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Minister Jane Hume
The Treasury
Langton Crescent
PARKES ACT 2600

Lodged electronically: CDRstatutoryreview@treasury.gov.au

Dear Minister Hume,

Statutory Review of the Consumer Data Right – Issues Paper

EnergyAustralia is one of Australia's largest energy companies with around 2.4 million electricity and gas accounts in NSW, Victoria, Queensland, South Australia, and the Australian Capital Territory. EnergyAustralia owns, contracts, and operates a diversified energy generation portfolio that includes coal, gas, battery storage, demand response, solar, and wind assets. Combined, these assets comprise 4,500MW of generation capacity.

We welcome the opportunity to provide this submission to the Issues Paper on the Statutory Review of the Consumer Data Right. Our submission focusses on whether the existing statutory framework supports the evolution of the Consumer Data Right (CDR). We also discuss the evolution of the CDR in the clean energy transition and future energy market.

The CDR and the clean energy transition and future energy market

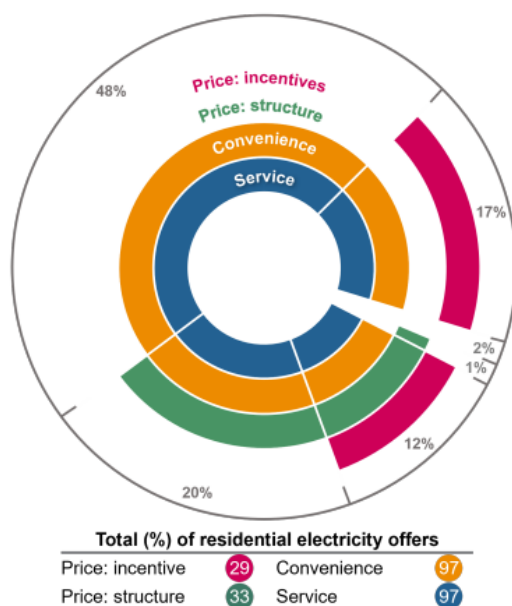
The development of the CDR should take into account the broader context of what is happening in the relevant sector. This is especially the case for the energy sector which is undergoing major market and regulatory change.

As a data sharing regime, the CDR operates very well for industries that have homogenous products, where product data can be easily standardised, and it is straightforward to compare products across service providers.

When retail competition was introduced in the National Electricity Market in 2008, electricity and gas products were generally homogenous. However this is changing. Today, most electricity products follow the same product and pricing structure (fixed daily supply charge to cover the costs of transporting electricity, and an energy tariff that varies with consumption). But there is a growing proportion of electricity products which have differentiated pricing structures. The Essential Services Commission of Victoria (ESCV) published a report in March

2022 which showed that differentiation on price structure and price incentives constitute 33% and 29% of residential electricity offers.¹

Figure 2: Offers in the Victorian residential electricity market, by differentiation category³⁷



Source: ESCV, see report for what the different categories mean.²

In the clean energy transition, which is taking place now, product differentiation will only accelerate to become mainstream, and we expect more and more customers to buy differentiated products instead of basic electricity only plans. The clean energy transition is driven by government commitments (net zero by 2050 and possible interim targets) and individual business targets, including EnergyAustralia's own Climate Change Statement.³

The transition is also driven by what is happening at customer's premises. Almost 24% of customers in the National Electricity Market partly meet their electricity needs through rooftop solar PV generation⁴, and battery and electric vehicle (EV) uptake is expected to increase as technology advances increase the affordability of those assets. Solar PV, battery and EV are sometimes referred to as Distributed Energy Resources (DER). This uptake of DER will shift the energy market from being "one-sided" centralised generation supplying customers, to a "two-sided" market where customers also provide generation through DER into the broader grid/system. Customers will also participate in the market by curtailing or changing the time of their electricity consumption away from peak times, which could be assisted through using energy in a battery instead of drawing from the grid (demand response).

