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ACCC CDR consultation paper – participation of non-accredited third-party service providers

AGL Energy (**AGL**) welcomes the opportunity to comment on the Australian Competition and Consumer Commission's (**ACCC**) consultation on how best to facilitate participation of third-party service providers under the Consumer Data Right (**CDR**) regime.

We actively support the introduction of the CDR regime and have been engaging with decision-makers to ensure the CDR framework is effective. Our engagement has focused on ensuring the CDR regime has appropriate consideration for all consumers, including vulnerable customers in the energy. The following submission addresses only the non-accredited third-party propositions in the ACCC consultation paper.

We consider that an effective CDR framework must include consideration of all consumers in all varying sectors and the ways that they may engage with their data, share their data, comprehend their rights, all to help make informed decisions. We therefore recognise the importance of this consultation process in assisting the ACCC to decide on the transfer of CDR data to non-accredited third parties, such as professional advisors, accountants and lawyers. However, we urge caution in this extension of the CDR framework, particularly as the CDR regime has not been applied in the economy yet, and its practical effects are as yet uncertain.

The CDR framework is built on a system of accreditation, security and trust – all integral to ensure that consumers feel safe to share their data, and data holders can securely and confidently disclose data back to accredited recipients. In developing the CDR framework, Treasury and the government envisioned a tightly controlled system that existed between four key participants – data holders, accredited data recipients, designated gateways and consumers.¹ The consumer testing undertaken by Data61, the Privacy Impact Assessment, and Senate committee consideration have all focused on how these four participants will be managed, reviewed and accredited to ensure that consumers and their data are appropriately protected.

Absent of any evidence to the contrary, we consider it prudent to delay any expansion of the CDR framework to include non-accredited third parties at this stage. AGL supports a gradual rollout of the

¹ See the Explanatory Memorandum of the [Treasury Law Amendment \(Consumer Data Right\) Bill 2019](#)



CDR framework, prioritising accredited recipients first and assessing consumer uptake and demands before a further informed assessment of whether non-accredited third parties, such as lawyers, advisors and accountants should be permitted within the CDR regime and receive CDR data. Given that the existing CDR framework permits CDR consumers to have direct access to CDR data, we do not believe any restrictions to non-accredited third parties receiving CDR data would unduly compromise the underlying objectives of the CDR regime. We are cautious of allowing an exceptions regime into the CDR framework at such an early stage, as it can be difficult to un-ring a bell. For example, in the energy sector, embedded networks² were provided exemptions from retail authorisations requirements to be able to operate in the National Electricity Market. However, the market evolved since that decision was made, and the rate of embedded networks increased significantly. As a result, there was a large proportion of customers that resided in an embedded network that did not receive the full suite of consumer protections afforded under the National Energy Consumer Framework (NECF). Because of these developments, the Australian Energy Market Commission (AEMC) have produced a final report that seeks to require embedded networks to become authorised and to become a registered participant to help provide consumer protections for customers.³

For these reasons, we recommend that the ACCC defer any decisions on the expansion of the CDR to allow for non-accredited third-party participation until:

1. The CDR system is live in banking and consumer insights from their actual interactions with the system are known
2. Consumer testing is undertaken to understand trust, concerns and use in a live environment.
3. Consider including this expansion into the Treasury Inquiry that is currently being scoped⁴
4. If proceeding with this course, then limit the scope in the first phase (e.g. only accountants) and include this exemption in the banking CDR rules (currently schedule 3 of the draft banking rules).

We welcome to the opportunity to discuss these matters further. If you have any questions, please contact Kat Burela on [REDACTED] or at [REDACTED]

Regards

[Signed]

Con Hristodoulidis

Senior Manager Regulatory Strategy

² Private electricity **networks** which serve multiple premises and are located within, and connected to, a distribution or transmission system through a parent connection point in the National Electricity Market.

³ See the [AEMC final report on embedded networks, June 2019](#).

