

Bruce Cooper
General Manager, Consumer Data Right Branch
Australian Competition & Consumer Commission

Lodged by email: ACCC-CDR@acc.gov.au

28 August 2020

Consumer Data Right: Energy Rules Framework Consultation Paper

The Australian Energy Council ('AEC') welcomes the opportunity to make a submission to the ACCC's *Consumer Data Right Energy Rules Framework Consultation Paper* ('Consultation Paper').

The AEC is the industry body representing 22 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

The AEC has consistently supported introducing the Consumer Data Right ('CDR') into the energy sector. If implemented correctly, it can enhance customer choice and encourage further innovation in the market. Enabling these opportunities needs to be done in a manner that maintains the privacy and security of the customer and recognises the unique characteristics of the energy sector, in particularly the customer-facing role of the retailer.

The submission below has been written with the frame of mind that this Consultation Paper represents the first, rather than final, stage in the consultation on the CDR energy rules framework. Many of the issues identified in the Consultation Paper are complex and interact with one another. For example, the AEC has not taken a firm position on the best model of phased implementation (if any) because an assessment of retailer readiness depends on the decisions made on other issues, such as customer eligibility. Consequently, throughout this submission, the AEC has highlighted areas that we believe require additional targeted consultation (both informal and formal) before a draft decision is made. The highlighted areas are seen as fundamental to providing the optimal customer experience.

General comments on overall approach

The AEC generally supports the principles that the ACCC has laid out for guiding the rules framework. The CDR is a right to provide the customer with the ability to access and use their data. The rules, first and foremost, should be designed to ensure this can be done safely, securely and in a cost-effective way. To do this, the AEC believes the rules framework should look to leverage existing infrastructure and systems to the extent possible. Given that retailers are the market participant with the strongest customer-facing role and have proven secure systems, the default position should be to build upon this rather than starting afresh.

As this is the first iteration of the CDR in the energy sector, the AEC believes a "minimum viable product" ('MVP') approach should be taken as was the case in the banking sector. There are unknowns associated with any first experience and taking a cautious approach to implementation will provide time for the rules, technical procedures and security protections to be thoroughly tested. This will enable any unintended consequences to be identified and rectified while limiting the extent of any potential risks. Once customers, data holders and accredited data recipients

(‘ADRs’) have developed confidence in the CDR energy infrastructure, then the CDR can be safely expanded in an iterative manner.

The energy rules should be developed, and expanded over time, in a manner that recognises data sensitivity as an important customer protection. The focus should not be on how sensitive energy data is compared to banking data, but rather how different types of energy data have different level of sensitivity and how this should be reflected in the energy rules. For example, where data is particularly sensitive, it may warrant a separate consent process to ensure customers are expressly aware that sensitive data is being shared, and to provide that information with an extra layer of protection. Likewise, there needs to be proper security protections in place to make sure authentication details (as part of the customer provided data) are sensitive towards issues like family violence.

Suggested approach to data sets

The definition of customer data that Treasury has taken is broad enough to encompass items like hardship, concessions and life support.¹ As noted above, this information is particularly sensitive to the customer and, if included within the first iteration, should be subject to additional controls to maintain security, especially if the ACCC chooses to pursue tiered accreditation. In this regard, the AEC supports the recommendation contained in the Supplementary Privacy Impact Assessment (‘SPIA’) that this data can only be transferred following specific consent from the customer.²

The timeframe for accessing data under the CDR should be aligned with the current regulatory requirements in the National Energy Retail Law (‘NERL’). These requirements state retailers must hold a customer’s billing data for a period of 24 months.³ The floated suggestion that data holders should be required to retain energy billing data for seven years so there is alignment with banking appears excessive, and seems to disregard the principle that the CDR does not create datasets, but rather provides greater access to and ownership of data that is already held. It is not clear what compelling customer use case there is for retaining seven years worth of energy data that would warrant shifting the existing legal obligations.

The information that makes up each dataset should also be aligned with the regulations. Currently, there are some inconsistencies between the energy specific rules and CDR requirements. For example, it is being proposed to include information about how the customer pays their bill in the CDR even though this is not something retailers are required to do under the energy specific rules. Furthermore, product data needs to reflect that generally available offers are presented on the market. There are provisions for other market offerings to be provided to Energy Made Easy (i.e. restricted plans) and these plans are not disclosed to the market for a number of reasons. The AEC encourages the ACCC to ensure that the draft rules clarify that as a matter of principle, retailers are not required to provide information not held, or otherwise not public, under the CDR.

