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Consumer Data Right in Energy

Energy Consumers Australia is the national voice for residential and small business energy consumers. Established by the Council of Australian Governments Energy Council (the Energy Council) in 2015, our objective is to promote the long-term interests of energy consumers with respect to price, quality, reliability, safety and security of supply. In our role of promoting the interests of consumers we have identified that the delivery of affordable energy services requires the delivery of individualised services through an optimised energy system. Achievement of this requires we make the most of energy data, which is why we are strong supporters of the Consumer Data Right (CDR).

Energy Consumers Australia therefore appreciates the opportunity to comment on the *Consumer Data Right in Energy Consultation Paper: data access models for energy data* (the Paper)[1] and the opportunities that have been provided to discuss the implementation of the CDR with yourself and ACCC staff. We note that this consultation is occurring at the same time as the *Treasury Laws Amendment (Consumer Data Right) Bill 2019* (the Bill) is being considered by the Parliament.[2] The Bill is part of an overall framework (the Framework) that will include Rules made by the Australian Competition and Consumer Commission (ACCC) and Data Standards which are currently being developed by Data61. Understanding of the Bill has been significantly enhanced by the availability of the ACCC's *Consumer Data Right: Rules outline,* though we note the ACCC has acknowledged the outline does not address all possible issues and is explicitly focused on "matters that are essential to the commencement of the CDR in the banking sector."[3]

Background

Our interest in consumer access to their energy data has been sustained over more than two years. We made a submission to the Productivity Commission *Data Availability and Use Inquiry* in December 2016.[4]

We prepared our own discussion paper in July 2017 proposing a facilitated approach for using the existing provisions for access to consumption data under the National Electricity Rules (NER) and leveraging the capability of the AEMO e-hub.[5] The progression of the proposal was hampered by concerns the networks hold about how they would manage their risk under the Privacy Act. The difficulty is that no one could give the networks comfort on whether the proposed process would meet

[1] https://www.accc.gov.au/focus-areas/consumer-data-right-cdr/energy-cdr/consultation-on-energy-data-access-models
[2] https://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bId=r6281
[3] https://www.accc.gov.au/system/files/CDR-Rules-Outline-corrected-version-Jan-2019.pdf
[4] https://energyconsumersaustralia.com.au/publication/customer-access-to-data-submission/
[5] https://energyconsumersaustralia.com.au/publication/electricity-meter-data-portability-discussion-paper/

requirements under privacy legislation, and there was no means for managing compliance and enforcement of third parties (the customer authorised representatives).

We paused further formal engagement on our project due to the HoustonKemp project for the COAG Energy Council. We made a single submission to both the Treasury and COAG Energy Council consultations on implementing the Consumer Data Right for energy in March 2018.[6] We provided a single submission to both the Treasury's second exposure draft of the Consumer Data Right legislation and to the ACCC's rules Framework consultation in October 2018.[7] We have also submitted to the Senate Economics Committee Inquiry into the Bill (link to submission awaiting committee publication of the submission).

In the middle of all this activity, in July 2018, the ACCC's *Retail Electricity Prices Inquiry* recommended that the "application of the consumer data right to the electricity sector [be] pursued as a priority under the consumer data right framework regulated by the ACCC."[8]

Despite the extensive work-program and engagement by Energy Consumers Australia and other stakeholders, we are still addressing threshold questions about the data access models. There are also matters that need to be clarified in the paper to accelerate progress on this important matter for consumers.

In the remainder of this submission we will cover three topics; the significance of an economy wide consumer data right, the matters for clarification in the Paper, and our responses to the consultation questions.

The significance of an economy wide consumer data right

The Productivity Commission *Data Availability and Use Inquiry* identified that there was significant economic benefit from a fundamental review of our approach to data. Data that could be used to improve decision making — be that of consumers, suppliers or policy makers — is currently locked away through the approach of current laws and approaches.

