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AGL Submission – Inquiry into the future directions of the Consumer Data Right

AGL Energy (**AGL**) is pleased to take this opportunity to respond to the Inquiry into the future directions of the Consumer Data Right (**CDR**) (*the Inquiry*) announced by the Treasurer in January 2020. We would like to thank the Inquiry for providing additional time for stakeholders to respond in light of the COVID-19 crisis.

We have more than 180 years' experience in the energy industry and operate the country's largest electricity generation portfolio, are its largest ASX-listed investor in renewable energy and have over 3.7 million customer accounts.¹ We are committed to making energy and other essential services, simple fair and transparent. Given our position, we can provide the Inquiry unique insights into the energy sector, our customers and the specific industry needs that must be taken into consideration in the development of economy-wide regimes such as the CDR.

The CDR regime is an ambitious undertaking by the Australian government to develop a world-leading data portability and access right for consumers. We continue to support the principles behind the development of the CDR regime which places consumers as the decision makers in the CDR system to direct where the data goes and use their data to make informed decisions about their goods and services.²

We are positive about the opportunities and benefits that an increasingly interconnected digital economy can bring for both consumers and industry. We encourage the Inquiry to recognise that the CDR is intended to be a right for all consumers (both digital and non-digital) and as such, any direction by decision-makers for both present day designation, and future expansion, must recognise this principle.

The future design must be mindful of current design and scope

We support the government's commitment to apply the CDR to multiple sectors starting with banking and following with energy and telecommunications. However, we note that there are early signs of implementation risks and applications for the energy sector, such as the application of privacy safeguards to the Australian Energy Market Operator (**AEMO**) and how this may impact consumer engagement.³ While we recognise the Inquiry is forward looking, rather than the current

¹ <https://www.agl.com.au/about-agl/who-we-are/our-company>

² See [introduction to the explanatory statement](#) for the CDR Act.

³ We discuss this further in our submission to the ACCC on energy data models.



application to banking or energy, we believe that these matters are vital to any future expansion of the CDR regime.

Importantly, the future design and opportunities for CDR in energy risk being constrained by current decisions that may move us away from an economy-wide model. The CDR regime offers both businesses and consumers opportunities and benefits spurring from cross-industry digitalisation and data sharing. While the AEMO gateway can help orchestrate energy market participants, and may be beneficial in the short-term in terms of costs and data sharing, decisions about the gateway scope and energy specific needs may be detrimental to the energy sector being able to effectively adopt future expansion of the CDR framework in the long-term.

For example, decisions made for energy, such as the scope of the role for AEMO as both a gateway and a data holder, and what role (if any) they will have with the direct engagement with customers, will impact on consumer trust and engagement with the CDR framework. AEMO is not a body that consumers are generally aware of, and consumers have no direct relationship with this body. Hence, expanding CDR to non-digital consumers may limit energy sector's ability to effectively support these consumers. Therefore, energy specific data sharing models may end up making it prohibitively expensive for retailers to then participate in the broader economy-wide system.

Until we understand how the current application of the CDR will impact AEMO's role as a data holder and a gateway, and to what extent this will be expanded on through the ACCC Rules, it is difficult to comment on ways to broaden the future application of the CDR generally, as well as in ways that can benefit the energy sector. ***Ensuring CDR is evidence-based***

While we generally support this Inquiry in considering the future of data and data access for consumers, it is important that this pursuit does not result in an over-expansion of the regime too early and risk undermining consumers' trust and utilisation of this regime. It is also important that any proposed expansion carefully considers the impacts for our most vulnerable consumers, minimising both foreseen and unforeseen impacts.

Currently, decision-makers are relying on policy assumptions of customer benefits to a hypothetical customer. This is included in documents such as Treasury's explanatory memorandum for the CDR Act, papers released by the Australian Competition and Consumer Commission (ACCC) and extrapolating limited-scope consumer testing conducted by Data61 – the Data Standards Body (DSB). While the DSB scope is now expanding, substantial parts of the CDR regime have already been developed/established. It is therefore important that appropriate assessments are undertaken in both the live CDR environment, as well as assessing the way international systems are working, such as the United Kingdom's Open Banking regime.

Cost benefit analysis

We agree that the regulatory environment should support and facilitate digital investment and uptake by consumers. However, fulsome cost-benefit analysis and assessment of each individual sectors' needs must be undertaken to ensure that subsequent designated sectors are not left with high implementation and compliance costs in order to apply a system designed primarily for banking. For example, using AEMO as the designated gateway may end up costing retailers twice, first in the retailer's own system development costs, and second with participant fees (as AEMO is industry funded).

This is then compounded where market participants seek to become an Accredited Data Recipient (ADR) in two or more CDR sectors. For example, an energy retailer could diversify its' range of



services into telecommunications or finance. This may result in the retailer building systems that are mixed with a gateway.