¹ *Consumer Data Right (Energy Sector) Designation 2020* (Cth), section 8.

² KPMG Australia, ‘Consumer Data Right in the Energy Sector: Supplementary Privacy Impact Assessment for the Commonwealth Department of Treasury’, 25 May 2020, p9.

³ *National Energy Retail Rules (Version 24)*, section 28.

Response to issues requiring energy-specific rules

4.2 Eligible consumer

The AEC supports the general rule that a CDR consumer must have an account with a retailer and be financially responsible for the account to be considered eligible under the CDR regime, noting the following comments.

4.2.3.1 Account holders

The AEC supports the inclusion of individual and joint account holders under the CDR so long as it meets the criteria laid out in the Consultation Paper.⁴ The rules should make explicit that the meaning of account holder only covers the customer to which electricity is sold and not supplied, that is – financially responsible. In other words, somebody who resides at a premise but is not a designated account holder with the retailer should not be considered eligible.

4.2.3.2 Minors

We agree with the observations made in the SPIA, and preliminary position of the ACCC, that the security risks of including minors are too large in the first iteration. It is something for consideration once there is confidence in the CDR regime.

4.2.3.3 Active accounts

Consistent with the Minimum Viable Product principle and banking approach, the AEC believes inactive accounts should be excluded from the CDR in its first iteration. The SPIA states that there is a privacy risk associated with inactive accounts because ‘it may contain information about a different individual who previously held an account in relation to the NMI’.⁵ The additional controls required to mitigate this privacy risk will impose costs on data holders that are at this stage unjustified, given that there is no compelling evidence of the customer benefit of delivering personalised data to inactive accounts. The AEC expects that the majority of value enabled by including inactive accounts relates to metering data, which can likely be delivered by AEMO in a manner that does not require additional obligations to be placed on retailers as data holders.

4.2.3.4 Online and offline accounts

The CDR rules, processes, technical standards, and customer protections have been developed to support a digital journey. The decision to take a digital approach recognises the future direction of retail services and the ability of digital enablement to provide customers with a smooth and efficient experience. As such, it is the AEC’s view that the CDR regime should aim to incentivise digital adoption by customers in the energy sector.

The best way to incentivise customers towards digital use is to adopt the approach taken in banking where eligibility is limited to having an online account. This is because it will encourage customers to create a digital account so they can participate in the CDR regime and its features, such as dashboard access, which not only enables greater participation by the customer in the CDR ecosystem, it is also an important customer protection.

There are privacy and security risks with widening the CDR’s application to cover offline customers, particularly in the first iteration where key processes are still being developed. For example, offline customers are unlikely to have access to the dashboard, where they can manage

⁴ ACCC, ‘Energy Rules Framework: Consultation Paper’, Australian Government, July 2020, p25.

⁵ KPMG Australia, ‘Consumer Data Right in the Energy Sector: Supplementary Privacy Impact Assessment for the Commonwealth Department of Treasury’, 25 May 2020, p41.

important things like consent, because this requires some type of digital solution for access (e.g. an email password). Likewise, if authentication model 2 was chosen, AEMO would not have the capacity to assist offline customers because it has no customer-facing infrastructure (like a call centre) or relationship with the customer (meaning customers will have no familiarity and will call their retailers instead).

4.2.3.5 Large customers

The AEC does not support the extension of the CDR to cover large customers at the present time. Large customers already have sophisticated and bespoke electricity arrangements with their retailer that make the benefits of enhanced data sharing negligible. Furthermore, some retailers only service large customers and subsequently do not have the customer-facing infrastructure of a retailer that also serves residential and small business customers. If the CDR were applied to large customers, these retailers would incur substantial compliance and IT costs for little to no customer benefit in return.

With respect to the secondary question of how to define what a large customer is, we encourage alignment with the jurisdictional small customer thresholds used in each participating NEM state. This will reduce regulatory confusion and the administrative burden on data holders without majorly inhibiting the customer experience.

