

28 August 2020

Australian Competition and Consumer Commission
Level 17
2 Lonsdale Street
Melbourne Vic 3000

By web portal: <https://consultation.accc.gov.au/consumer-data-right/energy-rules-framework-consultation/>

Dear ACCC,

Re: Consultation Paper – Consumer Data Right – Energy Rules Framework

Thank you for the opportunity to comment on the Australian Competition and Consumer Commission's (**ACCC**) *Consultation Paper – Consumer Data Right: Energy rules framework (Consultation Paper)*.

The Energy and Water Ombudsman (Victoria) (**EWOV**) is an industry-based external dispute resolution scheme that helps Victorian energy and water customers by receiving, investigating and resolving complaints about their company. Under EWOV's Charter, we resolve complaints on a 'fair and reasonable' basis and aim to reduce the occurrence of complaints¹. We are guided by the principles in the Commonwealth Government's Benchmarks for Industry-based Customer Dispute Resolution². It is in this context that our comments are made.

EWOV notes the development of the Consumer Data Right (**CDR**) in the energy sector with great interest. We are mindful that the energy CDR has the potential to create a significant uplift in privacy related energy complaints³, and lead to the emergence of new forms of energy data related complaints. As the Consultation Paper notes, Treasury is currently considering the appropriate external dispute resolution (**EDR**) scheme arrangements for the CDR in energy⁴ – and we are conscious that we and other energy ombudsman schemes are part of those considerations. While not yet formally confirmed as a preferred EDR scheme for energy CDR related complaints, we maintain an awareness of current

¹ See Clause 5.1 of EWOV's Charter: <https://www.ewov.com.au/files/ewov-charter.pdf>

² See EWOV's website: <https://www.ewov.com.au/about/who-we-are/our-principles>

³ To put this in context, privacy related complaints are currently extremely low at EWOV. Our most prominent privacy related complaint sub-issue, *Privacy>Details Released* registered only 34 cases in the 2019/20 financial year – which was still the highest number for that sub-issue recorded in the past five years. With the commencement of the CDR in energy, and the expected volumes of data transfer between various parties, we anticipate this sub-issue and other privacy sub-issues (eg. *Privacy>Details Obtained Without Consent; Privacy>Other*) to increase substantially.

⁴ ACCC, *Consultation Paper: Consumer Data Right – Energy Rules Framework*, July 2020, p. 42. Available at: <https://www.accc.gov.au/focus-areas/consumer-data-right-cdr/cdr-in-the-energy-sector/energy-rules-framework-consultation>

developments so that we may more easily on-board the energy CDR jurisdiction should it become necessary to do so.

Given the exclusion of EDR from consideration in the Consultation Paper, our primary interest lies in the comments regarding internal dispute resolution (**IDR**) options, and our submission is focused on that issue. We have had the opportunity to read the submission made by the Energy and Water Ombudsman of New South Wales (**EWON**), and concur with their view that the recently released IDR Regulatory Guidance issued by the Australian Securities and Investment Commission (**ASIC**)⁵ sets a higher benchmark for banks than existing energy laws (both in Victoria and elsewhere in the National Energy Market), do for energy companies. As EWON highlight in their submission, this is particularly true in relation to the requirements for banks to promote the availability of IDR and EDR to their customers.

Given the reasonably narrow parameters of our interest, we have not made a detailed submission in response to the Consultation Paper, nor sought to address all of the consultation questions raised. Instead, we have made brief high-level comments on each major set of proposals. Broadly speaking, the proposals outlined by the ACCC in the Consultation Paper are thorough and sensible, and give us no cause for concern. On a more specific note, we are especially reassured by the ACCC's awareness of the work being done in the energy sector to improve protections for customers affected by family violence, particularly when considering data rules pertaining to joint accounts.⁶

Our further comments are set out below.

Data sets

We are comfortable with the ACCC's proposed broad approach of specifying minimum inclusions of key data, allowing for further refinement and specification of data sets in the standards.

Approach to the rules, standards and privacy safeguards to accommodate the gateway data access model

The ACCC's summary of proposals in this area⁷, particularly in relation to privacy safeguards, align well with our expectations and we have nothing further to add.