For consumers the Privacy Act has provided a framework to limit the unnecessary collection of data and to attempt to provide consumers with control of how that data is used. The ACCC's *Digital Platforms Inquiry Preliminary Report* suggests that this approach to the management of data collection is ineffective.[9] The ACCC found (sections 5.3 and 5.4):

- *Many digital platforms seek consumer consents to their data practices using clickwrap agreements with take-it-or-leave-it terms that bundle a wide range of consents.*
- *These features of digital platforms' consent processes leverage digital platforms' bargaining power and deepen information asymmetries, preventing consumers from providing meaningful consents to digital platforms' collection, use and disclosure of their user data.*
- *Many digital platforms' privacy policies are long, complex, vague, and difficult to navigate. They also use different descriptions for fundamental concepts such as 'personal information', which is likely to cause significant confusion for consumers.*

[6] https://energyconsumersaustralia.com.au/publication/consumer-access-energy-data-response-government-consultation/
[7] https://energyconsumersaustralia.com.au/publication/consumer-data-right-energy-submission/
[8] https://www.accc.gov.au/regulated-infrastructure/energy/electricity-supply-prices-inquiry/final-report
[9] https://www.accc.gov.au/focus-areas/inquiries/digital-platforms-inquiry/preliminary-report

- *Despite consumers being particularly concerned by location tracking, online tracking for targeted advertising purposes, and third-party data-sharing, these data practices are generally permitted under digital platforms' privacy policies.*

While the protections in the Privacy Act do not provide an adequate framework for managing the collection of data, they are used as a basis for restricting consumers' access to and use of their own data. It is instructive that the ACCC digital platforms inquiry has found that the central construct of the Privacy Act — 'personal information' — is likely to cause significant confusion for consumers.

We favour an approach that is based on the use and management of data for consumer benefit rather than 'personal information'. The focus of the framework should be providing confidence to consumers about their participation in markets. The first requirement of that use and management is the security of data and that the use of data should be meaningfully controlled by consumers.

The Consumer Data Right Bill acts on part of this agenda; though it could more properly be referred to as the Consumer Data Use Right Bill. A fundamental issue of concern for some is that we should not be making it easier for organisations to obtain data without first rectifying the underlying issues around consumer consent to the use of data by data holders.

The alternative view is that such an approach perpetuates the problem that the only person who doesn't benefit from their data is the consumer themselves. The Consumer Data Use Right provides the opportunity to provide some clear rules that will allow use while imposing better controls than provided by the Privacy Act.

A further advantage from an economy wide right is the opportunity it presents for the use of data standards and rules frameworks that will allow for the combination of data from different domains. However, that is not the primary reason for the economy wide right. The primary reason for an economy wide right is the economy wide benefit from better availability and use of data.

The Bill is very explicit in this regard. It states in section 56BA(2) that the ACCC rules may set out:

> *a) different rules for different designated sectors; or*
>
> *b) different rules for different classes of CDR data; or*
>
> *c) different rules for different classes of persons specified, as described in paragraph 56AC(2)(b), in an instrument designating a sector under subsection 56AC(2); or*
>
> *d) different rules for different classes of persons who are able to be disclosed CDR data under the consumer data rules.*

We note that similar provisions about data standards occur at section 56FB.

The conclusion that the 'economy wide consumer data right' should not be equated with 'uniform approaches' is reinforced by the Explanatory Memorandum. That states:

> *1.31 The CDR will be applied across different sectors of the economy which are already subject to various regulatory regimes. As a result, the CDR framework balances the need to provide clear direction to the ACCC on the types of consumer data rules that can be made with the flexibility to create rules that are tailored to different sectors of the economy that may be designated over time.*

We consider that this is a practical provision. We are very concerned that the focus on an 'economy wide' right may result in insufficient consideration of the provisions of this subsection.

We believe that the approach of focussing on the data standards for Open Banking first has resulted in a set of standards that are excessive for many of the practical use cases of the Consumer Data Right in energy. As a simple example the consumer may have no relationship with the data holder and so the idea of the consumer providing an authorisation to the data holder as well as a consent to the data recipient — a key element of the ACCC rules framework for banking — cannot apply.

This is a particularly frustrating position, as Energy Consumers Australia did nominate to be a member of the Data Standards Advisory Group but were not included as the focus was on banking, while an energy retailer has been.