⁴ Treasurer announced [Inquiry into Future Directions of the Consumer Data Right](#), January 2020

Permitted disclosures

The CDR regime is built with a focus on a privacy, including by establishing new security and privacy safeguards and consumer protections. The Senate Economics Legislation Committee for CDR⁵ acknowledged the importance of the strong privacy safeguards, noting that these were integral and important expansions to the existing privacy protections for consumers. This was reflected in the explanatory memorandum (EM) that states strong privacy and information security provisions are a fundamental element of the CDR.⁶

We also note that the EM of the CDR legislation place significant weight on the importance of accreditation for the purposes of receiving CDR data – calling it *a license to receive data through a disclosure made in accordance with the CDR Rules*.⁷

*Being an accredited data recipient will be essential in order to be able to receive data about a consumer. The consumer data rules will provide that a CDR consumer's right to access their data and direct a data holder to transfer the data to another entity under the CDR, exists only where the entity is an accredited person.*⁸

This EM further states that:

*The Bill achieves this outcome by imposing a limitation on the ACCC's rule making power. The ACCC can only write rules which mandate disclosure of a consumer's data, where the disclosure is to an accredited person, a designated gateway, or the consumer themselves.*⁹

Until such a time that consumer use of the CDR consents system (including complaints, dashboard use, consumer comprehension) are fully understood, permitting on-disclosures from accredited data recipients to non-accredited third parties such as lawyers and accountants should not be permitted. Consumers are able to request data directly and are able to disclose this data themselves outside of the CDR system. It may therefore be more prudent at this time to ensure that accredited data recipients and data holders be required to provide information to consumers on the risks of their decision to make such an on-disclosure themselves.

We have supported scenarios of providing CDR data to an outsourced service provider or an intermediary simply due to the nature of businesses and how we operate (e.g. that businesses may contract with third parties for data storage purposes).¹⁰

⁵ The Senate Economics Legislation Committee Treasury Law Amendment (Consumer Data Right) Bill 2019 [Provisions] March 2019

⁶ See the Explanatory Memorandum of the [Treasury Law Amendment \(Consumer Data Right\) Bill 2019](#) p.5.

⁷ Ibid, para 1.91. [Schedule 1, item 1, subsection 56AK]

⁸ Ibid, para. 1. 92.

⁹ See para 1.93 of the Explanatory Memorandum of the [Treasury Law Amendment \(Consumer Data Right\) Bill 2019](#). [Schedule 1, item 1, subsection 56BD(1)]

¹⁰ See AGL submissions to the [ACCC CDR Framework, 12 October 2018](#) and the [ACCC draft banking rules, 10 May 2019](#).



However, we do not believe that the risks to consumers, particularly consumers who may not understand the impacts of on-sharing to non-accredited parties, have been appropriately considered. We do not believe that such a consideration can occur until the CDR is live.

Importance of limited initial scope for CDR

AGL believes limiting the initial scope for sharing data for CDR to within the CDR eco-system is supported by consumer testing carried out by Data61.

In the Consumer Experience (**CX**) testing conducted by Data61 that many participants expressed concerns about security of their data, both in terms of being hacked and stolen by third parties, and concerns about not knowing who would have access to their data once it was shared with the data recipient.¹¹ This report also concluded that a lack of information about any third parties the data would be shared with and how it was stored and secured were cited as common concerns.

The Data61 CX workshop in October 2019 also noted that the *control paradox* – where people partake in riskier behavior as a result of having more control – was a potential concern in relation to dashboard and strong consent requirements. If a consumer was of the belief that their activities of sharing and allowing on-sharing of data was protected within the CDR framework, this may lead them to permit disclosures beyond what they may otherwise have allowed. This would be a matter of information, comprehension and trust.

