

EXPOSURE DRAFT EXPLANATORY MATERIALS

Issued by authority of the Minister for Superannuation, Financial Services and the Digital Economy

Competition and Consumer Act 2010

Competition and Consumer (Consumer Data Right) Amendment Rules (No. 2) 2021

Section 56BA of the *Competition and Consumer Act 2010* (the Act) provides that the Minister may, by legislative instrument, make consumer data rules for designated sectors in accordance with Division 2 of Part IVD of the Act.

The Consumer Data Right (CDR) is an economy-wide regime which gives consumers access to and control over their data, and the ability to obtain products and services from accredited persons using CDR data.

The *Competition and Consumer (Consumer Data Right) Amendment Rules (No. 2) 2021* (the Rules) amends the *Competition and Consumer (Consumer Data Right) Rules 2020* (the CDR Rules) to give effect to the Government's intention to implement the CDR in the energy sector.

The *Consumer Data Right (Energy Sector) Designation 2020* (the designation instrument for the energy sector) specifies the energy data holders and data sets to which CDR applies. The designation instrument covers consumer data sets relating to the sale or supply of electricity, including where electricity is bundled with gas. Coverage of data sets about products is broader and includes electricity, gas and dual fuel plans.

In April 2021 the Treasury and Data Standards Body released a design paper for consultation, relating to a peer-to-peer data access model for the energy sector. These exposure draft Rules have been developed taking views expressed by stakeholders during the design process into account. The Rules implement CDR in the energy sector by establishing a peer-to-peer data access model for the energy sector and making energy sector specific rules and other minor amendments.

The Rules implement CDR in the energy sector. Schedule 1 establishes a peer-to-peer data access model for primary and secondary data holders who share responsibility for responding to consumer data requests. This model will initially be used in the energy sector, but may be applied to other sectors as appropriate. The model will be used in the energy sector to require a consumer's retailer to obtain the requested data that the Australian Energy Market Operator (AEMO) holds from AEMO in response to a request, with the retailer assuming responsibility for disclosing all requested CDR data to the accredited data recipient (ADR).

Schedule 2 makes rules that relate specifically to the energy sector including: the eligibility requirements for energy consumers to be able to share CDR data; defining the energy data sets that may be shared; aligning the internal dispute resolution (IDR) requirements for data holders for CDR in energy with existing energy sector IDR requirements under national energy legislation; and a staged implementation of CDR in the energy sector.

Schedule 3 makes minor amendments to remove anomalies and ensure the CDR Rules operate as intended. In particular, Schedule 3 amends the Rules with respect to: the definition of an eligible consumer; external dispute resolution requirements for the energy sector; ongoing reporting obligations on ADIs; rules relating to data standards; and to make consequential amendments after the passage of changes to the Act.

Details of the Rules are set out in [Attachment A](#)

The Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Rules commence on the day after they are registered on the Federal Register of Legislation.

Details of the *Competition and Consumer (Consumer Data Right) Amendment (No.2) Rules 2021*

Section 1 – Name of the Rules

This section provides that the name of the Rules is the *Competition and Consumer (Consumer Data Right) Amendment Rules (No.2) 2021* (the Rules).

Section 2 – Commencement

The Rules commence the day after they are registered on the Federal Register of Legislation.

Section 3 – Authority

The Rules are made under the *Competition and Consumer Act 2010* (the Act).

Section 4 – Schedules

This section provides that each instrument that is specified in the Schedules to this instrument will be amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

Schedule 1 – Amendments relating to P2P data access

Background

Schedule 1 to the Rules gives effect to the Government’s decision to establish a peer-to-peer (P2P) data access model for the energy sector. The Rules authorise the disclosure of CDR data directly to a data holder that receives a consumer data request from an accredited data recipient (the primary data holder) by another data holder (the secondary data holder). Previously under the Rules, CDR data could only be disclosed from a data holder to an accredited person or from an accredited data recipient to another accredited data recipient. This data sharing model is intended to be available for use across the economy but may be more particularly suited to certain sectors. The Rules provide for P2P data access to be ‘turned on’ for particular sectors if it is appropriate.

A consumer data request may cover data that is collected and held by the secondary data holder (for the energy sector, AEMO) instead of the primary data holder with whom the consumer has a relationship. For this reason, the Rules facilitate access to the data collected and held by the secondary data holder. The primary and secondary data holders will then jointly share responsibility for dealing with consumer data requests that relate to data held by both data holders.

