



**EnergyAustralia**

LIGHT THE WAY

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Fiona Walker  
Director  
Consumer Data Right  
Australian Competition & Consumer Commission  
Submission via ACCC's Consultation Hub

EnergyAustralia Pty Ltd  
ABN 99 086 014 968

Level 33  
385 Bourke Street  
Melbourne Victoria 3000

Phone +61 3 8628 1000  
Facsimile +61 3 8628 1050

enq@energyaustralia.com.au  
energyaustralia.com.au

Dear Ms Walker,

**Consumer Data Right – Energy Rules Framework Consultation Paper  
(PUBLIC VERSION)**

EnergyAustralia welcomes the opportunity to provide a submission to the ACCC's Energy Rules Framework Consultation Paper (Consultation Paper).

EnergyAustralia is one of Australia's largest energy companies with approximately 2.5 million electricity and gas accounts in NSW, Victoria, Queensland, South Australia, and the Australian Capital Territory. We also own and operate a multi-billion-dollar energy generation portfolio across Australia, including coal, gas, and wind assets with control of over 4,500MW of generation in the National Electricity Market (NEM).

We commend the ACCC on its comprehensive engagement with industry on the Consultation Paper, in both public workshops and individual meetings with retailers like EnergyAustralia.

The Consultation Paper raises many complex issues about how the CDR will work for the energy sector. Many of these complexities arise due to the interaction of various instruments including the current *Competition and Consumer (Consumer Data Right) Rules 2020* (Current CDR Rules), *Consumer Data Right (Energy Sector) Designation 2020* (Energy Designation Instrument), and Part IVD of the *Competition and Consumer Act 2010*. There are also inherent complexities with the gateway model regarding how functions like authentication and authorisation will operate, management of sensitive Metering Data and Joint Account Holder arrangements. The Consultation Paper outlines the different options for these issues which is a reasonable starting point to assess the options at a high level, but we encourage the ACCC to publish a second paper which sets out in more detail the preferred options. A second paper will allow stakeholders to identify and propose solutions to issues or exceptions which may not be apparent now.

The key points in our submission are:

- **Data sets**
  - Customer Data – Regarding concession and hardship information, there are major risks and benefits around the inclusion of concession and hardship information in the CDR. If hardship and concession data is included, a customer's consent to disclosing this information should be separate from consents relating to other data sets and obtained after the customer has accepted the Accredited Data Recipient's (ADR) product or service.

- Billing Data - The ACCC has clarified the billing category “a breakdown of an amount charged” as intended to mean the basis on which tariffs and charges are calculated and other matters.<sup>1</sup> If the purpose of this category is to effectively allow an ADR to recreate the bill completely, this would be very difficult to achieve as energy bills are highly complex. Credits and charges associated with the customer's energy plan may be conditional on behaviours other than the customer paying on time. The price and cost structures in the electricity market are exceedingly complex and they evolve quickly. There is also the added complexity of differences in billing item calculations for different energy retailers, across different platforms and systems. Any ADR would find it incredibly complex to recreate a bill for each retailer with a risk of data errors and misinformed outcomes for customers.
- Energy plan information - It is essential that the CDR provides the plan data to ADRs which would be necessary to relay the “complete picture” around the energy valued added propositions, which offer more than a basic electricity supply service. An ADR should be able to discern the difference between a basic “no frills” electricity plan and a value-added proposition and present this clearly to energy consumers. We recommend that the ACCC define Generic Product Data and Tailored Tariff Data to include high level information about value added services. Separately, and while not canvassed in the Consultation Paper, we consider that Generic Product Data, which can be requested and obtained by any person, should not include information about Restricted Offers.
- **Eligible consumers for the energy CDR** - The key issue for EnergyAustralia with respect to eligible consumers relates to how Joint Account Holders are incorporated into the CDR (if at all). We agree with potentially extending eligibility to request data under the CDR to Joint Account Holders. However, in contrast to the ACCC's proposal, we consider that the energy CDR should implement an equivalent Joint Account Management Service mechanism (which applies in the banking sector) to cover the customer's choices around Joint Account Holder authorisation to share data (where Joint Account Holders may jointly elect to allow one Joint Account Holder to authorise sharing on the other Joint Account Holder's behalf).
- **Authentication** - We agree with the ACCC and support strong authentication based on verifying the customer's (account holder's or Joint Account Holder's) identity and adopting a similar “redirect” model for authentication in the energy sector as that applied to the banking sector. Our preferred model is Model 1, combined with Option 1 under authorisation. Whichever model or option is adopted, the CDR for the energy sector should be designed to ensure that authentication and authorisation is current, which should be consulted on further. EnergyAustralia does not accept an authentication model which is not based on the consumer's identity, and which relies on other factors such as NMI, postcode and the name of the current retailer for a premise (“Resident Model”).
- **Phases for CDR implementation –**
  - In our view, all retailers that will be subject to the CDR as Data Holders (except for exempt retailers) should have the same implementation date in respect of the data sharing obligations. If the ACCC were to take a tranche approach, customers who are with retailers in later tranches will have a delayed implementation date and will not benefit from CDR until some later time. If there were a staggered approach for Data Holders, there should be a short period (such as a quarter) between the tranches and our preferred option is Option 3 (10 largest retailers).
  - In terms of phasing by data sets, we submit that the ACCC should consider phases as follow:
    - Stage 1, Generic Product Data
    - Stage 2, NMI Standing Data, Metering Data, and DER register data (to follow Stage 1 to allow retailers enough time to implement authentication and authorisation under Model 1 and Option 1)
    - Stage 3, remaining data held by energy retailers (subject to the ACCC decision on tranches).

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<sup>1</sup> Section 8(3)(b), Energy Designation Instrument.

- **Accreditation** – In relation to tiered accreditation, consistent with a minimal viable product (MVP) approach to the initial rollout of the CDR for the energy sector, we support only one level of accreditation at the unrestricted level with a review of this approach in a later iteration of the CDR. An unrestricted level of accreditation should permit persons to receive all energy data, as well as banking data.

If you would like more information or would like to discuss any matters set out in this submission, please contact Selena Liu on [REDACTED] or [REDACTED].

Regards,

Melinda Green  
Head of Customer Value Management

## Submission

Our submission structure largely follows the structure of the Consultation Paper. We have also reviewed the Current CDR Rules as they govern the CDR for the banking sector, and have identified additional issues where the Current CDR Rules need to be reconsidered for the energy sector.

### 1. Data sets

#### Sensitive data

The ACCC is considering making rules to explicitly exclude certain data. These exclusions could relate to sensitive data.

The scope of information relating to a customer or Customer Data and Billing Data under the Energy Designation Instrument appears broad enough to include sensitive information.

In our submission to the draft Energy Designation Instrument, we were open to considering the inclusion of sensitive data with careful treatment and we expand on our views below.

#### Life support

Information indicating that a customer has a life support requirement including related rebate or concession information (under the *National Energy Retail Rules* (NERR) and Victorian equivalent<sup>2</sup> and state/territory concession regulation) should be treated carefully and may need to be subject to additional protections under the CDR Rules. Life support requirement information is already likely to be considered "sensitive information" under the *Privacy Act 1988* (Cth) (Privacy Act) and "health information" in other state/territory health information legislation which recognise that greater protections should apply to this information.

EnergyAustralia is open to including information about a customer's life support requirement status in the CDR, although we question whether it would be possible to establish in time for the initial rollout of the CDR. In our submission to Treasury's *Inquiry into Future Directions for the Consumer Data Right: Issues Paper*<sup>3</sup> we supported the later inclusion of life support information as sharable data under the CDR to streamline and simplify the life support registration process for customers. The CDR could be used by medical service providers to automatically notify an energy retailer and distributor of a customer's life support requirement at the time the customer is meeting their medical practitioner.

Even allowing the sharing of customers' life support requirement between retailers and distributors when customers switch retailers would provide substantial convenience to customers. The AEMC is presently consulting on a rule proposal by Energy and Water Ombudsman NSW (EWON) which seeks changes to the NERR to enable the transfer of life support requirement status (and associated medical confirmation documents) between retailers when a customer switches retailer.

EnergyAustralia does not support EWON's proposed solution given the costs of implementation using the current infrastructure (MSATS). Implementing this rule via the CDR could be a preferable and lower cost alternative. However, there would need to be changes to the NERR obligations and Victorian equivalent to acknowledge the CDR mechanism as a way to meet life support obligations (and this would take time).

#### Family violence concerns

Family violence concerns recorded on a customer's account would be sensitive information (although not as it is defined under the *Privacy Act*). Similar to life support, information about family violence is not relevant to Accredited Data Recipient (ADR) use cases but it may assist non-retailer CDR participants like the Australian Energy Market Operator (AEMO) and ADRs in managing the customer's data to avoid disclosures that would put a person at risk of family violence.