Increasingly, electricity plans will be combined with supplying DER assets or services that help to manage those DER assets, and products that reward customers for demand response, which will mean greater product differentiation in the electricity market. For example, EnergyAustralia sells:

- Solar home bundle which bundles the cost of a solar PV and battery with the supply of electricity in one tariff.
- PowerResponse Virtual Power Plant which provides customers \$15 a month in bill credits when they share electricity stored in their battery.

¹ These percentages include electricity plans bundled with some distributed energy resources value add (discussed more below).

² [RPT - Victorian Energy Market Report - March 2022 - 20220331.pdf \(esc.vic.gov.au\)](#), p 14

³ [EnergyAustralia Climate Change Statement September 2021.pdf](#)

⁴ [State of the energy market 2021 \(aer.gov.au\)](#), p 33

- PowerResponse (Behavioural demand response) where customers will earn bill credits when they reduce electricity consumption during peak times.

As product differentiation increases, it will be more difficult for CDR data sharing to support like for like product comparisons (the key use case for the energy sector). Even today this is difficult. E.g. The current CDR data standards do not completely reflect the Solar home bundle product to show it includes solar PV and battery assets, so that it would appear expensive compared to electricity only plans.

The complexity and multi-dimensional nature of these products might mean comparisons are not possible. The best outcome might be to flag that the product is different, so that it is not compared with basic electricity only plans or accept that the product is out of scope for the CDR. Either way, the CDR will need to deal with these types of issues which will only become more significant.

There is also a great deal of data-related reform occurring in the energy sector outside the CDR. This will be important to monitor to understand where the CDR and those reforms could intersect and where they should remain mutually exclusive. For example, there may be new data streams (provided by the Government) which could be included in CDR data sharing.

Further, when the CDR expands into Action Initiation it will be even more important to consider the market and regulatory developments of the relevant sector. The CDR future directions report states that Action Initiation will likely be facilitated or automated switching (which will help customers engage in the market and switch Retailers). There have been many reforms in the last three years which aim to increase customer engagement and switching. E.g. Reference pricing which compares offers to a common benchmark price to help comparisons, and putting the customer's best offer on their bill so that they ask to switch to their best offer in Victoria (but now adopted in other states). It will be paramount to understand if facilitated/automated switching is still required and/or how it will interact with those energy reforms.

In view of the above, the development of the CDR should take into account the broader context of what is happening in the relevant sector. The statutory framework should be changed to explicitly require the development of CDR designation and CDR Rules to consider market and regulatory developments in the relevant sector. In Part IVD of the *Competition and Consumer Act 2010*, reference to the relevant sector is limited and directed at a different concept.⁵

Objectives of the CDR in the Competition and Consumer Act

Direct-to-consumer data sharing

The Objects in section 56AA of the *Competition and Consumer Act 2010* (the Act) refer to direct-to-consumer data sharing (section 56AA(a)(i)). **We are not opposed to direct-to-consumer data sharing (provided it can be safely done), but we recommend it be removed from the Objects,** because:

- It does not seem to be the core focus of the CDR. We consider the focus of the current CDR, and the future CDR will centre around the role of the Accredited Person which

⁵ There is a reference to the Minister considering the efficiency of relevant markets when making a designation instrument and making CDR Rules (section 56AD). However, we consider this is directed at considering how the CDR could be efficiently rolled out and the CDR driving efficiencies via promoting competition.

acts on behalf of customers i.e. providing data to them to unlock innovations and their role as “digital Power of Attorney” which will help customers engage in markets.

- There appear to be many challenges with direct-to-consumer data sharing including risks to privacy, which might not be insurmountable. If so, Treasury might need to discontinue it.
- Direct-to-consumer sharing does not apply to all sectors, including the energy sector. Treasury has clearly indicated that direct to consumer data sharing does not currently apply to the energy sector.⁶ It notes the existing, detailed regime for Direct-to-Consumer requests for metering and billing data under national energy legislation, and states “Treasury does not consider it appropriate to undertake detailed analysis at this point in time to accommodate the possibility of future changes to the rules on Direct-to-Consumer requests.” We agree with Treasury’s position. We also add that it is very unclear whether residential and small business consumers (the main beneficiaries of the CDR) would want direct access, where third party comparators can become Accredited Persons and access it directly under the CDR (i.e. third parties won’t request customers for data).

