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Future Directions Unit
Consumer Data and Digital Division
Treasury
Langton Cres
Parkes ACT 2600

Submitted electronically: data@treasury.gov.au

Re: Consultation - Exposure draft legislation to enable action initiation for the Consumer Data Right

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to make this submission to the Treasury's consultation on exposure draft legislation to enable action initiation for the Consumer Data Right (CDR).

We support the CDR and recognise its potential to generate significant benefits for energy consumers. For example, it is expected to reduce transaction costs (and cost to serve) by making it easier for consumers to participate in the competitive market by comparing different offers, and to make more informed decisions about whether to invest in distributed energy resources to better manage their energy consumption. We also acknowledge that policymakers consider the CDR should extend beyond data sharing to include action initiation in order to achieve these benefits; this was a key conclusion of the Inquiry into Future Directions for the Consumer Data Right.

Consumer protections for energy

The Treasury will be aware of the comprehensive and well established consumer protection framework for the retail energy market; this is the action layer that will coexist with the proposed instruction layer. The energy framework involves a number of unique protections that exist to ensure retailers and consumers carefully consider various options and their implications before they enter into a contract. The most notable is explicit informed consent (complemented by the clear advice entitlement in Victoria and the ACT), which is a well established concept and a key focus of regulatory oversight.

This framework also ensures that consumers are protected in a number of ways once they have entered into a retail energy contract. This has numerous dimensions, including protections for consumers experiencing family violence, assistance when a consumer is experiencing payment difficulty, limits on disconnection where energy is necessary for life support, or more simply, before they agree to a substantial change to their terms and conditions.

Efficiency in delivery to increase uptake of CDR

At its core, the CDR seeks to reduce transaction costs, thereby encouraging market participation and more effective competition. However, many of the consumer protections for energy are explicitly designed as frictions that allow consumers to carefully consider an action before they proceed. Therefore, CDR action initiation for energy must align with these measures to ensure all energy consumers receive the same level of protection when they participate in the market, regardless of whether they use the CDR framework.

We note the exposure draft legislation outlines a detailed process for designating actions and then designing an appropriate accreditation framework. This process mandates that the Secretary of the Treasury must consult with any 'person or body (if any) that the Secretary believes to be a regulator of the action type in question'. This will be an important element of the application of action initiation for energy and the Treasury will need to work closely with the Australian Energy Regulator (which also administers *Energy Made Easy*), the Australian Competition and Consumer Commission, Essential Services Commission, Independent Competition and Regulatory Commission and Australian Energy Market Operator, all of whom have important regulatory functions.

Treasury will also need to consult with relevant government departments—Department of Climate Change, Energy and Environment and Water and the Victorian Department of Environment, Land, Water and Planning—who administer the relevant energy legislation across the NEM (and in the case of the Victorian Department, administer the *Victorian Energy Compare* website).

Consultation with these entities will ensure appropriate protections for energy consumers remain in place but will also minimise confusion, overlap, and inconsistencies. This should reduce the administrative burden of compliance as far as possible, and minimise the incremental cost impact of applying action initiation to energy, which ultimately will flow through to consumers.

The supporting documents for the draft legislation also explain that the Minister will consider a range of factors when deciding whether to designate a specific action for a specific industry. These include the interests of consumers, the efficiency of relevant markets, promoting competition, the public interest, the regulatory impact of the rules, and any other factors the Minister considers relevant. This is the point at which the Minister can assess whether the expected benefits are likely to outweigh the costs, including the initial implementation and ongoing costs, and how they flow through to retailers' cost to serve.

The energy industry has well established processes in place that frequently involve contractual arrangements between retailers and external service providers. This can involve comparisons and initial advice to consumers about different offers and related services. In some instances, the third party may capture the consumer's explicit informed consent, albeit under strict conditions, where they act as an agent of the retailer to perform those functions.

These arrangements are designed to make it simple for customers and they also generate efficiency gains, while ensuring consumer protections remain in place. There is no scope for retailers to outsource their regulatory obligations under the current framework. CDR action initiation *may* generate some further efficiencies but this should be part of the Minister's assessment prior to designation. Otherwise, retailers may incur costs to build while consumers do not receive any additional benefits.

As a further point, the Treasury will also need to ensure that any changes to CDR Rules are future proofed and remain consistent with any changes to other legislation relating to data collection and retention that the Government might be considering in light of recent prominent data breaches.

It is important that consumers and retailers fully understand how the instruction layer will align with the action layer. Consumers need to understand what protections apply and what action they can take in the event of a data breach or unexpected outcome. Similarly, retailers and other energy market participants need to clearly understand their regulatory obligations to support compliance.

Additional complexity

The success of the CDR will depend on consumers understanding what protections apply to their data, who can access data under what circumstances, and what they can do in the event of a data breach. The more complex the framework, the harder it becomes for them to make this assessment. Furthermore, it can become harder for regulators to monitor compliance and take appropriate action where data breaches occur.

Therefore, we see some risks arising from action initiation as it will introduce additional concepts that consumers will need to interpret, e.g. Accredited Action Initiator, Action Service Provider and 'CDR consumer for a CDR action'. Furthermore, the draft legislation grants discretion to the Treasury to develop accreditation frameworks for different actions, which could include tiered accreditation models. This will exist in a broader CDR framework that is becoming increasingly complex, e.g. by allowing for a more diverse range of business models for Accredited Data Recipients and for CDR data to be shared with unaccredited parties, such as trusted advisers. We continue to recommend that the Treasury consider the simplicity of the CDR framework for consumers and for retailers as it considers further amendments.

Finally, the Treasury will also be aware that the CDR for energy will commence in November. Energy consumers and market participants have no active knowledge of how the CDR will operate or evolve for energy and we expect it will take some time before it is understood how it will work in practice and the new products and services that it will deliver. We recommend that the Treasury only proceed with action initiation once energy consumers feel confident that the security and integrity of their sensitive data is adequately maintained.



About Red and Lumo

We are 100% Australian owned subsidiaries of Snowy Hydro Limited. Collectively, we retail gas and electricity in Victoria, New South Wales, Queensland, South Australia and in the ACT to over 1.2 million customers.

We thank the Treasury for the opportunity to comment on the draft legislation. Please contact Geoff Hargreaves, Regulatory Manager on [REDACTED] if you have any further queries or want to discuss this submission in more detail.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Stefanie Monaco", written on a light-colored rectangular background.

Stefanie Monaco
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