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<sup>2</sup> *Energy Retail Code* (Vic)

<sup>3</sup> <https://treasury.gov.au/sites/default/files/2020-07/energy-australia.pdf>

Family violence concerns present a very serious issue for retailers. In Victoria, retailers have implemented measures to protect a customer once they have flagged with their retailer that they are a victim of family violence.

[Confidential:]

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In view of the complexities and seriousness of the safety issues associated with managing family violence concerns in the energy sector, Joint Accounts must be set up to minimise family violence issues. Where there is Joint Account Holder access to the CDR, and then a family violence issue is reported to the retailer, that Joint Account Holder access should be revoked and the fact that revocation has occurred should be conveyed in real time to the relevant account holder, ADRs, and AEMO. The issue of how ADRs, Data Holders and retailers would respond to any potential perpetrator's questions around why they cannot access the CDR or why their access has been revoked, should be carefully considered.

### *Concession and hardship information*

EnergyAustralia believes that if hardship concession and rebate information is included in scope for the CDR, it should only be considered within scope of the CDR to the extent it indicates that the customer is receiving the concession or rebate and the amount, or where it indicates that the customer is participating in a hardship program under the applicable laws.<sup>4</sup> Hardship information under the CDR should not include adjustments to the customer's debt (i.e. debt waivers) or other retailer actions under that retailer's hardship policy.

We have also previously noted that concession and hardship information is at a higher risk of misuse in a way that discriminates against financially vulnerable customers, as it may be assumed to indicate their propensity to pay or be in debt to their energy retailer. There is a risk that ADR services may evolve to offer retailers screening of customers for their desirability for sale to retailers. The three ways to manage this risk are to:

- exclude the data entirely which would require balancing the discrimination risk against the value to third party ADR use cases;
- prohibit or ban undesirable uses by ADRs; or
- as KPMG recommends in its Supplementary privacy impact assessment (SPIA), to ensure separate consent is obtained for a "data cluster" of concession and hardship information, after the customer has accepted the ADR's service.

Regarding the value to ADRs, the most common use case for ADRs in the energy sector, which Treasury and the ACCC have referred to, is the comparison and recommendations of energy plans. Eligibility for concession and hardship programs change, so it may not be correct to assume that data showing concession or hardship will be valid when the customer switches to their new retailer and new plan. Further, state/territory concession regulation may impose limitations on retailers as to how concession information can be used which we understand could mirror restrictions on the use of Centrelink information. For example, the NSW Social Code requires retailers "to protect the confidentiality of eligible customers to ensure that their records are not used for any purpose other than the delivery of a social program for energy".<sup>5</sup>

There are significant risks and benefits for the inclusion of concession and hardship information in the CDR. ADR use cases which require this information should be tested with current and potential ADRs, but the deciding factor should be whether the customer is comfortable sharing this data in full view of the risks and benefits.

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<sup>4</sup> Energy Retail Code (Vic)

<sup>5</sup> A5.13, NSW Social Programs for Energy Code

One way to protect against the discrimination risk where concession and hardship data is disclosed would be to prohibit undesirable uses by ADRs. However, it will be challenging to effectively future proof this restriction and to cover all potential use cases which would pose a risk.

Another way to mitigate against this discrimination risk is to ensure a customer's consent to disclosing this information is separate and obtained after the customer has accepted the ADR's product or service. To this end, we fully support KPMG's recommendation 3(iv) in the Supplementary privacy impact assessment (SPIA) that this data should only be transferred with the express and specific election by the consumer once the offer of the specific ADR's product or service has been accepted.

We also agree with the Data Standards Body's (DSB's) Customer Experience (CX) work that has recommended that hardship and concession details be separately categorised in their own "data cluster" to enable this specific election.<sup>6</sup> This separate data cluster approach should be applied to both consent and authorisation processes for ADRs and Data Holders. For ADRs, it will be equally important that the ADR clearly conveys information about its proposed collection *and use* of concession and hardship data for which it seeks customer consent. This would be a priority area for regulatory scrutiny of the CDR, as more ADRs enter the CDR for the banking sector and when the CDR for energy goes live.

## Billing Data

In our view, the Billing Data category defined in section 8(3)(a) of the Energy Designation Instrument was very broad. We maintain our views which questioned whether certain items of Billing Data were relevant for ADR use cases, as it appeared certain data items were based on the *Consumer Data Right (Authorised Deposit Taking Institutions) Designation 2019* (Banking Designation Instrument), specifically:

- "an account held by the customer with the retailer in connection with the arrangement"
- "a payment or transaction made in relation to the arrangement".

The Consultation Paper states that account information, such as account/customer ID and information about payments made on an account, will be specified as minimum Billing Data. These data items are not relevant to ADR use cases, but we acknowledge that they are potentially relevant to authentication and authorisation, and we would like to see details around their use in those contexts in a second ACCC paper. Payments on an account might have relevance if it is connected to the payment date, as it may indicate the customer's propensity to pay on time and whether pay on time discounts are valuable to a customer. However, where payment data can be used to calculate debt on an account, it has similar sensitivities to hardship and concession information (as discussed above).

The ACCC has clarified the billing category "a breakdown of an amount charged" as intended to mean the basis on which tariffs and charges are calculated and other matters.<sup>7</sup> However, we question the benefits and costs of including this very broad and detailed information.

If the purpose is to effectively allow an ADR to recreate the bill completely, this would be very difficult to achieve as energy bills are highly complex. Many retail price structures now contain complex seasonal, time-of-day, demand and demand response components. The meter data for many electricity customers is now half-hourly and is moving to a 5-minute basis in future. The bill contains a lot of information, but it cannot contain every component. Credits and charges associated with the customer's energy plan may be conditional on behaviours other than the customer paying on time.

The price and cost structures in the electricity market are exceedingly complex and they evolve quickly. This means retailers make regular changes to their systems and websites to allow quotes and comparisons to be done easily for customers. Retailers find ways to pass on different price structures as this is a way of sharing value with customers who have lower use energy usage

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<sup>6</sup> DSB, Consumer Experience Research Phase 3: Round 1 and 2, March 2020, p. 22 (available here: <https://consumerdatastandards.gov.au/wp-content/uploads/2020/05/CX-Report--Phase-3--Rounds-1-and-2.pdf>)

<sup>7</sup> Section 8(3)(b), Energy Designation Instrument.

patterns. These types of prices are becoming more prevalent as technology can assist customers to realise the value of these more complex price or plan structures.

The CDR should avoid getting into this complexity as it will hinder innovation and benefits for customers. There is also the added complexity of differences in billing item calculations for different energy retailers, across different platforms and systems. Any ADR would find it incredibly complex to recreate a bill for each retailer with a risk of data errors and misinformed outcomes for customers.

Importantly, we also note that the Billing Data will relate to the customer's *current* plan. The useful information for an ADR is to understand the total amount payable under the bill and key tariff or fees/charges (which could be covered by the Tailored Tariff Data). ADRs would match this total amount payable with the current tailored plan that the customer is on and the customer's consumption (Metering Data) for that period, so they can understand the offer the customer is currently on to compare it with new offers.

The ADR is unlikely to need more granular billing information which relates to how billing amounts are calculated, where they have those amounts themselves. Further, this information relates to the customer's current plan which will not assist the ADR in estimating the amount a customer will pay under a new electricity plan. In contrast, neither the Banking Designation Instrument or the banking specific rules in Schedule 3 of the Current CDR Rules require Authorised Deposit-Taking Institutions to disclose a breakdown of amounts charged to the customer.<sup>8</sup> There is no apparent reason why the policy position should be different for the energy sector.

We also wish to flag that the federal Minister for Energy and Emissions Reduction has submitted a rule proposal to the Australian Energy Market Commission (AEMC) which proposes changes to regulation of bill contents and format (in the states that participate in the National Energy Customer Framework).<sup>9</sup> The AEMC's consultation has not started so the general direction of the AEMC's position is not clear. The CDR may need to adapt to any changes that result from the rule proposal. This may include billing items being consolidated or separated out or being removed by retailers (where they are no longer mandated to appear on the bill).

### Energy plan information

EnergyAustralia notes that the Data Standards Body (DSB) has recently consulted on Generic Tariff Data Payloads which we understand relates to Generic Product Data which anyone will be able to request via a "Product Data Request" under the Current CDR Rules. The DSB's position is that the Tailored Tariff Data Payloads will mirror the Generic Tariff Data Payloads which appears to be a reasonable starting point given ADRs can be expected to compare the two for an energy plan comparison use case. We will provide our views on the data payloads to the DSB, but we wish to raise some general policy issues.

#### *Standardise data submitted to the AER and DELWP*

Broadly, the CDR data set for Generic Product Data should be the same data or a sub-set of the data that is submitted to the Australian Energy Regulator (AER) and Department of Environment, Land, Water and Planning (DELWP).

