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Australian Competition and Consumer Commission

Consumer Data Right Division

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Consumer Data Right – Energy Rules Framework consultation

AGL welcomes the opportunity to comment on the Australian Competition & Consumer Commission's (ACCC) Rules Framework for the Consumer Data Right (CDR) in the Energy Sector (**consultation paper**).

AGL supports the development and roll out into the energy sector of the CDR regime, recognising the benefits that can be delivered to consumers and businesses. The CDR regime is intended to allow consumers greater control and choice in their products and services, and to encourage industry to innovate for their customers through an interoperable system.

For consumers, the CDR should deliver a simple, easy to use system across industry that builds trust and therefore promotes uptake of the CDR. The CDR system will create administrative efficiencies for consumers as they can use the framework to verify best offers across different sectors in one transaction.

For industry, the CDR promotes innovation and multi-sector service provisions. It keeps implementation and management costs down for both Data Holders (DH) and Accredited Data Recipients (ADR) by developing an interoperable framework across sectors. This means that CDR is offered in the least cost approach while also promoting ongoing innovation across sectors.

Overall, the CDR regime is meant to be built on concepts of strong authentication, consumer control, trust and safeguards to ensure that the consumer remains the centre of all transactions. We strongly encourage the ACCC to keep these principles in mind when developing the draft CDR rules for electricity.

The following submission addresses matters of both governance and issues relating to the proposed data sets based on meeting the above principles and maximising the benefits of CDR, key to these points are:

- **Interoperability** - to achieve a truly interoperable system, the ACCC must minimise as many points of difference as practicable between sectors. This suggests that the ACCC should default to structures focusing on the retailer for all matters of process where it is reasonably possible to do so, such as the authentication model and the provision of the consumer dashboard. Interoperability must be considered for all CDR participants, not just consumers and data recipients. Minimising differences between sectoral applications in CDR recognises that businesses



may offer products and services across multiple designated sectors (e.g. electricity, gas, broadband, phone).

- **Strong consent must be the baseline for all CDR interactions** - it is important to ensure strong consent is established for energy and is in line with the banking sector. If there are stakeholders that want a resident model for broader participants then this should be sought under the energy rules and laws, not through the CDR regime which is specific and detailed in its protections and structures for consumers. We also note that the government comparators currently receive aggregated data from the Australian Energy Market Operator (**AEMO**) not raw/granular data.
- **Pursue a Minimum Viable Product (MVP)** - to minimise any unforeseen impacts of the CDR on consumers and businesses, the ACCC should seek to apply the MVP as was the approach taken in banking.
- **Eligible consumers in version 1 of electricity CDR** – must be mindful of the existing structure of rules, standards and protections for consumers. Direct customer access is not included in the first version of energy CDR by design of Treasury and ACCC. To allow for customers without an online account with energy retailers to be involved, the ACCC must either undertake fundamental / wholesale changes to existing general CDR Rules, standards and customer protections (such as the dashboard), or acknowledge that any *offline* customer that the right is extended too will ultimately be pushed to a digital solution to be in line with the current CDR framework. Greater clarity may be provided through the report on the Future Directions of Consumer Data Right, due by the end of 2020.

We would welcome the opportunity to discuss our views further with the ACCC and encourage ongoing engagement between now and the issuing of a draft set of rules. If you have any questions, please contact Kat Burela on [REDACTED] or at [REDACTED].

Regards

[Signed]

Elizabeth Molyneux

General Manager Energy Markets Regulation



1. Governance and implementation

In the following section we address matters relating to CDR governance and implementation. Some of the key positions covered in this section are:

- The importance of establishing the role of the Gateway to ensure that CDR remains as consistent as possible across all sectors. Importantly, we recommend the AEMO ‘resident model’ is not introduced into CDR but that the energy rules specifically address this.
- The importance of ensuring that strong authentication which builds on customer trust, control and rights (such as the management of all designated CDR data through the consumer dashboard), is implemented.
- The need to ensure principles of competitive neutrality and fairness are present by applying the principle of reciprocity to those parties that seek to become accredited data recipients.
- Our support of an application of a Minimum Viable Product (**MVP**) for the energy sector, as was taken in banking.

Role of the gateway

We continue to advocate for the role of the gateway to be a data sharing platform to conform as much as possible to the banking economy wide sharing of consumer data framework. This will ensure that interoperability and business investments can be optimised in a way that enhances the consumer experience and most importantly, trust in the CDR and keeps industry cost of implementation and management as low as possible.

We see the ACCC Rules as being essential in clearly defining the boundaries of the gateway to ensure that participants can have confidence in their ongoing obligations. The ACCC Rules can ensure that the Gateway role is limited to the facilitation of information passing through as was intended by the CDR Act.¹

It should clearly close the door on the proposed ‘resident model’ which we discuss further below, as the fundamental structure of a resident model is counter to all the structures put in place for the CDR regime. It was never envisaged that parts of designated CDR data could operate outside the protections established within both the Act and the Rules (such as the ability to track and manage consents).

We believe that the Gateway should act as a pipeline for the data, in a way that orchestrates energy participants for the sharing of data through to accredited data recipients. We support the option that is most aligned with the economy wide model and believe that options that expand the Gateways role will only complicate the provision of CDR data for participants and make it harder for multi-service retailers to operate efficiently.