Matters for clarification in the Paper

Purpose of the paper

On page 7 the paper says, "The purpose of this paper is to explore the best model for consumers to access their data through the application of the CDR to the energy sector." The very next sentence makes it clear that the paper is really about models for accredited data recipients to access data as consented to by the consumer. We believe this distinction is very important because, in the general consideration of the process by which a data holder is making data available, there is a very significant difference between that data being only provided to the data recipient and not to the requestor (requestor is a term we think should be used to refer to the person who approaches a data recipient but for whom there has as yet been no validation that they are the customer).

The significance is that there is a common view that by accessing energy consumption patterns household movements could be discerned. If the framework does not enable the requestor to obtain the raw data but only something derived from that data (an annual bill estimate) a malicious actor cannot use the consumer data right framework to access the data. In Energy Consumers Australia's discussion with consumer advocates this has been identified as their greatest concern.

Alternative models and their description

We are not sure that the three models described in the paper are correctly described.

We don't think that Model 1 – the AEMO centralised model — is one that can be considered under the Consumer Data Right Bill. Nothing in the right describes a circumstance where a data holder has to provide data to another party to then provide the data to others.

Model 2 — the AEMO gateway model — as we have envisioned it at Energy Consumers Australia is actually (contrary to the footnote) exactly as a gateway as described in computing or IT. A gateway in those domains is any process by which one set of protocols or standards connects to another. A gateway can operate at any of the seven layers in the open systems interconnection model (OSI). What are referred to in the Paper as Application Programming Interfaces are gateways operating at layer 7 – the applications layer.

Importantly, we don't see the 'gateway' operating as a process whereby AEMO receives a request, then goes and retrieves the data, stores the data and then on supplies the data. The model (that has otherwise been called the 'hybrid model') simply consists of the joint use of two sets of APIs – those that AEMO provides as part of the e-hub and those that are used by parties who are not accredited users of the e-hub but are accredited data recipients. What has been called the 'gateway' is simply another group of APIs that connect these two API sets. The data would not reside in AEMO's systems (as envisioned in the Bill's definitions of a gateway) anymore than it resides in any of the routers and switches across the internet. AEMO already provides some similar kinds of APIs that enable smaller retailers to conduct some B2B transactions simply through a browser screen rather than through

joined up systems. Where AEMO is the data holder (e.g. NMI standing data, DER register information) it doesn't perform the gateway function as it doesn't need to translate the APIs – it simply fulfils the request from its own systems.

What hasn't been included in the consideration, the fourth model, is the one that our discussion paper considered which was that data recipients all just became users of the e-hub. That was the intended development future direction of the e-hub as described by the Australian Energy Market Commission's consideration of the Shared Market Protocol.[10]

To put it simply, there are really only three viable models being considered for the data framework. The first is that all the energy market participants need to build a whole new suite of APIs to work with the CDR regime and the second is all the CDR data recipients need to become accredited e-hub users. The third and preferred model is that energy market participants can continue to use their communication platform (the e-hub), data recipients can use the APIs designed for the CDR and the data standards will specify the APIs necessary to connect these two domains and AEMO will provide that functionality.

Who holds the data

In section 5 of the Paper, in the second dot point of the first list on page 13, it is stated that metering data is data that has been collected from a meter and is held in a metering data provider's database and in AEMO's metering database. This is an incomplete and confusing description. The metering data is held in both the retailer and the distribution network service provider (DNSP) databases. As the Paper acknowledges in a footnote AEMO currently only holds a subset of the data.

Energy Consumers Australia is concerned that in our conversations with AEMO that they refer to the proposition that they will hold all meter data from October 2020 and at that point could be the designated holder. We do not agree as the data right that currently exists covers two years of historic data and there is no reason for AEMO to obtain that historic data.

Similarly, in the first dot point on page 14 the parenthetical phrase should be that both the retailer and the distribution network service provider are registered participants with a financial interest in the energy measured by the meter.

On page 30 the Paper asserts that the retailer holds most of the data relevant for the CDR. While this is mostly true, the DNSP holds all the same metering data. While many transactions may need to positively determine that the requestor is the customer, most will not. If the consumer has their last bill in their hand, they should have a no more onerous task to obtain a quote than they do to transfer provider.