Ensuring strong consumer privacy under the CDR

Treasury has sought and responded to Privacy Impact Assessments (PIAs) with each iteration of the CDR Rules. The PIAs have been comprehensive and integral to understanding the potential privacy risks for consumers, where they may not be obvious due to the complexity of how the CDR Rules cross-interact.

The Act mandates consideration of the privacy or confidentiality of consumer’s information before sector designation and making rules, which Treasury does by considering and responding to the PIA.

Our concern is that the PIA’s recommendations are often not accepted and at times the reasoning seems weak, especially for Version 3 of the CDR Rules. E.g. instead of adopting a recommendation, Treasury sometimes defers to *an ability* of the DSB, Treasury or ACCC to issue guidance or guidelines, without actually requiring that guidance or guideline to be made.

We acknowledge there are several matters that must be balanced in sectoral designation and rulemaking. However it seems other matters like “data-driven innovation” (and lowering barriers to become an Accredited Person) are taking precedence over privacy impacts in decision making.

Given the CDR is a new digital *data sharing* regime, and existing issues with digital consent, privacy impacts should be heavily weighted in decision making. **We recommend that the Act be changed to place heavier emphasis on privacy impacts when making a sector designation and the CDR Rules.** This could be done in various ways, including by referring to it in the Objects, which refer to privacy safeguards but this is a different concept.

⁶ Pursuant to rule 8.5 of Schedule 4 which provides that Part 3 of the CDR Rules does not apply in relation to energy sector data. See [Privacy Impact Assessment Agency Response - November 2021 \(treasury.gov.au\)](#), p 6

Governance

On the overall governance of the CDR, we submit:

- The two key organisations which make CDR regulations (Rules and Data Standards) are Treasury and the Data Standards Body. Our issue is that the Rules and Data Standards cross over to a significant degree, and at times the Rules have conflicted or are not clearly consistent with the Data Standards. For example, the Rules indicate that the Governments will provide Generic product data for the energy sector, but the DSB has recently clarified that Retailers will be involved in directing requests to the Government.

The introduction of the Design Paper approach to consultation will help significantly to streamline the Rules and Standards, but Treasury and DSB should continue to look for more ways to minimise any future disconnect between the Rules and Data Standards.

- We are not aware of any formal process documents on how the DSB will engage when making Data Standards and the time between the finalisation of data standards and the implementation date. While we appreciate that flexibility is important to expedite the CDR rollout, publishing a process (even of just minimum or indicative timeframes) will ensure stakeholders know what to expect and can plan around that process. The Act could be amended to require the DSB to publish such a process.
- As the CDR matures into a maintenance phase for CDR data sharing, we strongly recommend that maintenance changes be timed in scheduled releases, similar to how the Australian Energy Market Operator plans schema releases. While we understand that the data standards are based on international standards that may change at any time, this does not prevent the DSB from requiring those updates in the next scheduled release. This will greatly assist in the efficient planning and operation of the scheme.

Government held data sets

We support the inclusion of government held data sets in CDR data sharing. The Act is broad enough to designate governments as data holders (e.g. in the Energy Sector Governments are named Data Holders for Generic product data). However, the Data Standards will still require Energy Retailers to direct Accredited Person requests to the Governments for that data. If there is widespread data sharing by Government bodies across sectors, a longer-term solution should be considered to explore a data access model that does not rely on any other Data Holder to deliver it.

If you have any questions in relation to this submission, please contact me (Selena.liu@energyaustralia.com.au or 03 9060 0761).

Yours sincerely,

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