The Gateway should be invisible to consumers regarding any aspect of the CDR. Expecting consumers to build a relationship with an entity established for the operation of the market through education campaigns is not an efficient way to develop the CDR, nor is it within the principles of the CDR in seeking to

¹ <https://www.legislation.gov.au/Details/C2019A00063/Amends>



leverage existing relationships. We also encourage establishing a clear tripartite agreement between the Gateway, data holders and accredited data recipients in line with the CDR Act to provide clarity on the equal relationship of the three parties.

Our views on the role of the Gateway are further articulated in our previous submission.²

Authentication

We provide our high-level comments below on our preferred authentication model and the ‘resident model’. More detail on these views can also be found in our submission to Treasury.

Model 1 (retailer)

We support model 1.

Model 1 is the most similar to what was established in the banking sector and therefore fosters the principle of leveraging existing business structure and overall CDR interoperability and agree with the ACCC preference.

The ACCC focus must be on strong authentication and privacy; and this is best facilitated by the retailer who already holds the customers personal information (**PI**). We note that model 1 is also the recommended model under the Supplementary Privacy Impact Assessment (**SPIA**) as it has comparatively fewer privacy risks compared to model 2 and avoids having to disclose additional consumer information through to AEMO.³

The benefits of model 1 are:

- Leverages existing relationships in line with what was envisaged for the CDR system.
- Allows for consistent and familiar systems of consent management, dashboard, access and complaint resolution to be managed through their primary energy contact – the energy retailer.
- Flexibility for market-led solutions for outsourced consumer authentication to be developed and offered in future (e.g. where businesses offer cross-sector products and services).

Model 2 (AEMO)

We do not support model 2.

We believe this model fundamentally shifts the CDR regime and the customer-business relationship by placing the build burden on to AEMO and allowing them to manage the customer authentication and relationship. This is a significant departure from the current arrangements in the energy sector and therefore not only introduces unnecessary and duplicative costs to build but will also require a sustained education campaign to inform customers.

² <https://thehub.agl.com.au/articles/2020/05/agl-responds-to-treasury-approach-to-energy-consumer-data-right> see pages 9-12.

³ See SPIA – CDR in the energy sector, <https://treasury.gov.au/publication/p2020-89229> p9



The ACCC has suggested that model 2 could be an alternative for retailers who are unable to build authentication capabilities required by model 1, however we do not agree that this is an appropriate approach for the following reasons:

- Model 2 will require additional exposure of customer personal information which is fundamentally unnecessary given the viability of model 1.
- Model 1 is consistent with the banking sector and was considered appropriate for both large and small banks. To date, no evidence has been presented that suggests that there is a distinct need for additional support for smaller energy retailers compared to smaller banks or in fact that costs would be lower with model 2.
- Model 2 being made available for some retailers should they choose it, would need to have clear cost recover models established to ensure that only retailers who seek to use this as an option are those that are paying for it, otherwise other retailers that do not utilise model 2 will inefficiently be required to fund two authentication arrangements, their own and AEMO's. This would be the case for both the initial development costs, as well as the ongoing maintenance and upgrade costs. We also note that retailers already have authentication obligations so this should not be considered a wholly new obligation.

The 'resident model'

We do not support the 'resident model'.

During the Energy Rules Framework webinar hosted by the ACCC on 11 August, some stakeholders raised the proposed 'resident model' which would allow for the sharing of data with lower authentication requirements, through the use of NMI, postcode and retailer as the identifiers. The resident model is a model developed by AEMO and is based on a similar model that is currently used with government hosted comparators EnergyMadeEasy (**EME**) and Victorian Energy Compare (**VEC**), under the energy rules and laws for the sharing of metering data to help customers make comparisons.

The resident model is a preferred model for many potential ADRs, such as aggregators and comparators as it would allow easier access to customer meter data. This data, it is argued, is less sensitive than other data held by retailers. We have previously raised concerns with the resident model in our submission to Treasury, and note again below our key concerns with such an approach:

1. The premise that metering data is 'less sensitive' is solely based on the financial risk the consumer is likely to bear. We note other risks, such as health, safety and the right to anonymity that can be affected by the wrongful disclosure of metering data.
2. Government comparators do not have a commercial incentive to offer customers comparisons nor are they retaining the customer metering data, and it is not used for commercial purposes.
3. The ACCC Retail Electricity Pricing Inquiry (**REPI**) report noted issues with third party providers in the electricity sector, recommending a mandatory code be established to ensure these providers act in the interests of consumers (recommendation 34).

Some stakeholders have suggested that a lower level of authentication is an appropriate path due to the ACCC REPI report (recommendation 31) which suggested the fastest way to implement CDR in energy is through a lower threshold authentication model. We note that this recommendation was made two years



ago before the CDR Act was finalised and therefore before the ACCC understood the extent of the regime structure. We also question whether a resident model could really be delivered with a material saving of time given the range of other market changes AEMO is already managing such as five-minute settlement and faster switching times.