Significant efficiencies for the CDR, Energy Made Easy and Victoria Energy Compare would be achieved if the two data entry portals for both government applications were standardised into one. At the moment, retailers must submit and update data in two portals. We strongly urge the AER and DELWP to work together to reconsider this decision.

We also observe that there are inconsistencies in the data field names, and further inconsistencies in the data responses to the same or equivalent data fields. An example of the second is the conditional category for discounts which for the AER includes responses of pay on time, direct debit and other, while for DELWP the response options also include e-billing and bundled services. At a minimum, these inconsistencies should be resolved and not perpetuated under the CDR.

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<sup>8</sup> This is not captured in Rule 1.3, Part 1, Schedule 3 of the Current CDR Rules.

<sup>9</sup> [https://www.aemc.gov.au/sites/default/files/documents/rrc0036\\_rule\\_change\\_request\\_pending.pdf](https://www.aemc.gov.au/sites/default/files/documents/rrc0036_rule_change_request_pending.pdf). The National Energy Customer Framework states/territories are Queensland, NSW, Victoria, SA, ACT and Tasmania.

Under the CDR, the cost of inconsistencies in Victorian and non-Victorian Energy Plan data will be borne by ADRs and retailers. ADRs will have to account for different data in their data analytics for use cases depending on whether the customer is in Victoria or non-Victorian states/territories. Similarly, Data Holders will have to account for these differences when building their solutions to disclose Tailored Tariff Data.

### *Interaction of regulation and value-added propositions*

In 2019 and 2020, energy retailers implemented reforms which were intended to improve comparability of electricity energy plans, mainly through the introduction of reference pricing. Put simply, reference pricing aims to compare an electricity plan against the reference price which is either the Default Market Offer for participating states/territories or the Victorian Default Offer. The Independent Competition and Regulatory Commission has also recommended that the ACT Government introduce their own version of reference pricing. Reference pricing is intended to assist customers in comparing energy plans by providing a benchmark.

EnergyAustralia continues to support measures that make it easier for customers to identify the best offers that are suitable for them, and otherwise give customers more confidence when engaging in the market. We have concerns, however, that reference pricing requirements do not adequately deal with value-added propositions that offer more than basic electricity supply. That is, reference pricing tends to only accommodate plans with the most common pricing structures and benchmark usage profiles.

Value-added propositions contain elements like non-price benefits and products combined with distributed energy resources which are not easily compared. Simplified reference price disclosures may misrepresent the value to the customer of these different offers and introduce unnecessary complexity in the marketing of them, thus inhibiting product innovation.

We wish to ensure that the CDR does not inadvertently repeat the same issues – especially where ADRs could include new entrants to the energy sector which would be less familiar with the sector and which may experience challenges in navigating the different product structures in the market.

### *Types of value-added propositions*

This category of value-added propositions can be described as integrated offers of products and services that customers value. It can take different forms, for example:

- Propositions that integrate electricity supply with other products or services which aim to:
  - provide the customer cheaper electricity, by optimising the source of their supply of electricity across both electricity from the grid and electricity generated or stored on their premises from a solar or battery system (for example); and/or
  - demand management/demand response - by curtailing non-essential customer usage during times of extreme demand or shifting usage to times of lower demand or when the electricity system otherwise needs it (to capture value in lower wholesale prices or avoided network costs).
- Other value-added propositions may look to bundle electricity supply with the installation of solar and battery. On by EnergyAustralia's Solar Plus Plan is an example of a product which cannot be accurately described as an electricity plan only, but rather an integrated proposition that includes both electricity supply and the provision of a solar or battery system.<sup>10</sup>
- Other value-added propositions may not involve a bundle of products or services. Innovative electricity plan tariffs, such as changes to electricity plan pricing, offer customers more price certainty. For example, a few retailers are now offering subscription type plans similar to mobile data/calls usage pricing (where a customer pays a set amount each period to cover expected electricity consumption). On by EnergyAustralia's Easy Plan is an example of one of these plans.<sup>11</sup> In EA's experience, the reference pricing requirements do not align well with these types of plans and will likely confuse customers.

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<sup>10</sup> <https://www.experienceon.com.au/solar-plus-plan>

<sup>11</sup> <https://www.experienceon.com.au/easy-plans>

Value-added propositions, like the examples above, are essential to innovation and the future of competition in the retail energy sector which should evolve to services other than basic electricity supply. This is particularly the case considering that the National Electricity market is currently transitioning to de-centralised and distributed energy resources, and increasingly retail products will change to reflect this transition. This innovation has the potential to bring considerable benefits to consumers where this is supported by regulation and the protocols for the CDR.

It is essential that the CDR provides the plan data to ADRs which would be necessary to allow an ADR to discern the difference between a basic “no frills” electricity plan and a value-added proposition, and present this difference clearly to energy consumers. In some cases, it might not be possible for an ADR to offer a like-for-like comparison, and in other cases, the ADR will be able to make the comparison but will have to also flag that a plan is a value-added proposition.

### *Recognising value-added propositions in the CDR data sets*

The ACCC’s CDR Rules relating to the data sets should address this issue through adequate definition of plan data. We recommend that the ACCC define Generic Product Data and Tailored Tariff Data to include information that will identify a plan as a value added proposition. This can be achieved by the ACCC in clarifying and expanding on the category of “information about the sale or supply of *related goods or services*”<sup>12</sup> (Related goods or services) in the Energy Designation Instrument.

In our submission to the Draft Energy Designation Instrument, we noted that this Related goods or services category was quite broad and unclear. In the final version of the Energy Designation Instrument, Treasury provided an example of Related goods or services as being “a free energy efficiency assessment of their home if they enter an arrangement for the sale or supply of electricity”. Treasury’s Explanatory Statement also provides a further example of “discounts on other services and *details of non-electricity supplies that are bundled as part of the arrangement*”.<sup>13</sup> Consistent with these examples and Treasury’s intent, we request that the ACCC add - electricity products and services that are bundled with an electricity supply service - to both the Generic Product Data and Tailored Tariff Data set, in line with the approach described below.

The CDR Rules should define the meaning of bundled. This is a matter that the ACCC should consult further with industry.

Further, information about Related goods or services should only require a high-level description of the “bundled” products or services. That is, a balance needs to be struck between providing enough information about these value-added propositions to flag that it is not a basic electricity plan, and not requiring disclosure of excessive amounts of information which would put energy retailers on an unlevel playing field, compared to other non-retailer providers of value-added components.

For example, if energy retailers were required under the CDR to disclose detailed information about demand response services as Related goods or services bundled with electricity supply, this would place energy retailers at a competitive disadvantage and unlevel playing field, compared to demand response providers that are not retailers (and not subject to the CDR data sharing requirements). Again, the exact level of information describing Related goods or services should be consulted on in another ACCC paper. We consider that the ACCC should provide broader policy direction on this matter, rather than leave it to the DSB to determine via their payload decisions.

Lastly, our views above relate to high level product information about value-added propositions. We maintain our view that information about Related goods or services should not extend to data *measured by those DER devices or data derived from that data*. Such data could resemble Metering Data where it measures energy usage and Billing Data where it bills a customer for services. This does not appear to be in line with the Energy Designation Instrument or the ACCC’s direction for the CDR Rules, but for completeness we discuss this below under “Behind the meter” data.

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<sup>12</sup> Section 8(1)(b), *Energy Designation Instrument*

<sup>13</sup> ACCC, *Explanatory Statement Proposed Competition and Consumer (Consumer Data Right) Rules 2019 – August 2019*, p. 5 (available here: <https://www.accc.gov.au/system/files/Proposed%20CDR%20rules%20-%20Explanatory%20Statement%20-%20August%202019.pdf>)

### *"Behind the meter" data*

This data measured by appliance or devices such as solar and battery inverters, and load control devices (e.g. air conditioners that can adjust their load) is often referred to as "behind the meter" data. This data is different to data measured by the customer's main electricity meter and is measured by devices that are situated on the customer's premises and are only connected to the electricity grid via the main meter. "Behind the meter" data is not currently visible or accessible by industry parties or AEMO. In fact, this data is often not collected or stored by the customer or the appliance.

"Behind the meter" appliances are used to operate demand response type activities, including behavioural and automated demand response services provided to retail customers. E.g. a customer may allow a retailer or other organisation to control their air conditioner remotely. These services mean that customers are provided a payment (or some other benefit) for reducing or shifting their load away from peak demand times when the electricity prices are highest, networks are constrained, or there are system reliability or security issues. This is a way for a retailer to lower its costs and share that cost reduction with the customer. Retail demand response providers may need "behind the meter" access to estimate how much electricity is being stored or being used by the appliance so they can adjust load. The data is usually only available through the appliance manufacturers' portals that are built to enable demand response services.

In contrast, data measured by the customer's main electricity meter does not relate to any device or appliance. Rather, it relates to the electricity passing through a premises' connection point on the distribution network (which connects the premises to the national electricity grid). This meter data is captured by AEMO's market systems and used to settle the National Electricity Market (while "behind the meter" data is not).

