



OUT19/3978

Sarah Court
Commissioner
Australian Competition and Consumer Commission
By email: accc-cdr@accc.gov.au

Dear Ms Court

'Consumer Data Right in Energy' consultation paper

The Office of the NSW Small Business Commissioner (OSBC) is focused on supporting and improving the operating environment for small businesses throughout NSW. The OSBC advocates on behalf of small businesses, provides mediation and dispute resolution services, speaks up for small business within government, and makes it easier to do business through policy harmonisation and reform.

With small businesses in NSW and across Australia severely affected by high energy costs,¹ electricity and gas pricing has emerged as a standing issue for the OSBC's Advocacy Unit. The difficulty that small operators face in securing value in the energy market is a recurring theme of our engagements with small business. Despite energy retailers providing a disproportionately large number of small businesses with uncompetitive terms of supply,² many operators find changing their deal both confusing and time-consuming.³ Moreover, large businesses holding customer datasets are largely unwilling to share them with third parties – and current regulation provides little support to clients in this regard.⁴

The OSBC therefore welcomes the development of the consumer data right (CDR) in energy. In supporting increased data sharing, a well-designed energy CDR should empower small businesses to understand and access energy plans that satisfy their needs - as well as drive increased competition within the energy sector.⁵ We are pleased to provide the following comments and recommendations to the ACCC's consultation paper regarding the design of the scheme.

¹ Australian Competition and Consumer Commission (2018), '[Restoring electricity affordability and Australia's competitive advantage – Final report](#)', pp. 5-6; Council of Small Business Organisations Australia (2018), '[COSBOA energy bill shock: Future proofing small business](#)', p. 10

² Australian Competition and Consumer Commission (2018), '[Restoring electricity affordability and Australia's competitive advantage – Final report](#)', p. 338; Council of Small Business Organisations Australia (2018), '[COSBOA energy bill shock: Future proofing small business](#)', p. 11

³ Ibid.

⁴ Esayas, S.Y. & Daly, A. (2018), '[The Proposed Australian Consumer Data Right: A European Comparison](#)', *European Competition and Regulatory Law Review*, vol 2, no 3, pp. 10, 16

⁵ Australian Senate Economics Legislation Committee (2019), '[Report – Treasury Laws Amendment \(Consumer Data Right\) Bill 2019 \[Provisions\]](#)', pp. 9-10; Esayas, S.Y. & Daly, A. (2018), '[The Proposed Australian Consumer Data Right: A European Comparison](#)', *European Competition and Regulatory Law Review*, vol 2, no 3, p. 7

‘What are the advantages and disadvantages of each of the data access models?’

Given the acute barriers that small businesses currently face in accessing data, it is imperative that the data access model around which the CDR in energy is built supports simple and efficient access.

Of the access models explored in the consultation paper, the OSBC is firmly of the view that model one, with the Australian Energy Market Operator (AEMO) as data holder and distributor, is most likely to support accessibility for small business. Engaging with small businesses across the breadth of the NSW economy, we consistently hear that the experience of engaging with government should be as streamlined as possible. A single touch point and timely outcomes are critical to realising these aims; The OSBC’s own policy formulation work, occurring under the ‘*Easy to do Business*’ banner, delivers precisely these ends for small businesses looking to start up in targeted industries.⁶

The OSBC recognises that, from a customer perspective, model two - AEMO as ‘gateway’ to data held by energy sector businesses – is likely to deliver a similar experience to model one. That is, both models would provide that all data made available under the CDR is accessed through AEMO, as sole distributor to accredited recipients.⁷ However, given the relative complexity of data flows required under model two,⁸ we are somewhat concerned that it would be less effective at delivering information to recipients in a timely manner.

We further suggest that model three - the paper’s ‘economy-wide’ model⁹ - would plainly represent the most difficulty experience from the customer perspective. The need to approach multiple data holders individually would represent a major barrier for time poor small businesses - and thus to realising the CDR’s prospective benefits at all. Indeed, small businesses are already empowered to obtain metering and billing data from individual holders.¹⁰ We thus submit that model three would represent no more than a minimal improvement on the dysfunction of the status quo.