The 'resident model' fundamentally undermines the intention, structure and strong authentication models established in the CDR regime to ensure consumers feel their data is safe, secure and within their control. Should stakeholders wish to have the 'resident model', as it applies to the government comparators, then they should lodge rule/legislation change requests to have this enacted under the energy rules and laws that current allow for it.

Consumer Dashboard

Option 1 is our preferred option, as it gives autonomy to customise and build on better consumer experiences based on each retailer's direction. It is the option that most aligns with banking and likely to be established in future designated sectors. The CDR dashboard in banking was acknowledged by the ACCC and Treasury as being a right for data holders to manage due to their relationship and investment in the customer. If one dashboard is preferred as it will enhance the customers access and engagement, AGL therefore believes that option 1 is the appropriate solution.

Option 2 (AEMO hosted consent dashboard) is contrary to the principle of interoperability and leveraging existing customer relationships that the CDR system is built on. The CDR is not just about the consumers ability to direct their data to accredited third parties, it is also about allowing businesses to innovative their services and products for customers. Under option 2 and 3 (AEMO developed dashboard hosted by retailers), retailers would be constrained to a CX limited to the electricity (and possibly gas) sectors. This may be manageable in the short term, but as businesses diversify their products and services and other sectors are subject to CDR designation, the ability of these businesses to offer an inclusive and positive consumer experience will be significantly stifled.

Further, an option that centres around the provision of services by a central agency, such as AEMO, will mean both upfront and ongoing costs to all participants and involve significant time and consultation to develop. Individual retailers will still incur costs for the hosting, maintenance and obligations relating to the dashboard under option 3, thereby minimising any benefit it may deliver. There is insufficient information on option 3 to be able to say whether this could be an appropriate solution (e.g. how and what CDR data would AEMO need to access/store).

Recommendations

- Align the role of the Gateway to that intended under the CDR Act, a pipeline of data between data holders and accredited data recipients.
- Implement model 1 (retailer) for authentication for all retailers
- Implement option 1 (retailer) for the consumer dashboard for all retailers
- Make clear that the proposed resident model is counter to the CDR structures, and recommend that this be pursued under relevant energy rules and laws for decision-makers to consider viability and suitability.



Eligible consumers

AGL believes that nominated persons and inactive accounts should not be captured in version 1 of the electricity CDR.

Nominated and/or authorised persons to act on an account do not have full rights and control that joint account owners would have on an account. We note that the Australian Energy Market Commission (**AEMC**) provided a submission to the Future Directions of CDR Inquiry noting that they are currently reviewing how digitalisation is impacting the retail electricity market including looking at Explicit Informed Consent (**EIC**) provisions.⁴ We encourage the MVP for energy CDR to exclude nominated persons (authorised representatives) at this stage, while the broader review of EIC, energy markets, and the Future Directions Inquiry takes place. We also refer to our submission to Treasury regarding trustee/deceased estates and other arrangements that could be complicated by such an expansion.

We continue to encourage the ACCC to also exclude large customers (also known as Commercial and Industrial (**C&I**) customers) from version 1, given the bespoke contractual arrangements that these customers have.⁵

We have no comments regarding minors and joint accounts in relation to eligible consumers, other than the ACCC should start with the smallest (but most expansive) definitions to minimise any unintended consequences or complications that may undermine the CDR framework.

Online/offline customers

We recommend the ACCC consider offline customers as a future opportunity, rather than version 1. We note that individual consumers cannot directly access their data under version 1 of CDR, with the ACCC referencing existing data access rules and laws in the energy sector. We think there are substantial benefits in building off the existing digital structure for CDR and building on the CDR system in future versions.

While we agree with the fundamental premise that all customers should have a right to access their data, we question whether the current structure of the CDR can support offline customers both from a CX guide and technical solution perspective. In keeping with the MVP approach taken in banking for version 1 of CDR, we question whether the benefits would outweigh the costs for such an expansion in the electricity sector as there would need to be extensive amendments made to the general rules and technical standards as they have currently been developed. In addition, the online consent process, axiomatically, will not apply to offline customers who request that their data be shared with third parties. As a result, the extension of the CDR to offline customers will require a manual process for both identity verification and consent.

It is unclear what level of consumer uptake there would be for energy CDR in the initial years (we note that UK open banking uptake has remained small to modest), and to what extent (if any) offline customers would want to utilise the CDR system. We encourage consumer testing to understand whether the extensive costs associated to offline access of CDR data will be justified by consumer benefit, a position

⁴ See <https://treasury.gov.au/sites/default/files/2020-07/australian-energy-market-commission.pdf>

⁵ <https://thehub.agl.com.au/articles/2020/05/agl-responds-to-treasury-approach-to-energy-consumer-data-right>



from the Data Standards Body on the feasibility of such an extension at this time would also be beneficial for both the ACCC and stakeholders.

Given the infancy of the CDR regime, having only gone live on 1 July 2020, we do not believe that such wholesale changes are appropriate at this time, and note that the ACCC recommended that direct consumer access to CDR be excluded from version 1 of energy CDR as individual customers already have rights to access data under energy rules and laws.⁶

CDR experience 'online'

In banking, to be eligible the consumer must have an online account with a bank. In January 2020, the ACCC asked retailers to provide voluntary data regarding digital customer uptake/presence.