Our view is that the CDR should not apply to "behind the meter" data at this time. This data is enriched data via the application of analysis and algorithms which makes it proprietary value-added data or the intellectual property of its owner (energy retailers or its partners). The market should be permitted to place a fair value on this data to ensure owners are adequately compensated, to promote further investment in creating value-added data. The threat of regulation (via subjecting that data to the CDR) would deter this investment in the sector to the detriment of competition and customers. As noted above, this data is often not stored like meter data is, and access to a device or appliance by an external party does not necessarily require the capture of energy usage or demand measured at a point in time. Therefore, a "behind the meter" data set often does not exist.

In the future, broader reforms in the energy sector may seek to incorporate "behind the meter" data into AEMO's systems and the national electricity market, and at that time, it should be considered for inclusion in the CDR. In particular, we refer to the Post 2025 Market Design for the National Electricity Market (led by the Energy Security Board).<sup>12</sup>

### *Restricted Offers*

The ACCC's Paper does not canvass the issue of whether "Restricted Offers" or "Restricted Plans" (Restricted Offers) should be made available in Generic Product Data. Restricted Offers are submitted to the AER and DELWP but are not visible to the public on Energy Made Easy and Victoria Energy Compare.

In our view, Generic Product Data which can be requested and obtained by any person, should not include information about Restricted Offers. EnergyAustralia strongly supports transparency of generally available energy plans in the retail market. However, Restricted Offers are often not marketed publicly for various reasons. This may be because the plans are very tailored to suit specific customer characteristics, they contain certain eligibility criteria, or they relate to a pilot offer for an innovative product. It would not make sense to publish Restricted Offers as the plans may be irrelevant or not cost effective for most customers or require heavy qualifications on eligibility, which is likely to confuse customers and ADRs and result in negative customer experience.

We note that excluding information about Restricted offers from Generic Product Data would be aligned with the policy approach taken for the banking sector. For the banking sector, Generic

Product Data includes information that is published on the Data Holder's website or information in a product disclosure statement. The ACCC explained:

"This is a qualitative rule intended to ensure that product data provided in accordance with the standards is commensurate to the product data made available publicly by a Data Holder through its website or in a product disclosure statement relating to a relevant product."<sup>14</sup>

We consider there is no reason to take a different policy stance for the energy sector.

The above discussion relates to Generic Product Data. Separately, customers may be on Restricted Offers with their current retailer, and so the question arises as to whether Restricted Offers should be shared as Tailored Tariff Data (which relates to the electricity plan a customer is on). EnergyAustralia does not have an issue with this broadly, as we recognise that sharing information about a customer's current energy plan is central to the effectiveness of the CDR.

There is however potential for a confidentiality or proprietary concern, where a customer is participating in a confidential pilot or trial which includes an electricity supply service. If that customer were to consent to data sharing under the CDR, this would raise concerns about the disclosure of confidential information about that pilot or trial through Tailored Tariff Data. This issue is further exacerbated when considering section 8(1)(b) of the Energy Designation Instrument which would mandate disclosure of information about Related goods or services under the pilot or trial including non-electricity products or services (but in contrast to the discussion above, an energy retailer does not wish to disclose this data because it considers it confidential or proprietary in nature).

The effect of mandating that the details of confidential pilots and trials be disclosed to ADRs, would have a disincentivising effect on energy retailers investing in those pilots and trials to begin with. This is particularly the case in a context where related services markets or offerings are in an embryonic and highly commercially sensitive stage. EnergyAustralia submits that the CDR rules should explicitly exclude from Tailored Tariff Data, information relating to confidential trials and pilots for an electricity supply service and Related goods or services. It is not clear whether this information is excluded from being CDR data under the Energy Designation Instrument's exclusion of Materially Enhanced Information.

### *Inaccuracies in data presentation*

EnergyAustralia also flags that there are issues with how data is presented in EME and Vic Energy Compare, which in some instances mean that plans may not be presented accurately. These issues should be resolved before that data is included in the CDR and presented by many more third party ADRs, other than the Government comparison websites. For instance, we have observed a retail plan with a Basic Plan Information Document stating there is no paper bill fee, but it appears that, the bill can only be sent via app or email (i.e. the plan does not offer paper bills). The BPID could give the incorrect impression that there is a paper bill option, and no fees are charged for it.

### **Historical data**

The ACCC's proposed position for Metering Data is to limit historic data to the previous two years. We agree with the ACCC's view that two years for Metering Data is appropriate as customer consumption patterns change over time and more recent data is therefore more relevant to possible ADR use cases. All other data sets, including Billing Data, should have a historic period of one year. This seems to be the logical approach as recent data is likely to be the most valuable to ADRs.

The ACCC's position is that other data sets such as NMI Standing Data and Customer Data, should be limited to current data. We observe that historical NMI Standing Data is often helpful or even necessary to interpret metering and Billing Data. For example, where an accumulation meter is changed to an interval meter, the NMI standing data will vary. In some cases, if a customer's meter is replaced, they will be at the same premises but will have a new NMI. In the same way, historic Tailored Tariff Data (held by the current retailer in relation to an active account) may also be useful.

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<sup>14</sup> ACCC, *Explanatory Statement Proposed Competition and Consumer (Consumer Data Right) Rules 2019 – August 2019*, p. 14 (available here: <https://www.accc.gov.au/system/files/Proposed%20CDR%20rules%20-%20Explanatory%20Statement%20-%20August%202019.pdf>)

In relation to Customer Data, we agree that a customer's current data is typically the most relevant, and in fact, critical in the context of authentication and authorisation.

## **CDR Rules and interaction with the DSB payload consultations**

As the ACCC is aware, the DSB is completing work to define the payloads in their consultations on API standards. We welcome guidance on the minimum inclusions and exclusions from the data sets as soon as the ACCC has made an in-principle decision on these matters. The earlier this guidance is provided, the more efficient the DSB process will be as it would minimise the amount of re-work required to finalise the standards.

### **2. Eligible consumer**

The ACCC is considering who will be eligible to use the CDR to make requests to disclose CDR data. The ACCC discusses different groups of users in its Paper. These groups are discussed in turn below.

#### **Account holders**

EnergyAustralia agrees with the ACCC's view that a CDR consumer must have an account with a retailer to be an eligible CDR consumer, subject to the additional requirement that this Primary Account Holder is being supplied the service or that the service is being supplied to their associates.

The Primary Account Holder should be the starting position in designing eligibility for the CDR as they are "known" to the retailer and will have the contract with the retailer. They will also be paying the bills to the retailer and therefore have the strongest incentive to shop for a new electricity plan and to engage with the CDR. From this starting point of the Primary Account Holder, the ACCC can consider whether eligibility for the CDR should extend to Joint Account Holders or Additional Account Holders (discussed below). The ACCC can also solve for exceptions where the Primary Account Holder may not reside at the premises.

Regarding these exceptions, the ACCC notes the exception of the landlord as the Primary Account Holder who may not reside at the premises with their tenant. We agree this is an exception that will need to be solved for, but also wish to highlight the scale of this exception. We understand that for most rental properties, the tenant (and not the landlord) arranges for their energy supply under their own name (and is therefore the Primary Account Holder), except for:

- In Victoria, for tenanted premises without a meter, according to Victorian Consumer Affairs.<sup>15</sup>
- In NSW, ACT, Qld, SA and Tas, for leases that are not a standard Residential Tenancy Agreement, and where electricity (and/or natural gas usage) is included as part of the rent.<sup>16</sup>

Given the limited scale of this issue, the solution should be streamlined with other mechanisms that will exist under the CDR Rules. We suggest that tenants who have not contracted with their energy retailer (and are not a Primary Account Holder) should request that they be added as a Joint Account Holder if they wish to become eligible to use the CDR. This would streamline the inclusion of tenants into the Joint Account Holder avenue for eligibility.

#### **Joint Account Holders**

EnergyAustralia supports extending the CDR to people other than the Primary Account Holder through the construct of Joint Account Holders or Additional Account Holders. This would strike the appropriate balance between allowing more people to use the CDR where they have a reason to and would benefit from that access, and protecting the privacy, safety and security of the customer which energy retailers go to considerable lengths to protect.

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<sup>15</sup> If there is a separate meter, the tenant must pay for all other charges, unless otherwise agreed. If there is no separate meter, the landlord must pay. <https://www.consumer.vic.gov.au/housing/renting/beginning-a-lease-or-residency/utilities-telephone-internet-and-television>

<sup>16</sup> <https://www.aer.gov.au/system/files/Electricity%20and%20natural%20gas%C3%A2%E2%82%AC%E2%80%9Dinformation%20for%20tenants.pdf>, p 1

We would support extending eligibility to use the CDR to people EnergyAustralia identifies as Additional Account Holders *with financial responsibility*, but not other lower levels of Additional Account Holder. This financially responsible level reflects where the Additional Account Holder has the same level of authority as the Account Holder to manage the account. That is, they can arrange de-energisation and re-energisation. They are also held accountable, alongside the Account Holder, for any debt that may incur on the account, and their name appears on any bills and correspondence. They are also able to add concessions/rebates to the account to reduce what they need to pay for the electricity supply. For ease of reference, we refer to Additional Account Holders with financial responsibility as Joint Account Holders in the rest of this submission.