⁵ ASIC, *RG:165 Licensing: Internal and external dispute resolution*, 30 July 2020. Available at: <https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-165-licensing-internal-and-external-dispute-resolution/>

⁶ ACCC, *Consultation Paper: Consumer Data Right – Energy Rules Framework*, July 2020, p. 26. Available at: <https://www.accc.gov.au/focus-areas/consumer-data-right-cdr/cdr-in-the-energy-sector/energy-rules-framework-consultation>

⁷ ACCC, *Consultation Paper: Consumer Data Right – Energy Rules Framework*, July 2020, p. 16. Available at: <https://www.accc.gov.au/focus-areas/consumer-data-right-cdr/cdr-in-the-energy-sector/energy-rules-framework-consultation>

Eligible consumer

The ACCC's summary of proposals in this area is sensible – again noting our reassurance at the ACCC's mindfulness of family violence protection when considering rules around joint accounts. Excluding minors from being eligible CDR consumers for the CDR in energy is also sensible.

In relation to whether the CDR customer's account should be 'active' with an energy retailer for them to remain an eligible CDR customer, this is not unreasonable provided (as the ACCC have made clear) that such a customer could still access data held by a previous retailer relevant to an 'inactive' account.⁸

Authentication

Again, the ACCC's summary of proposals in this area⁹ align well with our expectations and we have nothing further to add.

Dashboards

In the interest of simplicity and delivering a uniform consumer experience across the sector in relation to the energy CDR, we are of the view that Option 2¹⁰ is the preferable dashboard option.

Dispute resolution

As noted above, we are keenly engaged with Treasury regarding their considerations around the EDR options for the energy CDR, and are conscious that EDR does not form part of the current consultation.

In relation to IDR, as noted above we note that the recent IDR Regulatory Guidance issued by ASIC¹¹ sets a higher standard around IDR for the banking sector than existing energy laws do for the energy sector. This is particularly true of the extent to which companies are required to ensure their customers are aware of IDR and EDR, and therefore of their rights as consumers.

Phased implementation

The ACCC's proposal for a phased implementation is sensible, practical and mirrors the approach taken in the banking sector. We are of the view that all retailers should be required to comply with the

⁸ ACCC, *Consultation Paper: Consumer Data Right – Energy Rules Framework*, July 2020, p. 28. Available at: <https://www.accc.gov.au/focus-areas/consumer-data-right-cdr/cdr-in-the-energy-sector/energy-rules-framework-consultation>

⁹ ACCC, *Consultation Paper: Consumer Data Right – Energy Rules Framework*, July 2020, p. 30. Available at: <https://www.accc.gov.au/focus-areas/consumer-data-right-cdr/cdr-in-the-energy-sector/energy-rules-framework-consultation>

¹⁰ ACCC, *Consultation Paper: Consumer Data Right – Energy Rules Framework*, July 2020, p. 38. Available at: <https://www.accc.gov.au/focus-areas/consumer-data-right-cdr/cdr-in-the-energy-sector/energy-rules-framework-consultation>

¹¹ ASIC, *RG:165 Licensing: Internal and external dispute resolution*, 30 July 2020. Available at: <https://asic.gov.au/regulatory-resources/find-a-document/regulatory-guides/rg-165-licensing-internal-and-external-dispute-resolution/>

authentication process (even if they are small, and exempted from data sharing obligations), as such authentication would permit the disclosure of AEMO-held data sets.

This would be a positive outcome, aligned with the fundamental principle at the root of the CDR – that the owner of the data is ultimately the consumer, and they should be able to access it for their own benefit if they so desire.

Issues relating to accreditation

We concur that energy data is less sensitive in nature than banking data, and could envisage that a lower tier of accreditation may be reasonable to allow parties to access energy data while not being able to access banking data (or other more generally sensitive data). We are of the view that a streamlined accreditation process would be beneficial, and trust the ACCC and other stakeholders to develop a robust set of conditions under which an accredited person may become a data holder for the energy data it receives under the CDR.

We trust these comments are useful. Should you like any further information or have any queries, please contact Zac Gillam, Senior Policy and Stakeholder Engagement Officer, on [REDACTED].

Yours sincerely



Cynthia Gebert
Energy and Water Ombudsman (Victoria)