4.3 Authentication

The AEC firmly supports the preferred option of the ACCC and SPIA, being to require data holders to carry out customer authentication ('Model 1'). Model 1 will better limit the exposure of customer data to other parties and enables customers to take advantage of their existing and direct relationship with the retailer. For retailers, they have already developed sophisticated authentication and engagement infrastructure that customers are familiar with and trust. Making data holders responsible for authentication also ensures energy is aligned with banking and the ACCC's guiding principle of having an economy-wide system.

In contrast, the alternative model put forward, to provide AEMO with a more centralised role ('Model 2'), appears to unnecessarily complicate the authentication process. There is no obvious synergy between operating the gateway and authenticating customers. Furthermore, AEMO does not have a pre-existing customer-facing role meaning customers will experience unfamiliarity when authenticating. The AEC is concerned that Model 2 could create early customer experience issues that will stunt the growth of the CDR, as it takes customers longer to develop trust in the regime.

While not presented as an option in the Consultation Paper, the AEC understands that some stakeholders are pushing for a "resident" model that supports a lesser standard of authentication to access data considered less sensitive. The AEC does not support this approach in the initial iteration of the CDR. Whilst this model may be appropriate for generic data as seen by the use of a similar approach for AEMO to provide annualised consumption data to Victorian Energy Compare and Energy Made Easy, there are security risks if used for more granular data as envisaged by the CDR. The AEC considers once the MVP is implemented and better understood, there may be merit in further understanding the benefits or risks that might arise from a lesser authentication model.

4.4 Dashboards

The AEC supports the ACCC's policy intent to ensure there is only a single dashboard for the customer. This is necessary to maintain a simple and smooth customer experience, as it provides a central spot for a customer to manage their consents rather than being required to navigate across multiple dashboards.

Consistent with the arguments made above, the customer experience is best served through Option 1 whereby data holders, rather than AEMO, hold responsibility for the provision of a dashboard. This is because processes like managing authentication and consent require customers to have trust in the system they are using. By leveraging the customer's pre-existing relationship and familiarity with their retailer, the customer is more likely to trust and utilise the consumer dashboard.

The AEC acknowledges that the preference of AEMO is for Option 3. Retailers have some prima facie concerns with this option in relation to who will ultimately be accountable for the dashboard and how much control retailers will have in interactions with their customer. These concerns reflect a broader level of confusion about how Option 3 would operate in practice. Given the importance of the dashboard to the overall customer experience, we see this as an area that deserves targeted consultation before any draft rules are determined.

4.5 Dispute resolution

The AEC recommends that the internal dispute resolution ('IDR') process for the CDR align with the Australian Standard 10002:2014. The Australian Standards exist to provide consistent standards across different retail sectors and therefore serve as a better long-term model for integrating future sectors into the CDR (e.g. telecommunications) and achieving uniformity. Conversely, the Australian Securities and Investment Commission's ('ASIC') Regulatory Guide 165 has been made specific to the financial sector so should not be used as a general benchmark to scrutinise the IDR processes of other sectors.

When considering the appropriate IDR scheme, the ACCC should contemplate how it will interact with customer accreditation. In particular, AEMO is not set up as a customer-facing institution and does not have the infrastructure to provide an effective IDR scheme. The inference in the Consultation Paper that the current IDR processes of data holders may be inadequate due to non-compliance with Regulatory Guide 165 should be weighed even more strongly against AEMO given it has no existing processes at all.

4.6 Phased implementation

The AEC has not developed a preferred position on phased implementation and believes it should be determined through a later stage of consultation. It is not presently possible to assess retailer readiness when various fundamental issues, from customer eligibility to the model of accreditation, remain unresolved. Similarly, the ACCC should also consider the merits of the phased implementation of datasets at a later time so the benefits can be more fully understood.

4.7 Issues relating to accreditation

4.7.1 Tiered accreditation

The AEC does not support tiered accreditation at the present time, except for generic product reference data. We remain concerned that introducing tiered accreditation exposes customers to

heightened privacy and security issues, as third-party entities are subject to lesser regulatory obligations. It has been cautioned previously, including in the ACCC's Retail *Electricity Pricing Inquiry* report ('REPI Report'), that many ADRs operate on a commission-based model and are not required to act in the best interests of the customer.⁶ Furthermore, strong customer protections that regulate other sectors, such as the principle of Explicit Informed Consent, do not currently apply to third-parties.