**[Confidential:**

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Our arrangements around Joint Account Holders are broadly consistent with the ACCC's description on page 25 of the Consultation Paper.

**[Confidential:**

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It is important however to note that other retailers could have significantly different arrangements for Joint Account Holders, where they hold lower authority to transact on an account or are not liable for the debt on an account. This is because account holder arrangements are largely a contractual arrangement which is unregulated. This does not suggest that regulation should standardise account holder arrangements as there is no evidence of any related market failure. However, this lack of standardisation may raise issues for leveraging these arrangements as a full solution to adding Joint Account Holders as eligible customers under the CDR regime, without the need for additional checks.

### *Joint Account Management Service*

If the ACCC were to allow Joint Account Holders to be eligible to use the CDR, the ACCC will need to consider how to manage authorisations for data sharing under the CDR. The Current CDR Rules make specific arrangements for banking. Accordingly, a Data Holder must provide a 'Joint Account Management service' (JAM service) for Joint Account Holders to jointly elect that each Joint Account Holder may individually manage CDR data in relation to the joint account. That is, where there is a joint account for a bank account, Joint Account Holders will engage through the JAM service to jointly elect or decline to allow one Joint Account Holder to authorise sharing of CDR data (without the other Joint Account Holder's authorisation).

We understand that the ACCC's proposed position is that the CDR for energy will not require an equivalent JAM service. This means that where an energy retailer has undertaken its own process to add a Joint Account Holder to an account, the Joint Account Holder will automatically be allowed to authorise sharing of CDR data (without the other Joint Account Holder's authorisation). This would effectively rely on existing retailer arrangements to confirm the appropriateness of Joint Account Holders for the purposes of CDR data sharing. We do not support this approach.

It is important to recognise that retailers will be adding Joint Account Holders to an account for the primary purpose of allowing that additional person to manage electricity supply and to share the debt on that account. This is a wholly different purpose to authorising the sharing of data under the CDR. The other reason to not rely on retailer processes is that each retailer may have different definitions and consent processes to link a Joint Account Holder to an account. This lack of standardisation in the robustness of retailer processes suggests that the CDR cannot rely on retailer processes.

EnergyAustralia considers the best approach to Joint Account Holders for the energy CDR would be to align with the banking approach:

- firstly, only allow for a Joint Account Holder to be considered as eligible for the CDR and to manage CDR data sharing, where the retailer has added a Joint Account Holder to an account. This would leverage existing protections built by retailers in relation to preventing family violence and fraud; and
- secondly, require a similar JAM service to apply to the energy sector. This will act as a secondary check and provide a mechanism for a Joint Account Holder to approve the authorisation arrangements for CDR data sharing specifically.

There would need to be real time updates to information captured by Data Holders under the first and second step. The following should also be in place:

- Joint Account Holders should be individually authenticated, and
- the Data Holder should provide each Joint Account Holder with a separate dashboard for authorisation purposes, as currently applies to banking under the Current CDR Rules.<sup>17</sup>

Separately, the protections that exist under the Current CDR Rules for physical or financial harm or abuse will need to apply to disclosures to Joint Account Holders, to protect against the risk of family violence, in addition to the existing protections that apply under energy regulation in Victoria. These protections apply in the Data Holder obligations, and are:

- Rule 4.7(1) which provides that a Data Holder may refuse to ask for an authorisation for CDR data, or refuse to disclose required consumer data in response to the request if it considered this necessary to prevent physical or financial harm or abuse.
- An exception to Rule 7.9. Rule 7.9 provides that a Data Holder that discloses CDR data to ADRs must update each consumer authorisation dashboard to show the data that was disclosed, and when and to which ADR it was disclosed. In relation to JAMS (if implemented for the energy sector), Rule 7.9 does not apply if a Data Holder discloses CDR data to an ADR as a result of a consumer data request made by a Joint Account Holder, and where the Data Holder considers it necessary to prevent physical or financial harm or abuse, not to update the consumer dashboard of the other Joint Account Holder (to show what has been disclosed).<sup>18</sup>

We recommend that the ACCC considers mirroring these obligations for ADRs to cover scenarios where data could be disclosed to the consumer (in either raw or modified form) in a way that might expose one of the Joint Account Holders to family violence risk. This appears to be a deficiency in the Current CDR rules as they apply to the banking sector. It may appear that looser protections are necessary for energy data compared to financial data, but we reiterate that access to half-hourly (and in future, 5-minute period) data that is linked to a site address must be treated with care. It clearly allows profiling of premises and lifestyles of consumers in a way that could directly lead to serious harm.

Further, in line with an MVP approach to implementing the CDR for the energy sector, joint accounts in the energy sector should be confined to two individuals only, with complex accounts with multiple persons considered at a later stage.

### **Inactive accounts**

EnergyAustralia is supportive of sharing Metering Data and other data sets held by AEMO, for inactive accounts. Metering Data related to inactive accounts would be useful to customers that have recently switched to a new retailer, and their data held by their new retailer only covers a short period of time. The historic data time periods (2 years) discussed above should also apply to inactive accounts.

We do not support data sharing of retailer-held data sets for inactive accounts as this information will be less useful to ADR use cases. For example, Tailored Tariff Data or Billing Data connected with an inactive account will have limited utility to an ADR, as it does not reflect the customer's current plan.

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<sup>17</sup> Rule 1.15(2) of the Current CDR Rules and Rule 4.4 Schedule 3 of the Current CDR Rules.

<sup>18</sup> Rule 4.6, Schedule 3, Current CDR Rules.

The ACCC will need to consider the implications of inactive accounts on authentication in more detail. A logical approach to adopt would be to have the current retailer authenticate for AEMO-held data sets as they would have the current customer details. We discuss this in more detail below under Section 4 Authentication.

### Large customers

As a general principle the CDR should apply to the majority of residential and small business customers as application to these customer segments will realise the most benefit.

The CDR should not extend to large customers because their energy service requirements are considerably more complex. There is also a market that already delivers sophisticated energy data services to large customers, and therefore the CDR will deliver less benefit to those customers such that the costs of including large customers will likely outweigh the benefit.

In the Consultation Paper, the ACCC asks questions regarding the appropriate threshold to define large customers. EnergyAustralia contends that these thresholds should be based on the existing thresholds which define small and large customers for business customers in the *National Energy Retail Regulations*<sup>19</sup> (as modified by the state/territory derogations) and in Victoria, the *Electricity Industry Act 2000* and *Gas Industry Act 2001*.<sup>20</sup> These thresholds are based on customer consumption per annum. For example, under the *National Energy Retail Regulations* a customer who consumes 100 MWh of electricity or more per annum is a large customer.

This small and large customer distinction is significant in the context of energy regulation because energy regulations are vastly different depending on the category the customer falls under. Most consumer protections only apply to small customers. In line with this distinction, it is not uncommon for retailers to have different processes and IT systems for small and large customers. There are therefore strong implementation efficiencies, if the CDR were to adopt the same large customer threshold, as there will be a clear delineation of the systems and processes that will be impacted by the CDR (those that apply to small customers only).

Another category of customers is multi-site customers. These are customers who are set up under the same or a joint contractual arrangement and include a number of sites which would individually be classified as large businesses, small businesses, and sometimes even residential sites. Our position is that multisite customers should also be ineligible to use the CDR, for similar reasons described for large customers – their energy services are often tailored and bespoke with value-added data services already, and so the benefits for these customers would be lower such that the costs of implementing the CDR for them would outweigh the benefits.

### Customers who do not have an online account

EnergyAustralia is open to seeing further detail around extending eligibility to use the CDR to customers without an online account. We consider the ACCC should undertake cost benefit analysis on this issue.

The Consultation Paper mentions that online account uptake is low for the energy sector. Our data shows that online account uptake is moderate but that digital engagement via email or online account is high, which supports the view that a fairly high proportion of customers would be able to engage with the CDR digitally.

### **[Confidential]**

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<sup>19</sup> See section 7 of the *National Energy Retail Regulations*. A small customer includes a customer who is a business customer who consumes energy below the upper consumption threshold. A large customer is a business customer who consumes energy at or above the upper consumption threshold. The upper consumption threshold for electricity is 100 MWh per annum. (3) The upper consumption threshold for gas is 1 terajoule (TJ) per annum.

<sup>20</sup> Section 3 of the *Electricity Industry Act 2000* and section 3 of the *Gas Industry Act 2001*, and the relevant Orders in Council.