The data access model determines who is responsible for the relevant CDR obligations to enable data sharing for consumers. Primary data holders will be subject to the requirements of the Act, CDR rules, data standards and privacy safeguards. These include obligations to protect the privacy of consumer’s data, which are subject

to civil penalty provisions and comprehensive record keeping and reporting obligations, including at a technical level to monitor performance metrics such as timing of responses to requests as specified in the data standards.

These mechanisms enable a consumer to utilise the CDR ecosystem in a consistent manner to benefit from the sharing of data and provide sufficient oversight for the Australian Competition and Consumer Commission (ACCC) and Office of the Information Commissioner (OAIC) to undertake enforcement activities if necessary.

The P2P model is appropriate for the energy sector because responsibility for CDR data needs to be shared between an energy retailer (who has a direct relationship with the consumer and is the 'primary data holder') and AEMO (who has no direct relationship with the consumer and is the 'secondary data holder').

In the energy sector, for consumer data requests that relate to both retailer held data sets (customer data, billing data and tailored tariff data) and AEMO held data sets (metering data, National Metering Identifier (NMI) standing data and distributed energy resources (DER) register data), AEMO will be authorised to disclose the relevant data that it holds to the retailer when requested, for subsequent sharing with the ADR.

In summary, the data flow in the P2P model involves:

- the consumer consenting to an ADR obtaining their data;
- the ADR contacting the primary data holder seeking access to the consumer's data;
- the primary data holder authenticating the ADR using the CDR Register;
- the consumer being redirected to the primary data holder's authentication and authorisation service to authorise the primary data holder to disclose their data to the ADR;
- the ADR requesting the specific set of data that is covered by the authorisation;
- the primary data holder requesting the relevant data, covered by the authorisation, from the secondary data holder;
- the secondary data holder providing the requested data to the primary data holder; and
- the primary data holder sharing the consumer's data (from both its holdings and the data obtained from the secondary data holder) with the ADR.

From the point of view of a CDR consumer, the primary data holder is treated as if it were the relevant data holder for all the CDR data relevant to the request. The consumer data requests for the data are made to it; authorisations for disclosure are made to it; it is the entity that discloses or refuses to disclose the requested data; any complaints are made to it; and it keeps the records that the CDR consumer can request.

Applying the P2P model in a sector

The Rules amend rule 1.7 to introduce the concepts of ‘shared responsibility data’ (‘SR data’), ‘SR data request’, ‘primary data holder’ and ‘secondary data holder’.

Rule 1.7 states:

- that ‘SR data’ will have the meaning set out in a relevant sector Schedule, if P2P data sharing involving primary and secondary data holders is turned on for that sector;
- that ‘SR data request’ means a consumer data request for CDR data that is, or includes, SR data of the CDR consumer; and
- that ‘primary data holders’ and ‘secondary data holders’ of SR data in a particular designated sector will be specified in the relevant sector Schedule.

These definitions will apply to any sector where the P2P data access model involving primary and secondary data holders applies.

Where CDR data for which there is a CDR consumer in a designated sector is held by one data holder, but it is more practical for the consumer to make the request to a different data holder that the consumer has a relationship with, such CDR data may be specified as SR data in the relevant sector Schedule.

Where a sector has primary and secondary data holders, the relevant data holders for SR data will be specified in the relevant sector Schedule.

For example, in the energy sector, clause 4.3 of Schedule 4 specifies that relevant retailers are primary data holders, and specifies AEMO data as SR data. This has the effect of designating AEMO as a secondary data holder for the energy sector.

Interactions between primary data holders and secondary data holders

Where data is specified as SR data in a relevant sector Schedule, Parts 3 and 4 of the CDR Rules are applied with the modifications set out in new Division 1.5.

Rule 1.20(1) provides that a primary data holder is required to provide an online service that enables them to respond to a consumer data request that involves data held by a secondary data holder.

Rules 1.22 and 1.23 provide that when a primary data holder receives a consumer data request, either directly from a consumer or from an accredited person, that involves SR data (an **SR data request**), the primary data holder is required to request the secondary data holder to disclose the relevant CDR data that it holds to the primary data holder, to enable it to disclose all of the requested CDR data in response to the request.

