



22 March 2019

Consumer Data Right in Energy Branch
Australian Competition & Consumer Commission (ACCC)
Melbourne office of the Australian Energy Regulator Department
Level 17, 2 Lonsdale Street
MELBOURNE VIC 3000

Submission to the ACCC Consultation on data access models for energy data

Dear Consumer Data Right in Energy Branch

The Business Council welcomes the opportunity to respond to the Consultation Paper on models for consumers to access their data in the energy sector.

The Business Council supports the development of a consumer data right (CDR). Data portability has the potential to benefit customers through greater competition - driving businesses to offer new, better or cheaper goods and services - and by making information available about the performance of specific products applicable to the requesting individual, enabling better choices to be made on what products best suit customers' needs.

The CDR will be applied to the banking, energy and telecommunications sectors initially before being progressively applied to the rest of the economy.

The Business Council understands that the purpose of the Consultation Paper is to invite input to help the ACCC determine the best model by which accredited data recipients (ADRs) may access CDR data held by CDR holders. Other issues, including the types of data that will be designated under the CDR will be considered through separate processes.

Public trust

As the Business Council has noted in several submissions relating to other aspects of the CDR framework, achieving the objective of the framework is reliant on maintaining the trust of consumers that their data will be safe, secure and put to good use should they exercise their rights under the scheme.

For trust to be maintained all parties charged with implementing the scheme - regulators, industry (data holders and ADRs), and any designated gateways - need to understand their obligations, be fully prepared in terms of systems and processes, and demonstrate they can work together to protect consumers' privacy.

The experience of other programs in government and the private sector is that once trust is compromised in relation to personal data, it is very difficult to regain. In this regards we note that many elements of the scheme have not been tested in other countries and involve the transfer of potentially sensitive personal information.

The CDR framework legislation has just been introduced to Parliament (in February, having being delayed) and is subject to the usual inquiry by the Senate Economics Committee, which is yet to make its findings available. Other processes relating to the CDR are being progressed in parallel.

Given this, we encourage the ACCC to remain open to reflecting on, and revisiting the results of the various CDR consultation processes it has conducted prior to the framework legislation passing parliament. In particular, if there is any doubt about the preparedness of industry or government regulators to implement the scheme – including due to clarity of requirements, and preparedness of systems and process – the timelines for implementation should be delayed.

Models for allowing ADRs to access CDR data

The assessment criteria presented in the Consultation Paper provide a sound basis for evaluating the model for implementing the CDR in the energy sector. In the Business Council's view, the ACCC should strongly weight the criteria relating to *user functionality, cost effectiveness, market efficiency, and reliability, security and privacy* compared to other criteria as these are critical to meeting the objectives of the CDR scheme in the first instance and going forward.

The Business Council has considered the three models proposed in the Consultation Paper and thinks that model 2, with the Australian Energy Market Operator (AEMO) as the designated gateway, best meets the proposed evaluation criteria. Although much depends on the details of implementation and system design.

A well implemented gateway model could help accredited data recipients (ADRs) source data from a variety of data holders cost effectively compared to a distributed model (option 3), which would require ADRs to establish and maintain relationships with multiple data holders. This in turn could ensure fewer barriers to ADRs entering the market as an accredited data recipient thus improving market efficiency.

A gateway model is also more flexible and has greater interoperability – it has the potential to be expanded to include new data and new participants should the CDR in the energy sector be extended beyond the national energy market (NEM) (to include gas related data and non-NEM jurisdictions, for example). A centralized model (option 1) would likely need extensive regulatory reform outside the CDR framework to include these features.

Additionally, the gateway model would seem to be preferred on the basis of reliability, security and privacy compared to a centralized model. A gateway model allows for the cost and efficiency benefits of a centralized model to be achieved without pooling all CDR data for all customers within a single architecture. A gateway model should also ensure that data accessed is always current as it would be accessed on a 'pull' basis by ADRs.

One issue that will need to be worked through should a gateway model be selected is that of consent and authorization, which relates to user functionality and the user experience. The quality of the user experience will to a large extent be determined by the ease by which consumers can give consent and authorization to ADRs to obtain data on their behalf. An ideal outcome would be that a consumer only needs to provide consent once in each instance that they want an ADR to access their data under the CDR or to specify a time period over which the ADR can obtain data on their behalf. It would be a poor outcome if consumers, having instructed ADRs to act on their behalf, were then required to make contact with, or be contacted by multiple data holders.

The ACCC should explore options to develop a consent scheme that allows ADRs to source data on a consumer's behalf without the consumer being required to provide further authorization/consent to data holders.

This would ensure that the consumer experience is roughly equivalent under any of the proposed implementation models.

Other issues

The Business Council notes that the CDR in energy applies to data and data holders that are potentially significantly broader than those considered by previous reviews and inquiries – notably the HoustonKemp review which only considered consumer data within the NEM.

The current CDR Bill exempts the ACCC from having to consult with the energy sector when making recommendations on the instrument to designate the sector and the CDR data that is within scope of the scheme.

The Business Council thinks that such an exemption is not well founded. The broader scope of the CDR introduces issues of cost to data holders, a new potential role of a designated gateway, additional data scope and ambiguities relating to privacy. Accordingly, we urge the ACCC to consult with industry and other stakeholders on the designation instrument notwithstanding any available exemption.

As noted above, the success of the scheme is reliant on all participants being prepared, capable of working together and having clarity on how the scheme will operate. Consultation can ensure all stakeholders are ready.

Getting the scheme right from the outset needs to be the priority rather than meeting arbitrary deadlines.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Garbutt', with a long horizontal flourish extending to the right.

Matt Garbutt
Associate Director