As one of the problem issues in the market is the use of 'saves'[11], getting a customer to decide to stay before they leave, it is our view that the current retailer should be the last port of call for obtaining data for the consumer if there are alternative holders.

[10] https://www.aemc.gov.au/sites/default/files/content/58522863-ac4c-4843-a7d0-c43655753229/Final-advice.pdf

[11] A 'save' is the process of making new offers to a customer after receiving information that the customer is intending to leave to convince them not to leave. It is different to a winback which happens after the customer transfer is complete. It is our view that much of the price dispersion in the retail market works against consumers. As a corollary retailers need to face incentives to provide consumers with their best offers all the time, not just when the customer thinks they might lead.

Consumer rights to data

Section 7.1.4 notes that under the National Energy Retail Rules customers can access up to two years of billing data from their retailer. However, the Paper should also mention in section 7.1.2 the similar right under Rule 7.7(a)(7) of the National Electricity Rules for a consumer to access their meter data for up to two years from either their retailer or distribution network service provider.

Terminology

The point we want to raise here isn't an error, it is rather a piece of preferred language that Energy Consumers Australia is trying to encourage be adopted in the energy sector. Where in 7.1.5 there is a reference to product data including tariffs, we try to encourage the term 'price structure.' We draw a distinction between tariffs being what networks charge retailers, and prices being what retailers charge customers. There are a number of reasons for wanting to impose this distinction, including breaking the assumption that network tariff structure needs to determine retail price structure and the concept that consumers get to choose between prices, but they don't get to choose between tariffs.

Additional priority data sets

The energy transition to lower emissions requires significant changes to the energy system. This specifically includes the use of Distributed Energy Resources in a coordinated manner and the development of demand side responses. These are data intensive applications that ultimately will need both historic and near real time access to data sets that include data from inverters and from in home energy management system. This data is already extracted from these devices and stored in the cloud. The data in the DER Register identified at 7.1.6 is only the equivalent of the standing data for these devices.

As the first priority is to use the data in these systems for trading and control it can be expected that the transactions will be facilitated over the AEMO e-hub. Consequently, the first data connection outside of the providers closed shop will be using the industry infrastructure. As the data becomes more readily used the consumer data right will need to apply. Energy Consumers Australia is keen to avoid further disruption and requests that the design criteria for the data access model consider the early addition of these data sets.

Consent, authorisation and authentication

The paragraph before section 9.1 provides a confused view of how consent and authorisation will be managed. Having specified that the specific process will be identified in a latter stage, readers of the Paper are directed to the processes supported by the draft of the Consumer Data Standards released in December[12]. These embed the requirement of a consumer providing an additional authorisation to the data holder as well as the consent given to the data provider.

Energy Consumers Australia believes that the priority use cases can be developed in such a way that one click consent process with the data recipient is all that is required. In particular, the transaction flow on page 29 of the Paper would be used by incumbents as a market retention strategy.

[12] Referred to as the Christmas Working Draft https://consumerdatastandards.org.au/standards/christmas-2018-working-draft/

The importance of interoperability

We consider that interoperability with other sector CDR implementations is a low priority. In particular we think the example of requiring energy billing data as part of a budgeting tool is overstated as the most likely source of that will be the financial payment data.

The single case where we can see interoperability as desirable is for comparison websites. To facilitate good comparison services, we do need to make it as easy as possible for these sites to fully utilise consumer data, and commonality of interfaces is an important consideration. Indeed, it is about the only operation for which we currently see any benefit in using the hybrid model over just mandating the use of the e-hub communications standards.

Response to consultation questions

Question 1: Are there any other assessment criteria or relevant considerations which the ACCC should use to determine a preferred model for consumers to access their energy data under the CDR?

> *We think the assessment criteria are all relevant and appropriate. However, we think that 'flexibility and extensibility' is just an extension of efficiency of relevant markets – that is simply whether the model supports future uses of CDR for the purposes of supporting efficient markets. Flexibility and extensibility are not ends in themselves but means to the end of efficiency in other markets.*
>
> *As identified in our comments above the extension of the CDR to data sets related to Distributed Energy Resources (and not just the Register) will be high priority projects by the time the first phase is completed.*

Question 2: Having regard to the assessment criteria, what are the advantages and disadvantages of each of the models?