Rule 1.23(9) specifies that Rule 4.7 (refusal to disclose) applies as if the primary data holder were the data holder of any SR data covered by the SR data request. The consequence of such a refusal will be that the secondary data holder will not receive a request for SR data from the primary data holder.

To enable a P2P model to function, rule 1.22(4) authorises the secondary data holder to disclose the relevant CDR data to the primary data holder for the purpose of responding to a valid SR data request.

Rules 1.22(4) and (5), and rules 1.23(5) and (6) provide that when disclosing requested CDR data, the secondary holder must do so in accordance with the data standards, and if the secondary data holder does not disclose the requested CDR data to the primary data holder, it must notify the primary data holder of its refusal.

Where a secondary data holder does not disclose SR data requested under Part 3 or Part 4 of the CDR Rules, rules 1.22(7), 1.23(7), and 1.23(8) relieve the primary data holder of its obligation to disclose the SR data to a consumer or accredited person in response to a valid consumer data request.

Rule 1.20 provides that a secondary data holder is required to provide an online service that is able to receive and respond to requests from primary data holders for CDR data that it holds and conforms with the data standards.

Rule 1.25 provides that a primary data holder may request relevant information from a secondary data holder in relation to a consumer complaint or dispute made to the primary data holder that relates to an SR data request. In response to the request, the secondary data holder must provide the information, which may include the data previously disclosed, to the extent that it is reasonable to do so.

To give effect to the requirements of interactions between a primary data holder and a secondary data holder in CDR, the Rules insert rule 8.11(1)(a)(iii) to require data standards be made that govern the interactions between them.

Primary data holder's obligations

The primary data holder has several obligations under the P2P model including:

- providing the consumer dashboard under rule 1.15 (rule 1.21);
- only collecting, using, or disclosing SR data that it received from secondary data holders for the purpose of securely transmitting the data to an accredited person to fulfil a consumer data request (rule 1.24(1));
- deleting SR data in accordance with existing requirements, after it has responded to the request (rule 1.24(2)); and
- complying with section 56EG of the Act in relation to SR data it received from a secondary data holder (rule 7.3B).

Section 56EG of the Act requires accredited persons to destroy any unsolicited CDR data it receives from a CDR participant as soon as practicable. Rule 7.3B requires the primary data holder to comply with section 56EG of the Act as though it is an accredited data recipient of the SR data.

The obligation to delete SR data ensures that primary data holders cannot use their role in the P2P model to enrich or expand their own data holdings.

Reporting and record keeping

Rule 9.3(1) extends the obligation on data holders to keep and maintain records to cover:

- where the data holder is a primary data holder, any SR data requests and related responses from secondary data holders; and

- when the data holder is a secondary data holder, any SR data requests received from primary data holders and their responses to such requests, or where the request was refused, the reasons for the refusal.

Rule 9.4(1A) provides that a secondary data holder must prepare a report for each period that sets out the number of SR data requests received, and of those requests the number of times the data holder refused to disclose the SR data, the reasons for the refusal, and the number of times the data holder has relied on each of those reasons. The report must be in a form approved by the ACCC.

Rule 9.4(1A) is a civil penalty provision. The maximum civil penalty that may be imposed for a contravention of rule 9.4(1A) is \$50,000 for an individual and \$250,000 for a body corporate.

Schedule 2 – Amendments relating to the energy sector

Background

The Rules insert Schedule 4 to the CDR Rules containing matters relevant to the energy sector, including:

- a number of definitions that apply only in relation to the energy sector;
- that AEMO data in relation to a CDR consumer is subject to the P2P model;
- modification of Privacy Safeguard 13 relating to correction of CDR data as it applies to AEMO data;
- the circumstances in which CDR consumers are eligible in relation to requests for energy sector CDR data that relates to them;
- the CDR data sets in respect of which consumer data requests may be made; and
- the staged application of the CDR Rules to the energy sector.

The Rules also make amendments outside Schedule 4 that relate to energy.

Meaning of retailer

Clause 1.4 of Schedule 4 narrows the definition of retailer in the designation instrument so that it only captures a data holder of energy sector data that retails electricity to connection points in the National Electricity Market. The intention is that data holder obligations only apply to authorised or licensed retailers that operate through the wholesale electricity market, known as the National Electricity Market (NEM) and the on-selling activities of retailers with respect to customers in embedded networks are not captured.