The Consumer Policy Research Centre (CPRC) submission to the ACCC Digital Platforms review also noted that behavioural research and consumer testing is essential in developing programs and policies that will impact consumers. They stated that terms such as ‘trusted partner’ and ‘third parties’ may not be understood or used differently by different organisations.¹²

In addition, use restrictions are needed because it has become exceptionally difficult for consumers to understand what they are disclosing when they share information online.¹³

Recommendations

In the first instance, we maintain that the ACCC should not draft rules for sharing data outside of the CDR ecosystem until more information is available on those matters that we detail above. This can be done through the upcoming Inquiry into the Future Directions of the Consumer Data Right, as well as through consumers testing to understand:

- 1) the projected initial uptake of banking CDR;
- 2) the key purposes for customers utilising CDR (e.g. is it in line with the expectation of comparison services, or is it to on-share data);

¹¹ [Consumer Data Standards: Consent Flow phase 2 CX Stream 1 Report](#), June 2019, p.37.

¹² [CPRC submission](#) to ACCC Digital platforms inquiry preliminary report, 15 February 2019

¹³ [Statement at United States Senate Committee on Commerce, Science, and Transportation Hearing on Examining Legislative Proposals to Protect Consumer Data Privacy Wednesday, December 4, 2019](#)



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- 3) customer comprehension of potential on-disclosures, ability to retract and protect their data, access information etc.

This could be undertaken while the CDR system is live with banking from 1 July 2020. We note that the matter of consumer testing in relation to the ACCC Rules was raised as priority by consumer group CHOICE and CPRC in their submissions to the Senate Economics Legislation Committee.¹⁴

Alternative

In the alternative, the ACCC could consider ways to ensure that the intention of the CDR framework (and that of strong privacy principles and consumer consent and control) are maintained.

We recognise that it may be unreasonable for a very small firm acting on behalf of the consumer (e.g. an accountant who completes tax returns) to be accredited to access their clients CDR data. In our recent submission to the Senate Committee for FinTech/RegTech¹⁵ we noted that compliance costs have been assessed by the government as being less than the potential benefits that a system built on privacy safeguards and consumer protections will offer. Therefore, based on the government's assessment, it is not reasonable to determine that compliance costs act as a barrier to entry that would justify the need to introduce this subcategory outside of the CDR regime, particularly in the absence of demonstrated customer detriment.

While it is not ideal, should the ACCC pursue the proposed course of action for allowing CDR to leave the CDR ecosystem, we recommend this be a tightly controlled test group of participants that could have data on-shared through ADRs. The ACCC could consider allowing for any potential exceptions to the CDR ecosystem to be limited to the banking sector, with clearly defined exemptions, to be contained within the banking schedule of the ACCC CDR Rules (currently schedule 3 of the draft ACCC CDR Rules). This would allow for the test case of accountants to be trialled and managed without having to consider the possible implications to other sectors yet to be designated such as energy or telecommunications.¹⁶

In relation to the possible exceptions, we suggest that the ACCC consider whether it would be appropriate to have a business revenue or employee threshold to be considered eligible for on-sharing (rather than accreditation), and the disclosure of information such as any shared commission, commercial interests between the ADR and the non-accredited third party. In these circumstances, it would be more convenient to extend the consumer data standards regarding 'human readable format' rather than based on APIs.

In response to other questions raised in the ACCC consultation paper:

¹⁴ The Senate Economics Legislation Committee Treasury Law Amendment (Consumer Data Right) Bill 2019 [Provisions] March 2019, p.30-31.

¹⁵ [AGL Submission](#) to the Select Committee on Financial Technology and Regulatory Technology.

¹⁶ The other distinction between banking and other industries is that financial advisors and accountants are subject to 'best interest' duties and professional body rules which can be used to supplement CDR privacy safeguards and privacy laws. Therefore, such an expansion would inherently include additional protections for consumers.



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- **Question 9** regarding what privacy and consumer protections should apply - we recommend that these be no less than those required of accredited data recipients.
 - **Question 10**, we refer to our previous submission to the ACCC¹⁷, on the need for transparent and clear warnings to customers about the consequences of disclosing data outside the CDR ecosystem (if the requirements of ADR's are not also placed to others).

¹⁷ AGL Submission to ACCC CDR Framework consultation, 12 October 2018