Tiered accreditation also creates difficulties for achieving the optimal customer experience. Customers share their data with third parties expecting to be provided with the full range of products and offers available to them so they can determine which offer is in their best interest. There is a risk that customers who decide to use a third party with 'restricted' accreditation will not be properly informed about their status and, most importantly, what it means. This may lower trust in the CDR regime if customers select a sub-optimal offer because they are operating on the false assumption that all their data has been analysed.

Notwithstanding the above, we acknowledge tiered accreditation appears to be being considered to prepare the rules framework for the CDR's future expansion into other areas, namely write access.⁷ The AEC firmly believes that this cannot happen until the Federal Government has actioned recommendation 34 from the ACCC's REPI Report, which is to develop and enforce a mandatory code of conduct on third party intermediaries that includes an obligation to act in the best interests of the customer.⁸ The problems identified with the current commission-based model of most third parties have not been addressed and risk being exacerbated under the CDR.

5.2 Data holder costs

Data holders will be required to make significant investments in their systems to enable safe and secure data sharing through the AEMO Gateway. These costs are likely to be more than what HoustonKemp estimated in its 2018 report. Specific evidence towards this will be provided by retailers individually. As a general observation, the AEC notes that the technology and operational costs that data holders do incur when implementing the CDR could increase depending on some of the decisions made as a result of this Consultation Paper. For example, some data holders will incur a significant increase in costs if the CDR was extended to large customers.

The question of data holder costs is particularly relevant in the context of potential 'hybrid' options. Hybrid options involve AEMO being designated to perform tasks that retailers already do, such as customer authentication. As AEMO recovers its costs from market participants (i.e. retailers), this will essentially result in retailers paying twice for the same service, which is neither efficient nor fair. Any additional costs resulting from a hybrid option being chosen should be funded through government, not market participants.

Other comments

To reiterate the comments at the start of this submission, the Consultation Paper contains a wide range of issues that interact with and influence each other. These issues are significant and the nuances of some cannot be fully fleshed out in one stage of consultation. The AEC would welcome and strongly encourages additional and targeted consultation on some of these key issues. As the primary data holders in the energy sector, retailers have a critical role to play in the CDR's

⁶ ACCC, 'Retail Electricity Pricing Inquiry – Final Report', Commonwealth of Australia, June 2018, p150.

⁷ ACCC, 'Consumer Data Right: Rules Outline', December 2018, p12, <https://www.accc.gov.au/system/files/CDR-Rules-Outline-corrected-version-Jan-2019.pdf>.

⁸ ACCC, 'Retail Electricity Pricing Inquiry – Final Report', Commonwealth of Australia, June 2018, Chapter 14.

successful operation and would benefit from being kept aware of the CDR's likely direction and subsequent responsibilities.

The need for additional consultation brings with it a second question about the expected timeframe and commencement date of the CDR (and its rules) in energy. The delayed commencement of the CDR in banking alongside with the agreed re-prioritisation of regulatory reforms by the three energy market bodies will have impacts for the energy CDR.⁹ The ACCC will need to be cognisant of these changes and upcoming major reform projects, in particularly 5 minute settlement (commencing 1 October 2021) and global settlements (commencing 1 April 2021), when developing its timeline trajectory. We note that AEMO's regulatory roadmap has given the CDR an indicative go-live date of the 'end of Q3 2022'.¹⁰ There may be benefit in clarifying the projected timeframe for the CDR to give stakeholders a better understanding going forward.

The AEC looks forward to continuing working with the ACCC to implement the CDR into the energy sector in a timely, secure and efficient manner.

Any questions about this submission should be addressed to Rhys Thomas, by email to [REDACTED] or by telephone on [REDACTED].

Yours sincerely,



Ben Barnes
General Manager, Retail Policy

⁹ Letter to Minister Taylor, 'Prioritising Implementation Timeframes: A More Detailed View', 9 April 2020, https://www.aemc.gov.au/sites/default/files/2020-04/Letter%20from%20AEMC%20AER%20AEMO%20-%20Prioritising%20implementation%20timeframes_a%20more%20detailed%20view%20-%209%20April%202020.pdf.

¹⁰ Australian Energy Market Operator, 'Regulatory Implementation Roadmap Update', August 2020.