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EnergyAustralia acknowledges that some functions under the CDR can be provided to customers non-digitally. For example, sending a one-time password to the customer for authentication can be completed via mobile text or recorded phone message.

We also consider that it is possible for CDR engagement for authentication and authorisation (and consent) to occur through a combination of non-digital and digital means. For example, it is possible that a customer can engage initially over the phone and then be sent a link to their mobile or email. And, at that link there will be content setting out authentication and authorisation details, to which a customer responds by entering their one time password and by providing digital acceptance/non-acceptance to the authorisation details. This combined approach is another option that can be considered by the ACCC and has the benefit of providing initial assisted engagement with the CDR (should customers need it), but then transitioning that information to a digital form which would support real time exchange of that information between CDR participants.

**[Confidential:]**

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### **Embedded network customers**

The Energy Designation Instrument applies to "Retailers" that are defined by reference to retailer authorisations and retailer, under the *National Energy Retail Law* and *Electricity Industry Act 2000* (Vic). This would appear to capture Retailers selling to embedded networks under a retail authorisation or retail licence (rather than an exemption). The Consultation Paper does not canvass whether embedded network customers should be eligible to request CDR data, but the ACCC has welcomed views on this issue in workshops.

Embedded networks are private electricity networks which serve multiple premises ("child connections") and are only connected to the distribution network and national electricity grid, through a "parent meter" connection point. Authorised or licensed retailers can sell to embedded networks in the same way that exemption holders sell to them – by purchasing electricity at the parent meter and on supplying that electricity to child connection points (these child connection points are often referred to as being "off market").

The regulatory regime also permits a situation where an "off market" child connection point can move "on market" and the customer at that connection point is able to purchase electricity from a third party retailer.

We understand that the ACCC is not focussed on "off market customers" and that they will not be eligible customers under the CDR in the initial implementation. This is a position we agree with and we will instead focus on "on market" customers.

Once "on market" these customers are assigned a NMI and are visible in AEMO's systems. However, the product construct and billing arrangements for "on market" customers may differ – under an "energy only" product they will receive two bills, one from their "on market" energy retailer for the electricity component and another for network charges from the private embedded network operator. Alternatively, their retailer may provide a combined energy plan with one bill that covers both the electricity component and network charges, and the retailer recovers the network charges from the network operator. The private network operator can differ from site to site.

Due to this significant lack of standardisation in product structure, billing, and relevant parties, we suggest “on market” embedded network customers should not be eligible customers for the initial roll out of the CDR. The costs of building to non-standardised arrangements would materially outweigh the limited benefit gained by customers.

EnergyAustralia notes that customers serviced via embedded networks is growing due to the increases in apartments and housing estates in recent years. For the CDR to be ubiquitous for the large majority of residential and small business customers (regardless of where they live or operate), we would support the eventual expansion of the CDR to embedded networks in the future, when embedded networks are better integrated into the National Electricity Market. This would be when the AEMC’s *Final Report on Updating the Regulatory Frameworks for Embedded Networks*<sup>21</sup> is implemented. Implementation of the AEMC’s Final Report would mean that previously “off-market” customers in embedded networks would be put “on market”, their data would be held by AEMO, and there would be some standardisation of customer bills. These changes would lower the cost of expanding the CDR to embedded networks and allow greater access to more retailers (so there would be greater benefits from the CDR through comparing more retailer offers). DELWP is also reviewing the regulatory framework for embedded networks in Victoria with similar objectives to the AEMC’s Final Report. The question of whether the CDR should include embedded network customers should be considered after this review is concluded.

### 3. Consent

The Consultation Paper does not specifically seek views on the consent requirements which apply to an ADR when seeking to collect and use the CDR data of a consumer.

EnergyAustralia observes that the consent framework that applies to ADRs is drafted well. It will be crucial to monitor the effectiveness of the consent processes as they operate in practice for the banking sector.

We also note some potential differences between how the CDR might be used for banking and how it will be used in the energy sector. Like banking, energy use cases may require a high frequency of collection and use of CDR data to provide up-to-date dashboards on a customer’s electricity information. We also expect different use cases which collect and use data on a more sporadic basis, perhaps every 6 months for example, where the use case involves checking for new in market offers that might be more suitable to a customer. This sporadic collection and use might mean that the customer needs to be reminded of their ongoing consent. It will therefore be important to ensure that the ongoing notification requirement under the Current CDR Rules applies to the energy sector. This requirement (under Rule 4.20) serves to remind the customer every 90 days that their consent is still operational.

### 4. Authentication

Authentication is a complex and key area for EnergyAustralia. We agree with the ACCC’s statement that customer authentication should strike a balance between ensuring security of data and a satisfactory consumer experience. For the initial rollout of the CDR for the energy sector, that balance should be weighted towards ensuring a high degree of security for consumer data. This is critical to ensure that consumer trust in the CDR is established so that consumers engage with the CDR.

As stated in our cover letter, we urge the ACCC to consider publishing a second consultation paper before releasing the Draft Rules. This paper should provide a more detailed outline on the preferred Authentication model and Authorisation option and the interactions between AEMO and CDR participants, and implications for Joint Account Holders and inactive accounts (if in scope).

We discuss our key observations and issues below.

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<sup>21</sup> Available here: <https://www.aemc.gov.au/market-reviews-advice/updating-regulatory-frameworks-embedded-networks>

## “Resident model”

The ACCC is seeking feedback on whether it would be appropriate to adopt an additional method of authentication for specific data sets. Instead of ‘strong authentication’ based on a customer’s identity, this method would permit authentication based on some other factors – namely, NMI, postcode and the name of the current retailer. We refer to this authentication method as the “Resident Model” because it would allow non-account holders to disclose data under the CDR. These non-account holders would likely be residents, but in practice anyone with access to a bill could meet the authentication requirements as the bill contains the 3 details (NMI, postcode and current retailer).

The ACCC explains that there are potential benefits of providing access to a limited subset of CDR data to “residents”, as it will allow for more data sharing across a wider range of consumers.

EnergyAustralia does not accept an authentication model based on the Resident Model. Adopting the Resident Model, even for a limited subset of CDR data, raises several significant risks.

Firstly, we note that the only data set that residents possibly have a “right” to would be Metering Data (because it reflects their consumption of energy) and NMI Standing Data (as that relates to the premises). Other data sets such as Customer Data, Billing Data, DER register data (depending on who owned the asset), and Tailored Tariff Data, do not relate to the resident. We focus on the major risks around Metering Data below. While sharing NMI Standing Data poses negligible risk, it would be pointless for a resident to only have access to this alone.

Secondly, it would be difficult to effectively authenticate that a person is in fact residing at a premise. Authentication based on NMI, postcode and current retailer will not confirm that the person resides at a premise. Again, anyone with a copy of the bill can obtain these details. Confirming residency would require some other form of identification verification like driver’s license which AEMO would not be able to perform as they do not “know” the customer.

Thirdly, access to Metering Data (or data derived from Metering Data) under the Resident Model creates an unacceptably high risk of misuse of data, as it does not provide a mechanism for the Account Holder/s to consent to disclosure or use of data relating to their account.

Metering Data would disclose the likely whereabouts or typical daily movements of Account Holders and other residents raising significant risks regarding family violence and criminal activity such as theft. Results from an EnergyAustralia survey of its customers indicate that customers are less comfortable in sharing their energy data, once it is explained to them that this includes Metering Data which could be used to identify what time they were and were not home.

**[Confidential:]**

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Some stakeholders have argued that the sensitivity around Metering Data can be protected by restricting how ADRs use that data, and not allowing that data to be presented in the same “raw” form as provided by Data Holders. In our view, this restriction on use would be inconsistent with the generally unlimited and broad ability for ADRs to use data to provide innovative goods and services. Moreover, it will be challenging to effectively future proof this restriction and to cover all potential use cases which would pose a risk.

In addition to the above risks, we question the Resident Model from a cost benefit perspective. It is unclear whether a resident (who is not the Primary Account Holder paying for the energy) is likely to be using the CDR regime in the first place. We suggest that there would be limited interest by these residents and limited ability to act on the information or services provided or facilitated by the CDR. If they are interested and the Primary Account Holder is amenable to allowing them access, then they could easily be set up as a Joint Account Holder.

In addition, we challenge the utility of Metering Data and NMI Standing Data, even when combined with Generic Product Data provided by the AER and DELWP. Although there may be some limited use cases based on these data sets alone (for example, energy efficiency assessments), the most valuable use of Metering Data and NMI Standing Data will be when it is combined with information about the customer’s current offer (Tailored Tariff Data and Billing Data provided by energy retailers). Only then will energy plan comparisons and bill estimates be possible which we expect will be the more valuable use cases to customers and ADRs.

EnergyAustralia therefore submits that the costs of building an additional Resident Model authentication would outweigh the benefit realised from limited, lower value use cases where it is unclear whether residents (who are not the account holder) would engage with those use cases.