Applying the P2P data sharing model to AEMO data

Clause 4.3 of Schedule 4 provides that AEMO data in relation to a CDR consumer is SR data, the relevant retailer is a primary data holder for the SR data and AEMO is the secondary data holder. The provision of the online service specified in rule 1.20(2) will be the extent of AEMO's requirements to provide online services and AEMO is not authorised to respond to requests from other CDR participants or CDR consumers.

The effect of specifying AEMO data as SR data is that the relevant retailer takes on the role of data holder as set out in Division 1.5 of the CDR Rules in relation to the AEMO data it holds. This means that consumer data requests and authorisations for

disclosure of the data are made to the retailer as it is also the entity that discloses or refuses to disclose the requested data. In addition, any complaints relating to consumer data requests are made to the retailer and it keeps the records relating to the data that the CDR consumer can request.

Clause 4.4 specifies that for the energy sector, retailers as primary data holders must always request any SR data to be used in responding to the request from AEMO, when responding to an SR data request under Part 3 or Part 4 of the Rules.

Application of the privacy safeguards

The Government is consulting on draft regulations, concurrently with the Rules, that will amend the *Competition and Consumer Regulations 2010* to exempt AEMO from obligations under four privacy safeguard provisions that apply to data holders under the Act, including in relation to data correction and, in circumstances where AEMO provides CDR data to a retailer, to apply the privacy safeguard obligations to the retailer in relation to that data as if the retailer were the data holder.

Clause 6.1 of Schedule 4 requires retailers to initiate the relevant correction procedures under the National Electricity Rules (NER) for NMI standing data and metering data and refer the correction request to the appropriate electricity distributor to action for DER register data. The retailer is required to provide the CDR consumer with an adequate level of information to explain what the retailer has done in response to the correction request. If it was not possible or appropriate for the retailer to take such actions, the retailer must explain why it was not possible or appropriate and outline the complaint mechanisms available.

Eligible CDR consumers in the energy sector

Rule 1.10B provides common economy-wide eligibility criteria that consumers must meet to be eligible under the CDR regime generally in addition to further criteria that sector Schedules can set for the relevant sector.

The Rules move common elements of CDR consumer eligibility from the banking sector Schedule into the main body of the CDR Rules. Where necessary, sectoral-specific eligibility criteria will be set out in the relevant sector Schedule.

These common eligibility criteria are consistent with the current operation of eligibility for the banking sector and do not affect its operation.

Where necessary, sectoral-specific eligibility criteria will be set out in the relevant sector Schedule.

Rule 1.10B provides that the economy-wide elements of eligibility are that a CDR consumer must:

- be an individual who is 18 years or older, or a non-individual, and
- be an account holder or secondary user for an account that is held with a data holder in relation to a sector that is open, and that has the characteristics (if any) specified in the sector schedule.

Clause 2.1 of Schedule 4 sets out additional consumer eligibility requirements for the energy sector. These are that the consumer must be a customer of a retailer in relation to an arrangement with the retailer that relates to one or more connection points or child connection points for which there is a financially responsible market participant in the NEM. This means that energy consumers, regardless of their size, will be

eligible to share their data under the CDR regime, provided they have an arrangement as described in clause 2.1.

Under the CDR Rules, a person must have account privileges in relation to an account with a data holder to be a secondary user for the account or manage secondary user instructions on the account (see rule 1.7(1)). Under clause 2.2 of Schedule 4, a person has *account privileges* in relation to an account with a retailer if they are able to make changes to the account and not merely make enquiries or view information.

Clause 2.3 of Schedule 4 provides that where a retailer receives a consumer data request on behalf of a CDR consumer, in accordance with rule 1.15:

- if the consumer has online access to the relevant account, the retailer must provide the consumer with a consumer dashboard; and
- if the consumer does not have online access to the account, the retailer must offer the consumer online access and a dashboard, and provide both if the consumer accepts.

Energy sector CDR data that may be accessed under the CDR Rules

The Rules define energy data sets with a broad descriptor of the data set and specifying minimum inclusions of key data. This approach allows flexibility for further refinement and specification of data sets in the standards. Schedule 4 defines the energy sector data sets that will be able to be shared.

