

## **EXPOSURE DRAFT 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) Regulations 2021*

Section 172(1) 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.

The purpose of the *Competition and Consumer Amendment (Consumer Data Right) Regulations 2021* (the Regulations) is to exempt the Australian Energy Market Operator (AEMO) from certain privacy safeguard obligations under the Consumer Data Right (CDR) provisions in the Act, and conversely, apply privacy safeguard obligations to a retailer who receives CDR data from AEMO.

Division 5 of Part IVD of the Act sets out privacy safeguards that impose obligations on accredited persons, data holders and designated gateways in relation to their handling of CDR data to protect the privacy and confidentiality of CDR consumers' CDR data.

Under section 12 of the *Consumer Data Right (Energy Sector) Designation 2020* (the Energy Designation), AEMO is specified as the data holder for specified types of information relating to arrangements under which electricity is supplied to consumers. However, AEMO never holds any information that allows it to identify a consumer in relation to any of the designated data it holds and has no direct relationship with any CDR consumer.

Retailers are also specified in the Energy Designation as data holders for information related to specific customers and their arrangements, as outlined in the CDR Rules. Significantly, the Rules authorise the disclosure of CDR data from one data holder directly to another data holder (whereas previously CDR data could only be disclosed from a data holder to an accredited person or from an accredited data recipient to another accredited data recipient).

In practice, consumer data requests are made to retailers, not AEMO, and it is the retailer responding to a request that includes AEMO data who is able to identify and interact with the consumer. Consequently, retailers are better placed than AEMO to ensure the privacy safeguard obligations are met in relation to that data.

The Regulations make minor technical amendments to the *Competition and Consumer Regulations 2010* to exempt AEMO from four privacy safeguard obligations, and in circumstances where AEMO provides CDR data to a retailer, to apply appropriate privacy safeguard obligations to the retailer in relation to that data as if the retailer were the data holder for that data.

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.

**Details of the *Competition and Consumer Amendment (Consumer Data Right) Regulations 2021***

**Section 1 – Name**

This section provides that the name of the instrument is the *Competition and Consumer Amendment (Consumer Data Right) Regulations 2021*.

**Section 2 – Commencement**

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

**Section 3 – Authority**

This section provides that the instrument is made under the *Competition and Consumer Act 2010*.

**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 the Schedules to this instrument has effect according to its terms.

**Schedule 1 – Amendments**

Item 1 in Schedule 1 to the Regulations amends the *Competition and Consumer Regulations 2010* by inserting new Part 2BA, which is made for the purposes of section 56GE of the Act, and modifies the application of certain CDR provisions as they relate to the Australian Energy Market Operator (AEMO), as well as retailers that AEMO makes disclosures to in accordance with the Act.

Regulation 28RA(3)(a) exempts AEMO from sections 56ED (Privacy Safeguard 1), 56EN (Privacy Safeguard 11) and 56EP (Privacy Safeguard 13) of the Act. The effect of removing these obligations is that AEMO is not required to:

- have policies, procedures, and systems in place to ensure compliance with the CDR regime or enable the open and transparent management of CDR data (section 56ED); or
- ensure the CDR data they hold is accurate, up to date and complete, nor to disclose corrected data (section 56EN); or
- respond to consumer requests in relation to data correction (section 56EP).

New regulation 28RA(3)(b) exempts AEMO from section 56EM (Privacy Safeguard 10) of the Act in relation to data disclosed to a retailer under the Act.

New regulation 28RA(4) provides that retailers who have data disclosed to them by AEMO as required or permitted by the Act, are required to apply Privacy Safeguards 1 and 10, as well as some aspects of Privacy Safeguard 13 in relation to that data.

The effect of these additions is that when CDR data is provided to a retailer by AEMO, the privacy safeguards that apply to data holders apply to the retailer in relation to that data as if they were the data holder, and conversely, do not apply to AEMO.

Regarding Privacy Safeguard 13, retailers are not required under section 56EP3(a) of the Act to correct CDR data or to include a statement with CDR data ensuring that it is accurate, up to date, complete and not misleading, but are still required to give notice under section 56EP3(b) of any corrections or statements, or notice of why a correction is unnecessary or inappropriate. This specific change to Privacy Safeguard 13 works in conjunction with changes in Schedule 4 of the Rules, which leverages the existing National Electricity Rules (NER) processes for correcting data. Similarly, Privacy Safeguard 11 is not applied to retailers as the national energy legislation and NER contains existing correction processes for energy retailers and other market participants.