The ACCC consultation paper suggests that 'online' for electricity CDR could be defined differently, asking for stakeholder views on offline and online customers. However, it is important for the ACCC to recognise that even if the definition of 'online' was based on the customer having an email address associated to their account, the basic structure of the CDR design will push those customers to an online account journey. As we identify above, the limitations of the CDR framework and the basis on which customers can manage consents and exert control over their CDR data is based on online account management, this includes access to the dashboard. Customers could be sent a link via email to a consumer dashboard hosted on a website, but to access this would need to provide a password for access (to ensure basic security measures).

The most secure and effective way for retailers to manage this would be by providing customers online accounts (e.g. to AGL's MyAccount portal). AGL is committed to moving to digital engagement as is the energy sector more broadly (see for example the recent AEMC review on Consumer Protections), and as such the CDR system for version 1 should be consistent with both the existing CDR framework as well as other market developments and reviews.

To ensure that the customers dashboard was set up and accessible, there would need to be some level of confidence that a customer would use a link that was emailed to them and proceed to set up an account. That confidence cannot be assured, and therefore online accounts would need to be set up in advance of any data sharing if customer protection and control is to be assured.

Understanding the limitations of the current CDR regime

When considering the expansion of CDR to offline customers, we encourage the ACCC to be mindful of the following:

- CDR is a digital solution, all current rules, standards and CX requirements are based upon a digital experience, for example:
 - The technical standards are based on the sharing of data and authentication of customers through APIs.
 - CDR consumers receive a CDR Receipt following consents via email.

⁶ See [ACCC Data access models for energy consultation paper](#) February 2019, p7 & 15



- Corrections for CDR data and other notifications from ADRs and DH are sent to the customer via either the dashboard or the customers email.
- CDR consumer protections are offered in a range of ways, but a key focus of the privacy impact assessment and CDR Rules was that the consent dashboard (an online tool) provides consumers control over their data and revocation of access to that data.
- Digital service costs are significantly lower for businesses than the cost to serve based on phone services and supports. The ongoing costs to retailers for managing offline CDR data access requests and authorisations would be significantly high and burdensome and are costs that would be borne by all customers through electricity prices.
- The Energy Retail Rules and Laws already allow for consumers to request a range of their own data from retailers, which is part of the reason the ACCC has excluded consumer-direct access to their data from version 1 of electricity CDR.

Active Account

We encourage the ACCC to consider the MVP approach when developing a definition for eligible consumers in energy. Matters such as metering data for non-active accounts will create significant complications. For example, if a customer would like to request 2 years of metering data but has changed retailers or account details in that time – it is unclear how the customer could make a valid request. Would the customer be authenticated by their current retailer for the 2-year period? What if the account holder name or details have changed in this time? Would the customer be re-directed multiple times (to previous retailers) to authenticate themselves with each, and then who would be responsible for the dashboard?⁷

Other complicating factors, such as where the previous retailer allowed for joint accounts, but the new retailer only accepts accounts in one name will further confuse the authentication process for this data set. We encourage the ACCC to host further consultations on these matters before issuing draft Rules.

Recommendations

- Limit phase 1 electricity CDR to customers with online accounts, recognising the current limitations of both the CDR frameworks as well as broader EIC obligations in energy for transitioning customers to digital solutions.

⁷ We raised these concerns in a recent consultation process run by AEMO for NMI standing data changes https://aemo.com.au/-/media/files/stakeholder_consultation/consultations/nem-consultations/2020/msats/third-stage-submissions/agl.pdf?la=en



Dispute resolution

Internal dispute resolution

We have previously stated our preference for the CDR Rules to be based on an interoperable standard for complaints management based on the Australian Standard 10002:2014.⁸ To help minimise the cost of compliance for CDR participants, it is appropriate to implement a standard that is consistent across a broader range of industries, particularly to assist with accredited data recipients accessing data across sectors. This would be an efficient way for the ACCC to minimise costs to ADRs, rather than seeking tiered accreditation.

AGL is compliant with the Australian Standard 10002:2014, which includes a revised definition of the above which defines a complaint as an “expression of dissatisfaction made to or about an organisation, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required”.

External dispute resolution

We continue to recommend the ACCC and the Federal and State governments to implement a national ombudsman scheme for energy.⁹ Energy ombudsman schemes are not structured to accommodate for external participants, such as ADRs and would therefore need to change their Constitutions and procedures to capture CDR complaints as part of their jurisdiction.

This is an issue that is already emerging in relation to solar and battery consumer complaints where the energy ombudsman schemes do not currently have jurisdictions over solar manufacturers and installers. We note that both Victoria and New South Wales Ombudsman have gone through lengthy processes to broaden jurisdiction, members and fee structures to provide external low-cost dispute resolution services. Continued incremental adjustment is not the most effective and low-cost approach to capturing EDR obligations under the CDR regime. Rather, CDR provides an opportunity to undertake a detailed review of the most effective way to deliver on this obligation.

Phasing options – retailers as data holders

As one of the largest energy retailers, regardless of the approach taken AGL will be first to implement energy CDR. We therefore urge the ACCC, Data Standards Body (DSB) and the Federal Government to work closely with us as the Rules are developed to understand the business implementation issues as we all have a common goal to ensure the framework is effective and appropriate for both customers and participants.