Response to Inquiry

In the following submission we highlight three main positions:

- 1. Interoperability of rules and standards** within the existing scope of the CDR framework needs to be further considered before seeking additional changes. At this stage, the application of the CDR regime into energy – the second sector to be designated – is largely unformed and yet to be clarified by decision-makers. Treasury and the ACCC are yet to provide a clear picture of how energy will operate in the broader regime. Further it is not clear whether the technical standards developed in consultation with the banking sector are now expected to be applied throughout other sectors of the economy.
- 2. Write access** is not practical or appropriate for the energy sector at this time. This was addressed by the ACCC in the Retail Electricity Pricing Inquiry (**REPI**) Report⁴ which noted a need for a mandatory code of conduct for third party comparators as well as a change in the National Energy Retail Law (**NERL**). Neither of these bodies of work have commenced to our knowledge. Fundamental structures to third party providers would need to occur for write access to be a valid solution.
- 3. Consumer protection** needs to be at the centre of CDR regime, including vulnerable consumers. We are supportive of the Consumer Experience (**CX**) testing that Data61 is undertaking and are encouraging of the new focus to vulnerable consumers supported by the Consumer Policy Research Centre (**CPRC**). These consumer protection measures must be balanced against the various costs, but ultimately should be a consistent set of principles and approaches implemented. The introduction of industry specific anomalies can risk undermining these consistent protections, and we explore this further in the submission below.

If you have any questions, please reach out to Kat Burela on 0498001328 or kburela@agl.com.au.

Regards

[Signed]

Elizabeth Molyneux

General Manager Energy Markets Regulation

⁴ See the Australian Competition and Consumer Commission Retail Electricity Pricing Inquiry Report <https://www.accc.gov.au/publications/restoring-electricity-affordability-australias-competitive-advantage>



Overview

AGL supports the Consumer Data Right (CDR) and the Federal Government's (government's) commitment to implement first in banking, then energy and telecommunications. We have actively engaged in the CDR consultative processes across Treasury, the Australian Competition and Consumer Commission (ACCC), the Office of the Australian Information Commissioner (OAIC), the Data Standards Body (DSB) Data61, Senate Committees and other associated reviews, roundtable discussions and working groups. Our key focus in these engagements have been:

- A genuine **concern at the pace and opaque nature** in which the CDR framework and associated legislative tools are being consulted on, often leaving a number of key questions unanswered that may result in unforeseen impacts to both consumers and industry.⁵
- **Whether a gateway model is appropriate** in the energy sector for broader interoperability and whether it will deliver the seamless and effective model that was envisaged when the CDR regime was initially being developed.
- The need to ensure that **consumer protection** is a central consideration of the regime, balanced with the cost of data holders in each sector. For example, in the energy sector, Treasury and the ACCC are considering only implementing a system that facilitates data sharing to third parties (not consumer-direct requests).⁶ Consistent consumer principles should be established and maintained throughout the designation of sectors in the CDR sector.
 - This includes concerns about privacy rules and how they will interact with the Australian Privacy Principles (APP), how they will apply to a designated gateway, and what measures will be put in place for those consumers who do not have digital access (for example, the online consumer dashboard is recognised in the Privacy Impact Assessment as a tool to minimise consumer risk, but non-digital customers will not have that type of access).⁷
- **Insufficient engagement** with other sectors that are expected to be designated but expecting an interoperable and consistent system throughout.

While there remains so many unknown factors, such as how consumers will interact with the framework, how it will apply to the energy sector⁸, how much the system will cost (and therefore whether the benefits will outweigh the costs), we would caution against any recommendations that seek expansion of the framework. Rather, this is an opportunity to realign the CDR to the original intent of delivering a seamless and trustworthy system of data control for consumers.⁹

It would appear there also needs to be clear agreement on the obligations under the CDR regime as to the objective. There appears to be inconsistency in approaches that seek to enhance digital opportunities, streamline data access for third parties, and provide a right for consumers to access data. While these can all co-exist in the one framework, the prioritisation of each will result in different designs and outcomes.

⁵ See our submissions on the CDR Bill here, and our submission to the ACCC about a designated gateway recommendation here.

⁶ See the ACCC Intermediaries participation paper, December 2019.

⁷ See Maddocks Privacy Impact Assessment, December 2019 - https://treasury.gov.au/sites/default/files/2019-12/p2019-41016_PIA_final.pdf p.29

⁸ Example - for online and offline customers, through a designated gateway (Australian Energy market Operator) model, with partial or full application of the technical standards etc.

⁹ See [Open Banking report December](#) 2017, p.8.



Other proposed expansions, such as the recent ACCC consultation on whether non-accredited third parties should be able to access CDR data introduce additional risks and remove privacy protections afforded under the accreditation model. We also do not consider this to be within the intent of the CDR Act which clearly envisioned a tightly controlled system that existed between four key participants – data holders, accredited data recipients, designated gateways and consumers.¹⁰ The consumer testing undertaken by Data61, the Privacy Impact Assessment, and Senate committee consideration have all focused on how these four participants will be managed, reviewed and accredited to ensure that consumers and their data are appropriately protected.¹¹

At this stage, our recommendation would be to focus on increased transparency in process and decision making, and to ensure adequate consultation and engagement with the planned sectors across energy and telecommunications. Secondary to this, it would be appropriate to map the scope and flexibility of the CDR framework that is already available to the ACCC and DSB to then better understand what the future of the CDR system can look like.