For the energy sector, clause 1.3 of Schedule 4 provides details of the information included in the terms ‘customer data’, ‘account data’, ‘billing data’, ‘metering data’, ‘NMI standing data’, ‘DER register data’, ‘tailored tariff data’ and ‘product specific data’.

Part 3 of Schedule 4 also sets out what is meant by ‘required product data’, ‘voluntary product data’, ‘required consumer data’ and ‘voluntary consumer data’ in the energy sector.

Clause 3.1(1) provides that ‘required product data’ means CDR data for which there are no CDR consumers that:

- falls within a class of information specified in section 9 or section 10 of the designation instrument for the energy sector;
- is about certain characteristics of the product (such as the product’s eligibility criteria, price, terms and conditions, availability or performance);
- is product specific data, and
- is held by the Australian Energy Regulator (AER) or the Victorian agency for the purpose of operating websites that provide such information to the public.

Clause 3.1(2) provides that ‘voluntary product data’ means CDR data that is not ‘required product data’ but is energy sector data and product specific data in relation to a plan offered by or on behalf of the data holder.

Clause 3.2(1) provides that ‘required consumer data’ means CDR data for which there are one or more CDR consumers that:

- is energy sector data;

- is any of the things listed in sub clause 3.2(1)(b);
- relates to a time at which an account holder for the account was associated with the premises to which the request relates; and
- is held in a digital form.

‘Voluntary consumer data’ in the energy sector means CDR data for which there are one or more CDR consumers that is energy sector data, relates to a time at which an account holder for the account was associated with the premises to which the request relates and is not ‘required consumer data’.

Some data is explicitly excluded from the CDR regime under the CDR Rules.

For the purposes of the energy sector, clause 3.2(3) provides that data is neither required or voluntary consumer data unless:

- it is account data, billing data, tailored tariff data or AEMO data, in relation to an account that is held by a single person or a partnership or joint account, and in the case of partnership and joint accounts, all account holders are at least 18; or
- in relation to a consumer data request, it is ‘customer data’ (personally identifying information: see clause 1.3) for the person who made the request (as opposed to another account holder or secondary user), or is AEMO data in relation to premises covered by the relevant arrangement at the time to which the data relates.

Also, energy sector data is not required or voluntary consumer data if it relates to a data holder that is not a retailer or AEMO (clause 3.2(4)). The effect of this is that if an accredited person becomes a data holder of energy sector CDR data because of section 56AJ(3) of the Act, they will not need to respond to a consumer data request for that data. Normally, under section 56AJ(3) a person who has CDR data disclosed to them other than from the operation of the CDR rules is a data holder of that data if they are an accredited data recipient of other CDR data, and would consequently be required to respond to a consumer data request for that data. In the energy sector it is not expected that a person who becomes and accredited person would meet the requirements of 56AJ(3), unless they are already a retailer.

Clauses 3.2(5) and (6) create exceptions to required consumer data for CDR data on open and closed accounts respectively if that data relates to a transaction or event from more than 2 years prior. The effect of these exceptions is that any such data would be ‘voluntary consumer data’. Requiring up to two years of CDR data to be shared facilitates energy use cases such as comparison and switching and is in line with consumers’ current ability to obtain metering and billing data from their retailer under national energy regulation.

For closed accounts, clause 3.2(6) also excludes data within the 2 year time limit that isn’t AEMO metering data, or certain CDR data held by retailers about billing, account data and tailored tariff data. CDR data sharing for a closed account may arise where a CDR consumer has multiple energy accounts with a retailer, where each of the accounts relate to one connection point and the consumer has closed on such an account but still has at least one other active account with the retailer. The rules do not require a data holder to share CDR data that relates to a closed account if the CDR consumer is not an eligible consumer in relation to the data holder.

Staged application of the CDR Rules to the energy sector

Part 8 of Schedule 4 outlines how the CDR Rules will apply across the energy sector. Application of the CDR Rules to the energy sector will be staged and will be implemented in two broad tranches.

Certain participants must comply with CDR obligations from the tranche 1 application date, which is proposed to be 1 October 2022. These participants are:

- the AER, in relation to product data requests only (clause 8.3(2));
- the following retailers, in relation to sharing consumer data with accredited persons (clauses 8.2 and 8.5(2)):
 - The AGL Energy Group;
 - The Origin Energy Group; and
 - The Energy Australia Group;
- AEMO, in relation to consumer data requests from the three retailers listed above to share consumer data with accredited persons (clause 8.5(3)).