The principle of reciprocity is essential to the intention of the CDR to ensure that consumers can access and control data that businesses hold about them. Therefore, we believe any business that seeks to become

⁸ See our submission to the ACCC CDR banking rules consultation here: <https://thehub.agl.com.au/-/media/thehub/documents-and-submissions/2019/agl-submission---accc-cdr-banking-rules---10-may-2019.pdf?la=en&hash=806DD1EB6209B13623926C62EAE4FEB5>

⁹ See AGL submissions on Consumer Data Right available on the Hub <https://thehub.agl.com.au/categories/submissions>



accredited should also become a data holder and strongly support similar rules of reciprocity established in banking to apply in the energy sector.

Accreditation

We have addressed questions relating to tiered accreditation under data sensitivity and tiering below (see page 12). However, we broadly note that the value of tiered accreditation has not been effectively evidenced to pursue in version 1 of electricity.

We note that the Inquiry into Future Directions of Consumer Data Right is making a range of recommendations, including on whether write access should be pursued. If write access is recommended, the matter of security and accreditation will also need to be considered. Our expectation is that write access will require the highest tier of accreditation given the control/impact this can have on individual consumers. Third party providers have strongly supported write access¹⁰ and as such are likely to pursue the level of accreditation that will allow for write access. This may mean tiered accreditation becomes an expensive short-term solution.

Data holder costs

We have not provided detail costs for CDR implementation as there is not enough information on the rules to make a robust assumption of the likely costs given the range of possible approaches, but make the following observations:

- The HoustonKemp (HK) report assumptions are not an appropriate basis for industry costs as the economy-wide model for the CDR, the technical data standards, and the introduction of a gateway were not available at the time of this report. The financial assessment within the HK report is qualified as being an assessment only of limited data sets and that “some high-level assumptions to estimate ballpark figures of what each option would cost”. Specifically, the HK report focused on interval meter data rather than expected CDR data sets.¹¹
- The financial and compliance cost impacts provided by Treasury in the explanatory memorandum¹² lack appropriate transparency and consideration. The stated compliance cost impact for energy has been set at just 11% of that for banking. We do not believe that this is accurate, and refer the ACCC to other major industry reforms such as Five-minute settlement and Power of Choice industry costs¹³ which we believe are of similar magnitude to the expected industry costs associated with CDR.
- A robust cost assessment would have been more appropriate before key elements of the CDR in energy had been finalise (e.g. that a Gateway will be utilised, the data holders and the broad sets of data to be captured). Providing additional information for an appropriate cost benefit analysis at this stage would

¹⁰ See for example FinTech Australia’s submission to the Future Directions Inquiry here: <https://treasury.gov.au/sites/default/files/2020-07/fintech-australia.pdf>, Spriggy (financial services) <https://treasury.gov.au/sites/default/files/2020-07/spriggy.pdf>

¹¹ See our previous submission to the [ACCC on the CDR banking rules](#), 10 May 2019, and our [submission to the Treasury banking designation](#) on 12 July 2019.

¹² https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr6281_ems_58a7c56b-36e3-4388-acf8-58455b983a76%22

¹³ We provided information on these previously to [the ACCC in our submission on data access models for energy data](#), March 2019



no longer be able to influence these core decisions, and as we highlight above – is difficult to do for other elements given the high-level nature of this consultation paper.

Finally, we do not consider there to be any material difference for retailer costs based on the models and options proposed in this paper. Additional costs would be associated to proposed expansions beyond an MVP (such as including authorised representatives as eligible consumers, allowing for offline customers to direct data to accredited data recipients) which could significantly increase costs to standardise and implement.

Below are our comments relating to the approach to electricity data.



2. Approach to electricity data

Minimum Viable Product

As we have noted above, we strongly encourage the ACCC to apply an MVP approach to energy CDR implementation for version 1. This MVP approach was taken by the ACCC to allow for the development of Rules that were essential to the commencement of CDR version1, and this approach was widely supported by stakeholders.¹⁴

The MVP approach would assist with a number of data set related questions that the ACCC is currently considering. For example, how vital is life support information for the most likely use cases under version 1 of energy CDR, versus the risks of personal information being breached or inferred (such as the health status). As a foundational question, it is important to understand why the data being requested matters and the type of utility that every day consumers can get in relation to its sharing. We also note that the AEMC is currently reviewing a proposed rule change to allow life support data to be shared between retailers when a customer switches retailer.¹⁵ We would encourage the ACCC to consider the changes under the energy rules process before mandating obligations of data sharing for life support under the CDR.

This would also help with issues that have arisen due to energy jargon deterring customers (e.g. the DSB CX research found that customers were confused by “NMI” and “Distributed Energy Resource” and would likely google it and be uneasy about sharing it).¹⁶

Data sensitivity and tiering

While we agree with the general concept that some data may be considered less sensitive than other data, we question whether this is relevant within the context of the CDR ecosystem and how the data is intended to be shared and analysed with accredited third parties.