### **Authentication model**

EnergyAustralia supports the ACCC adopting a similar “redirect” model for authentication in the energy sector as that applied to the banking sector. This redirect model can be described as redirecting the customer after they have given consent to an ADR, to the Data Holder’s authorisation function. The customer will then be asked to provide a pre-existing user ID or other form of personal identification, and then to enter the One Time Password (which will be sent to the customer’s phone or email separately).

We submit this strong authentication based on verifying the customer's (account holder's) identity is the preferable approach to minimise the risk of data breaches that involve disclosure to a person who is not the customer.

EnergyAustralia's preferred Model for implementing strong authentication is Model 1. Our key reasons for this view are that:

- Retailers have the relationship with the customer for the supply of electricity. It would be a more seamless customer experience if retailers deliver the authentication function. Retailers are also best placed to manage the risks around authentication and to address exceptions to the authentication process.
- Model 1 requires fewer data flows among fewer parties and therefore presents a simpler IT architecture.
- Model 1 avoids the transfer to and storage of personal information by AEMO (which would be required under Model 2), thereby minimising additional risk of data security breaches. In its market operator role, AEMO has not dealt with personal information which identifies or reasonably identifies an individual. If Model 2 were adopted and would require this, AEMO would have to wear the cost of uplifting its processes and systems to meet Privacy Act obligations that apply to personal information and potentially new Privacy Safeguards.

EnergyAustralia notes that retailers will generally have some Identity and Access Management (IDAM) solutions in place to verify the identity of their customers throughout the provision of services to their customers.

**[Confidential:**

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Not all retailers will have IDAM solutions that will meet Model 1 or can be easily configured to meet Model 1. The ACCC mentioned in the workshop held on 11 August 2020 that it might consider a hybrid approach which would allow retailers to implement Model 1 (self-build) or Model 2 (where AEMO does authentication on behalf of the retailer). In our view, this hybrid approach is weaker than Model 1 from an information security perspective. A hybrid approach still increases the privacy risk for customers who happen to be with a retailer that is using Model 2, as their personal information will be shared with AEMO. This hybrid approach also undermines any scale efficiencies that might result in Model 2 where AEMO performs the function of authentication for all retailers, as the cost under a hybrid model would be spread across fewer retailers. This would mean higher costs across the industry.]

We also agree with the ACCC's view on other aspects of authentication:

- that it should be the customer's current retailer that authenticates the customer (assuming that inactive account data is limited to AEMO-held data sets, and a current retailer would not have to authenticate another retailer's data set), and
- that other Data Holders (such as AEMO, AER and DELWP) should be able to rely on authentication performed by the current retailer. There will be exceptions that will need to be worked through, for example, where inactive accounts have a different account holder to the current account.

The ACCC has mentioned that authentication and authorisation do not need to be performed by the same party. While it might be technically possible to have two different parties perform these functions, there are efficiencies in authentication and authorisation being delivered together given they both require a digital portal. Delivery by the same party would avoid the need for a customer to be redirected between different applications hosted by AEMO for authentication and the retailer for authorisation, for example.

## 5. Authorisation dashboard

EnergyAustralia agrees with the ACCC's preference that one party should be responsible for Data Holder dashboards where there are multiple Data Holders providing data in response to a request (AEMO, AER, DELWP, and the retailer).

We support Option 1 of the Consultation Paper which outlines that the dashboard should be provided by the customer's current retailer for all energy consumer data requests relating to a single product. Option 1 is our preferred option because it aligns with authentication Model 1 (retailer provided) and because from a customer experience viewpoint it makes sense that retailers engage with the customer as they have the pre-existing relationship with the customer. If AEMO delivers the dashboard (under Option 2) this would introduce a party that a customer has never dealt with and potentially raise questions as to why another party is dealing with data that relates to their energy plan.

EnergyAustralia understands that Option 3 involves retailers still providing the dashboard to provide the authorisation function but that the difference is that a new data set would exist which would consist of information gathered from the authorisation process.<sup>22</sup> Specifically, this information would be: when authorisation was provided, the relevant period of the authorisation, and information about whether the authorisation is current etc. AEMO is proposed as the Data Holder for this new data set.

We understand that this data set might not include any personal information as the relevant identifier would be the NMI, so there should be limited additional privacy risk. However, the benefits of having AEMO retain this data as a Data Holder are unclear (retailers could retain this data instead, so it would involve duplication and this would create risks and, presumably, additional costs). The ACCC has noted that this new data set could drive standardisation in authorisation dashboards, but it is also unclear why the energy sector should adopt a different approach to authorisation, compared to banking. We would welcome more information on Option 3 and the reasons behind it in another consultation paper.

## 6. Ensuring authentication and authorisation is current

EnergyAustralia emphasises that whichever Authentication Model and Authorisation Option is chosen, it must ensure that authentication and authorisation is current. Ensuring authentication and authorisation is up to date is particularly complicated where consent and authorisation is provided to apply for a period of time (up to 12 months under the Current CDR Rules). The following issues will require more consideration by the ACCC:

- Where an account holder including Joint Account Holders, changes to a different person, consent, authentication, and authorisation would need to be obtained again.
- Where a household switches retailer and a different person signs up as the account holder, authentication and authorisation would need to be completed again with the current account holder.
- Authorisation for 12 months could theoretically apply across a period where the customer changes retailer (and there is no change to the account holder), and this enduring authorisation would need to be presented to the customer on the current retailer's dashboard. This could potentially be a confusing customer experience, where an authorisation provided to one retailer could be reflected in a different (current) retailer's dashboard. We suggest that Customer Experience testing be undertaken to understand any negative customer experience that could result from this approach.
- Where an ADR is replicating CDR data in the same form as it was received from Data Holders (for example presenting real time Metering Data in a customer dashboard), it could arguably warrant a higher level of authentication or authorisation.
- As noted above in Section 3 Eligible consumers, Joint Account Holders should be individually authenticated for the purposes of the CDR. Additionally, real time updates will be required to ensure that up to date information is shared among CDR participants in relation to joint accounts.

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<sup>22</sup> Under Rule 1.15(3) of the Current CDR Rules

## 7. Internal Dispute Resolution

Dispute resolution for the CDR in the energy sector, is complicated by the multiple CDR participants that will hold, transfer and use CDR data. We look forward to benefiting from the lessons learnt in the banking experience regarding handling of customer disputes when it may not be immediately clear where the root cause of the issue lies. The presence of a gateway for the energy CDR adds another key party which could further complicate the resolution of customer complaints.

CDR Rules requiring internal dispute resolution should apply to AEMO in their capacity as the gateway, and as a Data Holder for data sets held by AEMO, even where AEMO does not have a direct customer facing role. This is because AEMO may need to field customer complaints and deal with disputes where a customer complaint issue has been caused by a failure of AEMO's processes and systems. Importantly, AEMO are the Data Holder for Meter Data and this is data this could easily be a focus of a dispute.

To provide one central point of engagement for customers, retailers could be the first point of contact for customer complaints, but AEMO should be able to field those complaints once they are referred to AEMO. It will be difficult for a customer to build trust in a CDR regime, where customers cannot directly interact and resolve their complaint with a key party in the CDR data ecosystem.

In relation to the Internal Dispute Resolution requirements that should apply to Data Holders, we submit that the current IDR requirements that apply to energy retailers (under the National Energy Retail Law (NERL) and Energy Retail Code (Vic) (ERC)) should apply under the CDR Rules.

- From a policy perspective, retailers are already storing and managing Customer Data and other energy data now. Retailers would already handle complaints about mismanagement of energy data and complaints about failures to meet current obligations around providing Metering Data and Billing Data. For example, under the NERR, rule 56A requires an energy retailer to provide energy consumption data. Billing Data will be provided by energy retailers under both energy regulation and the CDR. From a policy standpoint, it makes little sense to apply different IDR requirements based on disclosing Billing Data under energy regulations as opposed to disclosing it under the CDR.
- From an operational perspective, it would also be inefficient and confusing for teams to administer two sets of IDR process with potentially different timelines and customer notices for both CDR data and non-CDR information.

The ACCC is seeking views as to whether the additional requirements in Regulatory Guide 165 (that go beyond AS/ISO 10002-2006 and AS/NZS 10002:2014) should apply under the CDR for energy. In addition to the reasons above opposing two sets of standards and processes, we note that the requirements in Regulatory Guide 165 were developed in response to the challenges around complaint handling and dispute resolution in the financial sector. It would be inappropriate to impose these requirements on the energy sector where the energy sector has not shown any systemic failings in handing customer complaints and disputes.

If the CDR were to take the approach of adopting IDR requirements to apply economy-wide and across sectors, it should apply the Australian Standards (which the NERL and ERC requirements are based on).

## 8. Phased implementation

The ACCC is seeking views on a phased implementation based on retailers and datasets.

### Phased implementation by retailer tranches

In our view, all retailers that will be subject to the CDR (except for exempt retailers) should have the same implementation date.