Other participants must comply with CDR obligations from the tranche 2 application date, which is proposed to be 12 months after the commencement of tranche 1, on 1 October 2023. These participants are:

- retailers, other than the three retailers listed above, in relation to sharing consumer data with accredited persons (clause 8.5(4));
- AEMO, in relation to the remaining retailers, in relation to sharing consumer data with accredited persons.

Tranche 1 participants must comply with CDR obligations imposed on AEMO or a retailer in relation to CDR consumers that are not individuals, partnerships, nominated representatives, or secondary users, in relation to consumer data requests, from 1 October 2022. Tranche 2 participants will be required to comply with these obligations on 1 October 2023 (clause 8.7).

Subject to the agreement of the Victorian Government, the Victorian Department of Environment, Land, Water and Planning (DELWP) will participate as a data holder of product data only, at a date to be specified by the Minister in a notifiable instrument (clauses 8.1 and 8.3(3)).

Consistent with the banking sector, the Rules also enable other retailers (who are not the three largest retailers), if they are ready to share CDR data early, to come into the regime voluntarily at an appropriate time after 1 October 2022. If a retailer chooses to be a part of CDR, they must comply with all relevant CDR obligations (clause 8.6).

Clause 8.4 provides that CDR participants in the energy sector will not have obligations under Part 3 of the Rules on commencement.

Dispute resolution processes in the energy sector

Part 5 of Schedule 4 sets out the requirements accredited persons and retailer data holders in the energy sector must meet in relation to their internal and external dispute resolution processes.

Clause 5.1 of Schedule 4 provides that internal dispute resolution processes must:

- for accredited persons, comply with the Australian Securities and Investments Commission's *Regulatory Guide 165* (RG 165) dealing with specified matters such as commitment and culture, the enabling of complaints, resourcing, responsiveness, objectivity and fairness, complaint data collection or recording, and internal reporting and analysis of complaint data; and
- for retailer data holders, satisfy the applicable requirements under the National Energy Retail Law or Energy Retail Code (Victoria).

Where a retailer becomes an accredited person, the retailer will be able to continue to comply with the internal dispute resolution requirements under the National Energy Retail Law or the Energy Retail Code (Victoria). These retailers will not need to comply with RG 165 if the requirements under the National Energy Retail Law or Energy Retail Code (Victoria) are satisfied.

Clause 5.2 of Schedule 4 provides that, subject to a notifiable instrument being made, for external dispute resolution, retailer data holders must be members of each relevant State or Territory energy and water ombudsman and accredited persons must be members of the Australian Financial Complaints Authority (AFCA). Where a retailer is also an accredited person, and does not use energy sector CDR data to provide services outside of the energy sector, those retailers must be members of the relevant energy and water ombudsman in relation to accredited person complaints. Where the jurisdiction does not have an energy and water ombudsman (for example, the Australian Capital Territory), the retailer must take the necessary steps to participate in dispute resolution processes appropriate for accredited person complaints provided by that jurisdiction.

Register of Accredited Persons

Under rule 5.25, the Accreditation Registrar must maintain a database in association with the Register of Accredited Persons that includes such information as the Registrar considers necessary to enable processing of requests in accordance with the CDR Rules and data standards.

Because of AEMO's unique role in the CDR system where it does not interact directly with the Register for the purposes of data sharing, it is not necessary for the Registrar to keep the kinds of information under rule 5.25 on the Register in relation to AEMO.

Clause 9.4 specifies that the information the Registrar is authorised to maintain under rule 5.25(1) does not include information relating to AEMO in its capacity as a data holder.

Miscellaneous other amendments to the CDR Rules for the energy sector

- Clause 2.3 specifies (in a note) that the AER and the Victorian agency (DELWP) are designated data holders for all the relevant product data under the

designation instrument. This does not affect the operation of rule 2.3 with respect to the banking sector.