> *In our comments we will only consider the three viable models – CDR APIs only, e-hub APIs only or the hybrid model. We do not consider the gateway model as described by the legislation to reflect any of the models being considered.*
>
> *As the end-user experience will be determined by the data recipient, commonality in back-end APIs is likely to result in slight benefits to user functionality.*
>
> *The hybrid model is more likely to be cost effective. While it is frequently asserted that data holders will have to build whole new processes to meet CDR requirements this is not accurate. Even were it to be so, it is far simpler to build to the known common interface – the e-hub – rather than implement a new set of APIs. The hybrid model requires the translation process to be built once only by AEMO.*
>
> *We see no difference between the models on reliability and security grounds. The AEMO e-hub is already used for the transactions that underpin the national electricity market.*
>
> *Finally, unlike banking, in energy we will want all data holders participating from the start. Based on our experience with other IT changes required from industry rule changes, smaller data holders will be better able to participate through the hybrid model*

Question 3: What are the likely implementation/compliance costs for market participants (including accredited data recipients) under each of the models, including costs associated with IT system changes or data storage?

We are not in a position to make a detailed estimate of costs. However, we note that under the hybrid model only AEMO will need to build the functionality to test the accreditation status of a 'data recipient; requesting data. Further, any additional functionality required in energy market participant systems will be working with a known set of communications protocols, hence reducing costs.

Question 4: What additional requirements should the ACCC consider including in the CDR rules for the energy sector if the gateway model is adopted?

As we believe the hybrid model can be entirely incorporated in the data standards and does not need additional 'gateway' functionality specified we do not see any additional rule requirements to meet this implementation. We remain however concerned that the ACCC's representation of data flows (page 31) incorporates the data flows from banking as if they have already been agreed for energy. Our preferred model is one where the consumer only needs to transact with the data recipient and that data flows on the basis of consent and validation of that consent and does not require a separate authentication.

Question 5: What emerging technologies do stakeholders believe will have an impact on the energy sector with respect to the CDR?

We have highlighted earlier in the submission the importance of the early introduction of the CDR for data sets associated with the use of DER and in-home management systems.

Question 6: What are the cost differences to participants of providing data once a day (to an AEMO repository) or on demand?

This question is potentially misleading as it suggests the gateway model imposes this distinction. Metering data is collected by metering data providers on a periodic basis. For communicating interval (smart) meters this is usually once a day. Once collected, it is provided to the retailer and network service provider and (possibly only a subset) to AEMO. This data should be provided on demand.

The provision of data on demand from the meter is a dataset that is not currently part of the suggested designated datasets.

This data will become significant as we develop market models that reward consumers for 'orchestrating' DER. Whether the CDR will need to include the dataset of metering data held in the meter or whether there will be an intermediary database or some other source will depend upon the models deployed.

Question 7: What is the competitive impact, if any, of accessing data through AEMO rather than through a retailer?

Firstly, retailers may not hold all the data of interest. If I have changed retailer then I either need to contact one network or two or more retailers. Secondly, if we add Plan ID to bills, comparison sites and DER dimensioning services would be able to operate with only the receipt of consumption data and standing data which can be provided from DNSPs and AEMO. Finally, if the CDR request is to a retailer this may trigger 'save' behaviour. Opinions differ on whether saves are good or bad, but we note that the ACCC REPI report encouraged the more rapid transfer of consumers to reduce save opportunities.

Question 8: Are there any other issues that stakeholders wish to raise?

It is not clear to Energy Consumers Australia why this data access model consultation has been necessary, or if it is necessary why it is being conducted by the ACCC rather than through the creation of an advisory body on the data standards for the energy sector. We believe that the Department of the Environment and Energy, Treasury and AEMO have all promoted the formation of this advisory group and we would encourage the ACCC to convene the group as quickly as possible.

We equally remain concerned that the consideration of the data access model has been framed against the rules developed for banking without sufficient consideration of how those rules will be different in energy.

Please do not hesitate to contact David Havyatt on david.havyatt@energyconsumersaustralia.com.au or 02 9220 5500 if you would like to discuss this submission further.

Yours sincerely,

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