Recommendation 1: The data access model applied to the consumer data right in energy should position AEMO as data holder and distributor.

‘Are there any other relevant considerations which the ACCC should use to determine a preferred model for consumers to access energy data under the CDR?’

The OSBC offers the following in relation to general questions of design and implementation of the CDR in energy:

⁶ See for example, Office of the NSW Small Business Commissioner (2018), ‘[Easy to do Business: Streamlining business approvals](#)’

⁷ Consultation paper, pp. 26, 29

⁸ Consultation paper, pp. 24-28

⁹ Consultation paper, p. 29

¹⁰ Consultation paper, pp. 13-15

Datasets covered

The consultation paper considers the datasets that may be made available under the energy CDR. Some data – such as individually tailored data about a customer’s energy deal and usage¹¹ - does appear to be fundamental to the efficacy of the scheme, while other datasets appear peripheral. Nonetheless, making a wider range of data available can only enhance a smaller business’ understanding of their own needs and options, and thus the scheme’s potential utility.

The OSBC acknowledges that Treasury intends to conduct a dedicated consultation regarding this matter.¹² We anticipate providing more detailed commentary and precise recommendations on this matter at that point in time.

Education and awareness

In our submission, the success of the Consumer Data Right will hinge, to a large extent, on the extent to which small businesses and individuals are made aware of its existence, benefits, and function. Clearly, a scheme of impeccable design will still deliver no public benefit if the intended users do not engage with it.

The experience of Government-run energy comparison services suggests that user awareness of and engagement with the energy CDR should not be assumed. The ACCC’s Retail Electricity Pricing Inquiry reported that many small electricity consumers may not be aware of such resources - and recommended ongoing funding as a necessity to address this issue.¹³ Likewise, the Australian Energy Market Commission recently came to the same conclusion, and made the same recommendation, regarding the Commonwealth Government’s ‘*Energy Made Easy*’ website specifically.¹⁴

In light of these considerations, we are concerned that the ACCC has budgeted only \$100,000 to \$200,000 for public communications concerning the Consumer Data Right as a whole.¹⁵ It is vital that the CDR in energy (and in other sectors) is accompanied by an appropriately resourced awareness campaign, rolled out both prior to and following implementation. This should outline the benefits of the CDR – as well as allay potential concerns regarding data security for consumers that might rely upon the right.¹⁶ We question whether this is achievable under the constraints of the meagre budget reported, and suggest the ACCC be provided with additional resourcing for an expanded campaign.

Recommendation 2: The Commonwealth should provide the ACCC with additional resourcing to increase awareness and understanding of the CDR in energy.

¹¹ Consultation paper, p. 22

¹² Consultation paper, p. 21

¹³ Australian Competition and Consumer Commission (2018), ‘[Restoring electricity affordability and Australia’s competitive advantage – Final report](#)’, pp. 286, 340

¹⁴ Australian Energy Market Commission (2017), ‘[2017 AEMC retail energy competition review](#)’, p. 17

¹⁵ Australian Senate Economics Legislation Committee (2019), ‘[Report – Treasury Laws Amendment \(Consumer Data Right\) Bill 2019 \[Provisions\]](#)’, p. 40

¹⁶ Henry, D.A. et al (2018), ‘[Access to routinely collected data for population health research](#)’, Australian and New Zealand Journal of Public Health’, vol 42, no 5, p. 3



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Next steps

The OSBC is committed to supporting design and implementation of the Consumer Data Right in a manner that maximises its prospective benefits for small business. We understand that this consultation is one of many relating to the CDR that is scheduled to take place in the immediate term. We therefore anticipate further engagement with the Commonwealth concerning the CDR – both in relation to the energy sector and elsewhere - in the near future.

To discuss this submission, please contact Thomas Mortimer, Senior Advisor, Advocacy and Strategic Projects, on (02) 8222 4196 or thomas.mortimer@smallbusiness.nsw.gov.au.

Yours sincerely

A handwritten signature in black ink that reads 'Robyn A Hobbs'. The signature is written over a circular scribble and extends downwards into the printed name below.

Robyn Hobbs OAM
NSW Small Business Commissioner
4 April 2019