- Clause 4.1 of Schedule 4 provides that in receiving or responding to product data requests made under the CDR Rules, either of the *energy sector agencies*, being the AER and the agency administered by the Victorian energy Minister, may act for the other.
- Clause 4.4 of Schedule 4 provides that the civil penalty provisions under the CDR Rules do not apply to AEMO or the energy sector agencies.
- Clause 7.1 of Schedule 4 sets out how the energy agencies are to meet the reporting requirements under rule 9.4(1).
- Clause 9.1 of Schedule 4 specifies the following laws as being laws relevant to the management of CDR data in relation to the energy sector for the purposes of rule 1.7:
 - (a) the National Electricity Law;
 - (b) the National Energy Retail Law; and
 - (c) the *Electricity Industry Act 2000* (Vic).
- Clause 9.2 of Schedule 4 sets out conditions for a person that has collected CDR data in accordance with a consumer data request under Part 4 of the CDR Rules to be a data holder (rather than an accredited data recipient) of that CDR data.
- Under clause 9.3 of Schedule 4, for the purposes of rule 5.4(1)(c), the AER and the Essential Services Commission of Victoria are specified as additional authorities the Data Recipient Accreditor may consult with in relation to decisions about accreditation under Part 5 of the CDR Rules.
- Clause 9.5 of Schedule 4 specifies that the additional grounds for revocation, suspension or surrender of accreditation in the energy sector for the purposes of table item 5 in rule 5.17 are:
 - that the accredited person was, at the time of the accreditation, a retailer; and
 - the accredited person’s authorisation or licence to sell electricity in the National Electricity Market has been suspended or revoked.
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Schedule 3 – Miscellaneous amendments

Schedule 3 makes miscellaneous and technical amendments to ensure the CDR Rules operate as intended. In particular, Schedule 3 amends the Rules with respect to the definition of an eligible consumer, secondary user provisions, ongoing reporting obligations on ADIs, rules relating to data standards, and to make consequential amendments after the passage of changes to the Act.

Eligible Consumer

The Rules move common elements of CDR consumer eligibility from the banking sector Schedule into the main body of the CDR Rules. Where necessary sectoral-specific eligibility criteria will be set out in the relevant sector Schedule.

Rule 1.10B provides that the economy-wide elements of eligibility are that a CDR consumer must:

- be an individual who is 18 years or older, or a non-individual, and
- be an account holder or secondary user for an account that is held with a data holder in relation to a sector that is open, and that has the characteristics (if any) specified in the sector schedule.

These amendments do not affect the current operation of eligibility in the banking sector.

Ongoing reporting obligations on ADIs

Schedule 3 amends Schedule 1 to the CDR Rules to clarify that ongoing reporting obligations of accredited persons do not apply to unrestricted authorised deposit-taking institutions (Schedule 1, clause 2.1(1A)).

Unrestricted ADIs are eligible for streamlined accreditation. The accreditation process is streamlined for these ADIs in the sense that they do not need to provide an independent assurance report to establish information security capability at the application stage. ADIs do not need to provide this evidence because they are already required to meet APRA's CPS 234 information security standard.

The amendments to the ongoing reporting requirements merely clarify that unrestricted ADIs do not need to meet the ongoing reporting requirements as they will continue to meet CPS 234 and be supervised by APRA.

Secondary users

The secondary user rules are amended to clarify that these rules apply to individuals. The nominated representative mechanism in the rules is designed to enable non-individuals (e.g. businesses) to make nominations about who can share their CDR data (rule 1.7, definition of 'secondary user').

Rules relating to data standards

Schedule 3 amends Part 8 of the Rules to provide that a Data Standards Advisory Committee must be established in relation to each designated sector. A Data Standards Advisory Committee may, however, be appointed to cover more than once designated sector (rule 8.2).

Consequential amendments to the rules relating to privacy safeguards

Schedule 3 amends the rules relating to privacy safeguards to align the CDR Rules with the privacy safeguard provisions in the Act.

The Act was amended by the *Treasury Laws Amendment (2020 Measures No. 6) Act 2020* to ensure that some privacy safeguard provisions applied to accredited persons before they received any CDR data.

Schedule 3 amends rule 7.2 to ensure that accredited persons must comply with the obligation to have a CDR policy before it receives any CDR data.

Rule 7.3 is amended to ensure that under the Rules, the exceptions to the privacy safeguard obligation to give a consumer the option to be dealt with anonymously or pseudonymously applies to an accredited person before it receives any CDR data as well as when it is an accredited data recipient.

Rule 7.4 is amended to ensure the privacy safeguard obligation to notify of the collection of CDR data only applies in respect of the specific CDR data that was collected.