to the consumer data right by making a legislative instrument.

Energy is the second sector of the Australian economy to which the CDR will be applied.

The *Consumer Data Right (Energy Sector) Designation 2020* (the Designation) sets out the classes of information that are subject to the consumer data right regime, the persons who hold this information and will be required or authorised to transfer the information under the regime, the gateway for certain classes of the information, and the earliest date that the information being held is subject to the consumer data right.

Data holders may be required to disclose the data in this Designation in accordance with the consumer data rules. The rules may also authorise data holders to choose to share this data through the consumer data right.

The Designation does not specify any information as being subject to fees for access or use for the purposes of paragraph 56AC(2)(a) of the Act.

Details of the Designation are set out in [Attachment A](#).

The Designation will commence on the day after it is registered.

**Details of the Consumer Data Right (Energy Sector)  
Designation 2020**

**Section 1—Name**

This section provides that the title of the Designation is the *Consumer Data Right (Energy Sector) Designation 2020* (the Designation).

**Section 2—Commencement**

This section provides that the Designation will commence on the day after the instrument is registered.

**Section 3—Authority**

This section states that the Designation is made under subsection 56AC(2) of the Act.

**Section 4 —Definitions**

The Designation includes a number of definitions. These include:

*Act* means the *Competition and Consumer Act 2010*.

*Associate* has the same meaning as section 318 of the *Income Tax Assessment Act 1936*. This includes a person's relatives such as spouse, children or siblings. Including an associate in the designation reflects there can be more than one account holder on an electricity account, or that the primary account holder may grant access to the account to a relative or spouse.

*National Energy Retail Law* means the National Energy Retail Law that is set out in the Schedule to the South Australian legislation the *National Energy Retail Law (South Australia) Act 2011*.

The *National Electricity Rules* refers to the rules, as in force from time to time, made under the National Electricity Retail Law and as they apply in the Commonwealth or the states and territories.

Together the National Energy Retail Law and the National Electricity Rules establish and regulate the National Energy Market, which is the wholesale electricity market that operates in New South Wales, the Australian Capital Territory, Queensland, South Australia, Tasmania, and Victoria.

A number of terms mean the same in the Determination as in the National Electricity Rules:

- *DER register information*
- *Metering data*
- *NMI Standing Data Schedule*
- *Type 7 metering installation*

**Retailer** means a person that is authorised as a retailer under the National Energy Retail Law or a retailer under the *Electricity Industry Act 2000* (Vic). This is intended to capture all electricity retailers in the National Energy Market, including Victoria.

## **Section 5 — definitions relating to arrangements**

This section sets out definitions of **arrangement**, **customer**, and **associate** that apply in the Designation (except for section 10, which relates to natural gas).

- **Arrangement** means an arrangement where a retailer sells or supplies electricity to a person for a premises.
- **Customer** means a person who purchases electricity under an arrangement.
- **Associate** means an associate (within the meaning of section 318 of the *Income Tax Assessment Act 1936*) of a customer. This is intended to capture persons such as the customer's close relatives including a spouse, children or siblings.

The note to section 5 clarifies that an arrangement for the sale or supply of electricity will always involve electricity, but may also include retail goods or services (for example, discounts on movie tickets or airline loyalty points).

## **Section 6 — designation of sector subject to the consumer data right**

This section sets out:

- the classes of information that are prescribed and therefore subject to the consumer data right (sections 7 to 10);
- the data holders for the classes of information that are prescribed (section 12);
- that the earliest date that the classes of information that are held by a data holder under the Designation can become subject to the consumer data right is 1 July 2018; and
- that the Australian Energy Market Operator (AEMO) is the designated gateway for certain information (classes of information set out in section 7 and parts of section 8).

## **Specified classes of information**

### Section 7 – information about a customer or associate

Information about a customer or the associate of a customer that is subject to the consumer data right is information provided by the customer or associate or obtained by the data holder in connection with the arrangement.

The information may include identifying information about the customer or associate, information that goes to the customer's eligibility for an arrangement, or the contact details of the customer or associate.

## Section 8 – information about sale or supply of electricity

Information about the sale or supply of electricity includes information about the physical electricity connection points or other information about the supply of the electricity to the customer.

This includes, but is not limited to, information relating to the arrangement that is in the NMI Standing Data Schedule, is metering data, or is DER register information.

This information may also include:

- a bill
- payment information, including the payment method;
- information about the customer’s account with the retailer
- authorisations for access to the customer’s account;
- information about whether the customer is experiencing hardship;
- any discounts applicable, including concessional arrangements; and
- a breakdown of the charges under the arrangements.

Any information that is “materially enhanced” within the meaning of section 11 is not covered by this section and is subsequently not subject to the consumer data right. However, information that would otherwise be “materially enhanced” but that falls within the specific inclusions in subsections 8(2) and (3) will still be subject to the consumer data right.

## Section 9 – information about retail arrangements

This section applies to information about an arrangement for the supply of electricity, including:

- the name or other identifying information relating to the arrangement;
- costs and charges associated with the arrangement;
- discounts or non-monetary benefits under the arrangement;
- terms and conditions associated with the arrangement; and
- eligibility criteria for the arrangement.

This information applies to a new or current arrangement or arrangements that are still in use but no longer available to new customers. It also applies to arrangements that relate to both electricity and natural gas.

An arrangement can be offered to a group of people or tailored to a particular person.

## Section 10 – information about retail arrangements (natural gas)

The Designation also applies to certain arrangements that only relate to the supply of natural gas. These arrangements are only those that apply to new customers, and not arrangements that are tailored to an individual customer.

The information related to a supply of natural gas that is subject to the consumer data right is:

- information identifying the arrangement;
- all costs associated with the arrangement;
- a discount or non-monetary benefit under the arrangement;
- terms and conditions associated with the arrangement; and
- eligibility criteria for the arrangement.

## **Section 11 – Exclusion – materially enhanced information**

Information about the sale or supply of electricity in section 8 can also be *materially enhanced*. This will be the case when the section 8 information is improved through the application of insight or analysis by the data holder (or on their behalf), and the improved data is significantly more valuable than the original information.

If information that would otherwise be captured by section 8 is materially enhanced then it is not subject to the consumer data right. However, information of the kind listed specifically in subsections 8(2) and (3) cannot be materially enhanced and will always be subject to the consumer data right. This is because information listed in subsections 8(2) and (3) is factual and based solely on observation.

Further, there are circumstances where information captured by section 8 that is materially enhanced will still be subject to the consumer data right. This is where:

- the information is publicly available; or
- the information is required to be disclosed under an Australian law.

## **Section 12 – Specified data holders**

This section sets out who is the data holder for the information set out in the Designation.

<b>Information</b>	<b>Data holder</b>
<b>Information about a user of electricity</b>	Retailers
<b>NMI Standing Data Schedule information</b>	AEMO

<b>Metering data</b>	AEMO and retailers
<b>DER register information</b>	AEMO
<b>Other information about the supply of electricity (other than NMI Standing Data Schedule information, metering data, and DER register information)</b>	Retailers
<b>Information about retail arrangements (other than tailored arrangements)</b>	The Australian Energy Regulator and Victorian Energy Compare
<b>Tailored retail arrangements</b>	Retailers
<b>Retail arrangements relating to natural gas</b>	The Australian Energy Regulator and Victorian Energy Compare