1. Requiring additional consents for some data sets

We support segregating some data sets as requiring a separate consent from consumers but encourage strong CX research into how customers can be properly informed of the risks and benefits of sharing this data and what businesses may infer from it (e.g. health or financial status). As a matter of clarification, the ACCC states that it found consensus among stakeholders that energy data does not generally have the same sensitivities as banking data. We note that the SPIA developed by KPMG states that there are certain

¹⁴ See for example, [Business Council of Australia submission](#) - *We support the ACCC’s intention to prepare CDR rules for banking that represent a “minimum viable product”, the simplest and narrowest rules necessary to enable meaningful data portability for high-priority banking products.*

¹⁵ See the AEMC rule change for life support [here](#).

¹⁶ DSB CX research, insights and findings 2020 – page 20



types of data that consumers would consider sensitive to them and they would be concerned about sharing under the CDR, including fear of discrimination.¹⁷

We also note that the DSB Consumer Experience (CX) research found concerns amongst participants in relation to data that they considered sensitive (e.g. hardship, concession and contact details) and that “participants were concerned it could also lead to discrimination “the lack of a clear benefit caused some apprehension and concern”¹⁸. Further, consumer research coupled with an assessment of use cases under the MVP approach would assist in determining if and where additional consents would be required.

2. Whether energy data is less sensitive

The CDR Act envisaged that CDR data (as designated by Treasury) would be subject to consistent protections and obligations to CDR participants across the CDR regime. Tiering data across sectors, or within sectors as being deemed ‘more or less sensitive’ introduces a range of complexities and potential risks for consumers that needs to be more fully addressed.

What is sensitive information

Firstly, given the involvement of the OAIC in the CDR regime, we would encourage consistency in the use of language. The term “sensitive information” is defined under the Privacy Act and is a subset of personal information.¹⁹

To ensure there is not confusion for those operating under the CDR regime and the Privacy obligations, we encourage consistency and clarity with any terms used to define certain sets of CDR data as more sensitive.

As the ACCC has identified in the consultation paper, information that may be more sensitive could include topics such as hardship, concessions and life support. However, there are also sensitivities related to other data sets that do not immediately reveal a specific financial or medical fact about a customer but may nevertheless be considered sensitive. For example, we have previously provided information about the way metering data can be used to infer a range of things about an individual, such as their personal behaviour patterns, household composition, appliance types, home security etc.²⁰

This is further complicated as you consider the interdependencies of data sets and what they may reveal about a customer. We note that data combinations can also be considered more sensitive as they can be reverse engineered and allow the viewer to infer things about a customer (e.g. their health status, what time they are home (which could be either for crime purposes or for business activities such as knowing when to call about debt collections, etc).

All the CDR materials released by the ACCC talks about the security 'totally secure' CDR model and it is unclear how a lesser model can now be considered. The CDR system relies on consumer confidence that the system is safe, secure and this requires the highest level of standards to ensure protection of data and is the reason the privacy safeguards were developed.

¹⁷ KPMG SPIA, <https://treasury.gov.au/publication/p2020-89229> p31

¹⁸ DSB CX research report, 2020, see p22

¹⁹ See B.138 - <https://www.oaic.gov.au/privacy/australian-privacy-principles-guidelines/chapter-b-key-concepts/>

²⁰ <https://thehub.agl.com.au/articles/2020/05/agl-responds-to-treasury-approach-to-energy-consumer-data-right>



Tiering data

Tiering data as more sensitive and less sensitive creates a lot of complexity in the CDR system which is ill-advised at such an early stage of the life cycle of the CDR system. It is not clear how the current banking sector go-live is working, and we likely will not get a picture for at least 12 months. As a fundamental principle we believe the ACCC should implement, review and only recommend changes to established CDR procedures and structures based on evidence, to help minimise any unforeseen impacts.

The ACCC aim should be for uniformity across industries and consistency for customers. The ACCC should also consider what message the consumers are getting through ACCC led education campaigns (e.g. the introduction videos available on cdr.gov.au) and banking education programs. This is to ensure that data literacy and general CDR literacy leverage off the same base, rather than having to re-set customers understandings against different sectors or different 'levels of data sensitivity'.

Other observations regarding the impact of tiering are:

- Tiering data will also create a lot more work; there would need to be a full catalogue developed listing data as tier 1 or tier 2.
 - What would the education program be for this tiering of data to ensure consumer understand the difference with accredited parties, what data they can access, what the different data sets may mean for different use cases (e.g. a product offer recommendation based off usage data vs billing data could be wildly different).
- If only some energy data is considered 'less sensitive', and other elements fall into the higher banking level (e.g. hardship, billing data), are these customers at risk of not being able to access the full benefits of CDR? For example, if billing data (or parts of billing data) are labelled as more sensitive and therefore are put against the unrestricted level of accreditation, does this mean that businesses who are accredited at the lower tier will therefore rely on metering data for the purposes of switching and risk undermining the consumers choice and access to better offers.
 - Consumer offers are not solely built on meter data and incorporate a range of benefits, credits and other information that results in their end bill. The provision of metering data alone will not provide information to ADRs on non-price benefits the customer may receive including things like movie tickets, club memberships, reward points (such as Flybys) access to perks such as AGL Rewards²¹ etc.
- Would these customers know that they are unable to access the full benefits of CDR (e.g. that their retailer can only access some of their energy data sets so the use cases / services / products would be limited by that).
- How would consumers be told and ensured to comprehend that not all energy data could be released to the one accredited data recipient and the limitations (e.g. a product recommendation based on metering data will be different to that based on billing data).