The discussion in the ACCC's Paper on phasing in different retailers in two tranches focusses on the ability of different retailers to manage CDR obligations. We contend that smaller retailers might be more agile in responding to regulatory change, where they do not have the same issues that apply with large IT systems. We emphasise that all retailers will face challenges in delivering CDR obligations, particularly in the current context of:

- lower energy retailer profits. For H1 2020, EnergyAustralia's parent company reported that our retail business is operating at a loss in an environment of retail price regulation, higher energy purchasing costs, strong competition, bad debt provisions, and a 3% decline in customer account numbers and demand.<sup>23</sup> The 2020 interim report, indicated that challenging retail market conditions are expected to continue as the economy emerges from COVID-19 restrictions. The level of customer hardship, the speed of demand recovery, the intensity of retail competition and the longer-term outlook for price regulation will all have significant impact on margins for our retail business;<sup>24</sup>
- the difficulties in managing very large technological change in a pandemic environment; and
- implementation of many other regulatory changes at the same time.

All retailers should be given sufficient time to implement the CDR. To enable testing, the ACCC could permit energy retailers to opt in earlier than the implementation date, if this is possible.

If the ACCC were to adopt a two tranche approach to implementation, this would be a somewhat unusual step for the energy sector which has a history of implementing many significant changes across all industry participants at the same time. There are also major regulatory changes in the pipeline for the next 2-3 years which require a large amount of IT system change such as five minute settlement, global settlement, and wholesale demand response. None of these provide for a later implementation date for some retailers.

Requiring implementation by only some retailers in a first tranche essentially places those retailers at a competitive disadvantage, by having to go through the effort and cost of implementation (including dealing with teething problems) and by exposing their data to competitors possibly up to a year earlier than when those competitors will have to do the same. Additionally, customers who are with retailers in tranche 2 will have a delayed implementation date for the CDR will effectively not benefit from being able to share their data with ADRs, until their retailer implements the CDR.

In view of the above, we consider all retailers should have the same implementation date. However, as a second position, we consider that Option 3 (largest 10 retailers) is our next preferred option. According to data collected by the AER, the largest 10 retailers for residential customers, will capture at least 94% of the residential market, including all the local incumbents (Aurora, ActewAGL and Ergon) and significant vertically integrated Tier 2 retailers, Red Energy/Lumo, Simply Energy, and Alinta Energy.<sup>25</sup>

### Phased implementation by data sets

We agree with the ACCC's proposal to first implement the CDR for the energy sector for Generic Product Data. It is appropriate for these data sets to be in the very first stage of the CDR as these data sets exist already and are held by the AER and DELWP. The same can be said for NMI Standing Data, Metering Data and DER register data, but we would encourage the ACCC to ensure that there is adequate time for retailers to put in place the authentication and authorisation function that will be required for these data sets. For this reason, the ACCC may find it appropriate to phase in the data sets in three stages:

- Stage 1, Generic Product Data
- Stage 2, NMI Standing Data, Metering Data, and DER register data

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23 As reported by the Australian Financial Review (available here: <https://www.afr.com/companies/energy/clp-re-commits-to-energyaustralia-amid-challenges-20200803-p55hxo> ). Also see [https://www.clpgroup.com/en/Investors-Information-site/Documents/Financial%20Report%20PDF/e\\_2020%20Interim%20Report.pdf](https://www.clpgroup.com/en/Investors-Information-site/Documents/Financial%20Report%20PDF/e_2020%20Interim%20Report.pdf)

24 See [https://www.clpgroup.com/en/Investors-Information-site/Documents/Financial%20Report%20PDF/e\\_2020%20Interim%20Report.pdf](https://www.clpgroup.com/en/Investors-Information-site/Documents/Financial%20Report%20PDF/e_2020%20Interim%20Report.pdf) , pp. 18 and 19.

25 Calculated from AER, *Retail energy market performance update for Quarter 3, 2019-2020*, Schedule 2, Types of Contracts (available here: <https://www.aer.gov.au/retail-markets/performance-reporting/retail-energy-market-performance-update-for-quarter-3-2019-20>)

- Stage 3, remaining data held by energy retailers.

### **Implementation of CDR in broader change context**

Implementation planning by AEMO is also relevant to determining the implementation timeframes for the CDR. We understand that the earliest date for CDR implementation for retailers is mid-2022. It is important that if there are delays in the ACCC's decision on the final CDR rules, or if there are delays to five minute settlement, wholesale demand response and global settlement, that the implementation date should be moved to a later date. These are very large changes that impact AEMO's market systems and they should be implemented before the CDR. The lessons learned from previous energy market-wide implementations is that these dates should be movable but not be so flexible that they don't present a firm target to organisations obligated to implement successfully.

### **Exempt retailers**

EnergyAustralia accepts that some very small retailers will not have the scale to implement the CDR data sharing obligations, and their small customer bases would mean that only a small proportion of customers will not benefit from the CDR. We also appreciate that imposing the CDR on retailers with very small customer bases could deter new entry to the retail energy market. By exempting new entrants from the CDR, those businesses would avoid the regulatory cost of the CDR until their customer base reaches a certain threshold.

We therefore agree with exempting retailers with very small customer bases from the data sharing obligations that apply to Data Holders under the CDR. There are precedents for these types of exemptions. For example, under the current South Australian Retail Energy Efficiency Scheme, retailers with 5,000 or less residential electricity customers; or 5,000 or less residential gas customers are excluded from the requirements; or if their electricity or gas purchases exceed a certain amount (where the amount reflects the average energy used by around 5,000 average South Australian households). The purchases threshold ensures that the threshold will apply equitably for retailers that mainly sell to small-to-medium businesses which might mean they have fewer customers but would still be captured if those customers consume to the same amount.

A similar customer or account threshold could be utilised for the CDR. We recommend that the ACCC carefully consider this threshold and strike the appropriate balance between retailer scale/detering new entry and extending the CDR to ensure that more customers benefit from the CDR to the greatest possible extent. The small retailer threshold for CDR, should not apply to a small retail arm of a significantly sized energy retailer or other large organisation (whether a retailer or not). A large company with a small retail energy business is unlikely to face the same challenges or deterrents as a small, standalone energy retailer.

## **9. Accreditation**

### **Tiered accreditation**

Consistent with a MVP approach to the initial rollout of the CDR for the energy sector, we support only one level of accreditation at the unrestricted level with a review of this approach in a later iteration of the CDR. An unrestricted level of accreditation should permit persons to receive all energy data, as well as banking data.

In our view, energy data is sensitive data. This is particularly the case when considering Metering Data and information about the customer. As noted above, in a customer survey, EnergyAustralia found that customers comfort in sharing data decreased when it was explained that energy data includes Metering Data which could indicate when they were and were not at home. There are very few data sets across the economy which would indicate the lifestyle of a consumer in this way.

This customer view on the sensitivity of Metering Data would in itself provide a reason to retain an unrestricted level of accreditation for at least Metering Data. Customer Data and Billing Data should also be considered equally sensitive.

- Customer Data where it contains life support status should be considered sensitive data because it is health information, to which greater protections already apply.
- Billing Data, where it includes bank account data, would also be sensitive, particularly when combined with other customer details.

We also question the purpose of applying a lower level of accreditation for less sensitive energy data such as NMI Standing Data and DER register data. Similar to the points made on the Resident Model, we find that these less sensitive data sets will typically be used in conjunction with sensitive data (especially Metering Data). As sensitive data sets would require an unrestricted level of accreditation, this would mean an ADR would need to meet this higher accreditation level anyway, and therefore negate the effect of imposing a lower tier of accreditation for some data sets.

### Streamlined accreditation

The ACCC is seeking views on whether it should allow for a streamlined accreditation process for energy Data Holders that wish to become ADRs. We consider that this might be possible where streamlined accreditation is aligned with other industry best practice standards such as NIST and ISO 27001, rather than the AESCSF.

### 10. Gateway

We broadly agree with the ACCC's statement that the role of the gateway is that it will function as a conduit for data provided by retailer Data Holders to ADRs, and that it should not hold and store the data it receives as the gateway except where required to facilitate its gateway function.

We accept that AEMO as gateway should provide the online service that is used by ADRs to make Consumer Data Requests, and we recognise that this would avoid the inefficiencies of requiring each energy retailer to individually provide this online service. EnergyAustralia also considers there are efficiencies in AEMO providing centralised reporting on matters it has visibility over under section 9.3 of the Current CDR Rules (which Data Holders report in the banking sector CDR).

In terms of additional requirements that should be imposed on the gateway, the same information security standards that apply to an ADR should apply to the gateway to ensure that the CDR data ecosystem as a whole maintains the same level of security.

### 11. Estimating the regulatory costs of CDR in energy

EnergyAustralia is only able to provide rough estimates of costs at this time. We also note that other retailer costs may vary significantly depending on their data source systems.

**[Confidential:]**

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