

27 April 2020  
Secretariat  
Inquiry into Future Direction for Consumer Data Right  
The Treasury  
Langton Crescent  
Parkes ACT 2600

By email: [data@treasury.gov.au](mailto:data@treasury.gov.au)

Dear Secretariat

### **AEMC submission on the Inquiry into Future Directions for the Consumer Data Right: Issues Paper**

The Australian Energy Market Commission (AEMC or Commission) welcomes the opportunity to make a submission to the issues paper regarding the future direction for the Consumer Data Right (CDR). The Commission considers the CDR to be valuable and could bring positive changes to the energy sector.

#### **Explicit Informed Consent in the Energy Retail Market**

The Commission is currently reviewing how digitalisation is impacting the retail electricity market focussing on, among other provisions, Explicit Informed Consent (EIC) within the National Energy Retail Law and Rules. EIC is a key consumer protection designed to protect customers and make sure that any new contracts in their name or changes to their contract are only made when they specifically agree to it. The protection was designed so that customers understood their contracts and therefore can only be provided directly by the customer.

The combination of more granular data provided by advanced metering and increases in retail competition has led to more diverse and complex energy offers being available to consumers. While the increase in the range of offers provides consumers with a greater set of options to meet their needs, it also increases complexity and can be difficult for consumers to navigate the market on their own. Due to these changes in the market, there is potentially significant benefit for EIC to be granted by proxy to third parties that act on behalf of the customer seeking more competitive contracts to suit their energy needs. We consider that EIC and the CDR are directly linked and should be considered in concert.

A key aspect of the inquiry therefore centres around the authorisation procedures that will enable third parties to access customer data and use it to provide services. Customers must be able to clearly understand what they are requesting, from who they will receive offers, and authorisation processes should be clear to avoid confusing customers – for example, a customer may be confused if they have already given their consent to the third party service provider and later receive authorisation requests directly from accredited data recipients.

#### **Importance of 'write' access in energy**

As the Issues Paper notes, by giving consumers more control over their data, the Consumer Data Right has the potential to positively impact customers. The Commission notes that within the energy sector customers already have access to their data ('read' access) and with technological advancements and digitalisation within the sector, data is becoming increasingly dynamic and accessible. Therefore, the most valuable development that the CDR could bring to the energy sector is the introduction of 'write' access that would allow accredited third parties to apply for, manage and change products on behalf of the customer with their consent.

## Comparator sites in the Retail Energy Market

Currently, most private energy comparison sites work on commissions delivered through pre-existing arrangements with energy retailers. As a result of the commission model, the retail contracts recommended through these sites are often based on which retailer pays the highest commission and therefore are not always in the best interest of consumers. The Commission and the ACCC have recommended the regulation of commission-based comparator sites to increase transparency regarding the services that these sites provide to customers.

In contrast to the comparison sites that operate on a commission, there are also government-run comparison websites that do not have commercial arrangements in place and present consumers with a number of the best offers available to them in their region. These include the Australian Energy Regulator's site *Energy Made Easy*, as well as state government sites, such as *NSW Energy Switch*. However, these sites, do not have the authority to switch consumers on their behalf with the retailer, even where the consumer is willing, due to the current EIC requirements. Several trials for comparator sites that act on behalf of customers were commissioned over the last few years, including NSW Energy Switch and CHOICE's Transformer, however these projects have been unable to switch customers due to complications arising from the strict application of EIC.

## Consumer protections needed for 'write' access in energy

The Commission considers that the introduction of 'write' access within CDR would have substantial benefits within the retail energy market. However, given the current practices of commercial energy comparison sites there is a need for checks and balances so 'write' access is only given to those that act on behalf of and in the best interest of consumers. The Commission therefore recommends that the introduction of 'write' access should be accompanied by requirements for any party seeking write access within the CDR for energy to be acting in the best interests of consumers. The Commission understands that there are a number of mechanisms that could be used to give effect to this and would be willing to work with the Treasury and ACCC towards developing an effective solution for how this could be achieved. This should be additional to the current suite of data security requirements that allow accreditation for 'read' access.

The Commission has appreciated being part of the CDR process and looks forward to continuing to work with the Treasury and ACCC to develop the energy CDR and to bring about better outcomes for energy retail customers. We ask to be included in any rule or law change development to work required for the CDR so that we are able to work together towards fastest implementation possible in the energy sector, while ensuring appropriate consumer protections are in place.

I would be happy to provide more information on any matters that may assist the Secretariat in its deliberations. In the meantime, please do not hesitate to contact Michael Bradley on (02) 8296 7868.

Yours sincerely



Benn Barr  
Chief Executive