Other matters

²¹ <https://www.agl.com.au/get-connected/loyalty/rewards>



- **Timeframe for data access** - we encourage the ACCC to limit CDR data requests for energy to a two-year (24 month) period. Energy data is fundamentally based on customer consumption which is influenced by a number of factors including behaviour, household composition (which can change over time), is seasonal and can alter due to changes in appliances.

We therefore do not believe that seven years of data is appropriate or necessary in energy and differs in relevance as compared to seven years of banking and financial data.

- **Other regulated products** – we encourage the ACCC to provide more detail to stakeholders on how other regulated products are intended to be captured under the energy CDR Rules. We raised concerns during the Draft Designation Instrument consultation about the broad definition of arrangements and associated products which may capture other products/services provided by retailers (for example, where a customer receives telecommunication and electricity from the same provider). While Treasury acknowledged that this was not the intent, it has been suggested that the Rules would clarify this matter however the consultation paper does not address this.

Recommendations

- Undertake further CX testing, coupled with data holder working groups to determine what risks and benefits there may be in requiring additional consents for some designated data sets.
- Do not consider energy data (in part or in full) as less sensitive than other sectors, thereby we do not support tiered accreditation as being appropriate at this stage of the CDR regime.
- Limit the timeframe for energy data access under CDR to two years.
- Provide greater clarity to stakeholders on intended scope of 'arrangement' as defined under the Designation Instrument.

Customer provided data

Understanding valid customer provided data sets is key for accurately responding to this consultation. We agree that data around the customer's name, address and date of birth can help in being able to identify and confirm the consumer. As we have submitted to the ACCC before, this data should be provided to an accredited data recipient when signing up for services under the CDR regime.

It is important to understand how the ACCC envisages information such as concessions, hardship, life-support etc will serve use cases. For example, what valid use cases will life-support information provide accredited data recipients? If these are deemed necessary for version 1 of CDR in electricity, then a separate consent is appropriate as information such as life support (see also our comment on the AEMC process underway above), hardship, concessions reveal sensitive things about a customer (such as health information, financial status etc).

Limiting factors / considerations

The ACCC will need to be mindful of other factors that can limit/impact the application of definitions that are chosen under customer provided data and what that reveals about a customer, or other consumers. For example:



- In Victoria and NSW, customer can be flagged as life support but not be eligible for the life support concession based on the machine type they use.
- In NSW, customers do not need to hold a concession card to receive life support but might not be eligible for the life support concession based on the machine type they use. Understanding consents given by customers for concessions information and how that could be provided externally. Noting that different states class these pieces of information differently. For example, NSW considers concessions information to be health information under the Privacy Act.

It is important for this level of detail to be considered by the ACCC to ensure that whatever the final data sets are will be managed consistently under the CDR regime.

Data that does not belong to the CDR consumer

To ensure unintended consequences for consumers are minimised in phase 1 of energy CDR, we encourage the ACCC to apply the MVP approach from banking discussed above. For this reason, we believe that in the first instance energy CDR should not include other people's data, to help prevent (or minimise) data leakage or unintended exposure of others personal information. Relevant factors include:

- In NSW and Victoria for life support, the life-support machine holder in the residence does not need to be the energy account holder. Revealing the life support information would be revealing personal information about another person without their consent.
- **Multiple premises issue;** we have previously raised issues with a disconnect between supply address and billing address and driver's license address (noting a driver's license is not required to set up an energy account), so it is unclear how it could be limited to just current address.
- **Nominated persons** – should be excluded at this stage given the complexity of these arrangements and noting that this granular level of data sharing was not envisioned when authorised / nominated rep arrangements were set up and information communicated to the customer about this.

NMI standing data

We encourage the ACCC to ensure that a minimum number of NMI standing data fields are made mandatory under the CDR Rules for a range of reasons. A smaller, defined set of NMI standing data fields will:

1. Make clear the scope of data required for relevant use cases under version 1 of electricity CDR
2. Be in line with the ACCC's MVP for CDR application in new sectors.
3. Will help minimise costs and inefficiencies caused by industry changes to the AEMO documents and procedures that influence the NMI standing data fields.

Finally, we question the language that will be used for the purposes of sharing NMI standing data. While we recognise that this will be captured under the data standards, a key focus area should be ensuring that energy-specific language is re-defined for the consumer facing experience. We are concerned that if consumers do not understand NMI standing data as a data cluster that they will not feel comfortable sharing it, or alternatively, will agree to share it without being appropriately informed of the arrangement.

Metering data



We do not believe that phase 1 of energy CDR should be a live testing ground for consumer comprehension and experience of tiered accreditation. There are too many uncertainties around the consumer interactions and the data interdependencies to support tiering at this stage. For metering specifically, we note:

- It is unclear how it will be made clear to customers that their billing information and metering information may not align.
- If metering data is used by an ADR to recommend an offer, this could be out of line with other obligations in place for electricity retailers (e.g. clear advice entitlement and best offer obligations in Victoria). This may result in customer switching to a plan recommended by an ADR based on metering data, but then receiving a best offer message a month later from their electricity retailer with a different offer. This would not help facilitate trust in the market and may only further exacerbate consumer confusion and disengagement. Another example is the existing end benefit notification requirement in NECF jurisdictions which may create discrepancies between a retailer end benefit offer²² and a CDR offer based on metering data.
 - We note that while this risk will exist even with billing information, it would be significantly decreased due to a greater alignment with billing and best offer data.

Distributed energy resource register data

We agree with the ACCC's proposal to exclude installer information to ensure that personal information of others is not disclosed through the CDR process.

The language used for items such as Distributed Energy Resource register (NMI standing data) will need to be extensively workshopped and tested to ensure that consumers can understand what the data is and why they may want to share it to help facilitate consumer uptake and trust.

Billing information

We provide the following insights on the billing sub-sets. Our submission to Treasury on the draft designation instrument also contains more detailed feedback.²³

The purpose of the CDR in electricity, particularly in phase 1, is to give customers the power to access their data in a way that empowers them to compare and potentially switch energy products. For many customers, circumstances, housing make-up, appliance type and usage and other changes will impact their energy data meaning older data will become less relevant to the customers' electricity arrangements. For example, concession arrangements may change, payment methods and consumption changes (e.g. solar or batteries have been installed, COVID-19 support etc). Expanding historical billing data beyond two years would therefore offer limited consumer benefit and yet result in a significant quantity of data that would need to be managed, stored and be accessible by retailers.

The remainder of our comments are contained in the table below.

²² See the Australian Energy Regulator Benefit Change Notice Guideline -

https://www.aer.gov.au/system/files/AER%20Benefit%20Change%20Notice%20Guidelines%20-%20June%202018_0.pdf

²³ <https://thehub.agl.com.au/articles/2020/05/agl-responds-to-treasury-approach-to-energy-consumer-data-right>



Category	AGL comment																
Information about a bill issued under the arrangement, such as billing period, bill issue data, pay-by date and amounts payable.	It would be useful for more information about what is intended to be captured under this category (e.g. is it the figures that appear on the customer's bill, or the data behind it?)																
A breakdown of the amounts payable, including the tariffs and charges relating to a bill, basis on which tariffs and charges are calculated, discounts and benefits applied and fees (which may include charges unrelated to energy usage).	<p>As above, we would appreciate greater clarity on what is intended to be captured by 'a breakdown of the amounts payable' (e.g. is it the information that appears on the customer's bill, or the data behind it?)</p> <p>Here is an example of the tariff and charge breakdown that appears on a customer's bill. We would support this being what is captured here.</p> <hr/> <p>New charges and credits.</p> <table border="1"> <thead> <tr> <th>Usage and supply charges</th> <th>Units</th> <th>Price</th> <th>Amount</th> </tr> </thead> <tbody> <tr> <td>General Usage</td> <td>575.736kWh</td> <td>\$0.3135</td> <td>\$180.49</td> </tr> <tr> <td>Supply charge</td> <td>30 days</td> <td>\$1.1869</td> <td>\$35.61</td> </tr> <tr> <td>Total charges</td> <td></td> <td></td> <td>+ \$216.10</td> </tr> </tbody> </table>	Usage and supply charges	Units	Price	Amount	General Usage	575.736kWh	\$0.3135	\$180.49	Supply charge	30 days	\$1.1869	\$35.61	Total charges			+ \$216.10
Usage and supply charges	Units	Price	Amount														
General Usage	575.736kWh	\$0.3135	\$180.49														
Supply charge	30 days	\$1.1869	\$35.61														
Total charges			+ \$216.10														
Information about amounts deducted credited or received under a government energy charge rebate, concession or relief scheme or under a payment plan	As above, this should be limited to what appears on the customer's bill. We also refer the ACCC to initial DSB CX research findings that indicated customer concern that energy data can be used to discriminate, and that participants from vulnerable backgrounds had a lower propensity to share, as they had greater concerns about possible harm arising from misuse of their data. ²⁴																
Account information, such as account and customer ID, information about persons authorised to act on the account and the extent of those authorisations	<p>In relation to authorised persons on an account, we continue to encourage the ACCC to place this data under customer provided data rather than billing data. This information is not required for billing purposes and different retailer systems will store and manage this data differently.</p> <p>It is unclear how authorisations linked to billing data will help with CDR use cases, and yet represents a high-risk inclusion due to the fact it would disclose the personal information of another person.</p> <p>We also note that there is no industry standard in relation to authorisations and different levels, so unclear how this could be addressed through the data standards.</p>																
Information about payments made in connection with the account and associated payment methods	No additional comments from our Treasury submission																
Information about retailer-generated estimated meter reads and customer self-meter reads used by the retailer for billing purposes	This should be limited to what appears on the customer's bill. If more detailed information is expected for retailer-estimates, then our systems could not support this (e.g. disclosing an algorithm externally from our systems is not feasible).																

²⁴ CX research insights and findings – energy p19



	<p>In relation to self-service meter reads (e.g. customer submitted self-meter reads), this number is consistent between what the customer provides and what appears on the bill and we therefore support this.</p>
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