Summary of recommendations in this submission

- Require a fulsome cost-benefit analysis of the live/current CDR regime is undertaken, including for the energy sector, to determine if expansion is necessary or cost-effective.
- Recognise that the AEMO gateway model in energy may hinder the success of the CDR regime unless appropriately limited to ensure that retailers still manage the relationship with the customer.
- Recommend improved governance structures for decision-makers when designating new sectors.
- Expand the regime in ways that facilitate interoperability for both digital and non-digital customers into the future.
- Look at the benefits intended to be delivered across the CDR in the context of known sectors to be designated.
- Specifically, consider the energy environment (increased regulation, decreased price dispersion, government comparators and high churn than banking) to determine validity of presumed increased switching benefits as a direct result of CDR.
- Tiered accreditation for publicly available product reference data would be appropriate
- Any system for managing accreditation status changes by ADRs must be managed by the ACCC (e.g. a data holder should not be in breach for the provision of data to an ADR who has a lowered status of accreditation).
- Undertake behavioural research based in both the live CDR environment and planned expansion areas to have a better understanding of consumer comprehension and engagement matters.
- Encourage decision-makers to ensure that the voice of vulnerable and disengaged customers are included in all aspects of CDR decision making.
- Recognise the industry and regulatory structure in energy does not currently support write access for third parties in a way that would ensure positive consumer outcomes.

¹⁰ See [introduction to the explanatory statement](#) for the CDR Act.

¹¹ For further information on this please refer to our [submission to the ACCC](#) in January 2020



Structure of the existing CDR framework

The CDR is intended to deliver data-driven benefits to both consumers (in their access to new, competitive services and products) and businesses (through product innovation for customer acquisition and retention). While we recognise that the Inquiry is not intended as a review of the existing CDR framework, we believe it is important to offer some insights through our experiences to-date as the second sector to be designated. These insights will provide information to the Inquiry on the direction of the existing CDR framework for future designated sectors, and whether these directions are appropriate and effective for the intended operation and future direction of the overall CDR regime and digital uplift.

Energy experience

Firstly, we note that there is very little transparency on how the existing CDR framework will be applied to subsequent sectors, including energy. Treasury and ACCC do not currently have a governance framework in place for energy participants to understand the short-term direction and long-term objectives of energy designation which would help inform decisions such as the scope and role of AEMO.

We recognise that there are some efficiencies to be gained from utilising the AEMO gateway, and for energy retailers the short-term gains of a data orchestrator in the energy sector, there are elements of the AEMO gateway that need greater consideration.

While decisions such as the utilisation of a gateway model appear to be solidified for the energy sector, there are questions about how AEMO can help facilitate an interoperable system that provides benefits for both consumers and the energy industry and allows the energy sector to efficiently adopt with any future expansion of the CDR framework. These questions include:

- what the role of AEMO will be,
- what interactions retailers will have with AEMO versus the broader economy-wide (banking) model,
- who will be responsible for the relationship with a CDR consumer and what impact this will have on the overall trust consumers have in the system.

AEMO was set up to act as a clearing house or central market B2B platform for industry participants in the energy sector and therefore AEMO does not have or is expected to have a consumer presence. A CDR role that seeks to create this relationship can undermine consumer trust and utilisation of a system, which can impact the overall effectiveness of the CDR regime.

AEMO was created to oversee market operations between market participants (energy retailers, generators and network businesses), system security and planning. It does not have a relationship with consumers, and does not hold, and is not responsible for, a significant portion of the data that will be designated in the CDR system. We have concerns about customer protection and security if authentication is not appropriately managed by those businesses with relationships to the customer. This would also be counter to the approach taken in banking, where the banks are investing in educating the customer customers around the federated approach to authentication. Having a different approach to other industries would confuse the consumer and possibly undermine the security of the system.



Other comments on why the gateway model may not prove as effective as initial proposed include:

- AEMO is the market operator for National Electricity Market (**NEM**) jurisdictions only. The CDR is intended to be nationwide and its structure in individual sectors will impact both consumers and businesses (for example, AGL may need to build three separate data holder frameworks for AEMO (NEM), Western Australia energy, and telecommunications).
- The ACCC has acknowledged that the CDR requirements for providing data to the gateway¹² will be different to existing b2b sharing arrangements facilitated by AEMO which will create IT costs for retailers. This will increase should retailers have to build multiple CDR data systems to interact at an economy-wide level.
- AEMO's orchestration role becomes less relevant as the CDR regime broadens:
 - AEMO cannot orchestrate gas or other energy services as it can with electricity.
 - While Treasury is currently consulting on the draft designation instrument for energy CDR, we note that the definition of 'arrangement' is broad. This broad definition does not necessarily align with AEMO's scope or role and as retailers diversify their services (e.g. AGL with telecommunications), the more minimalised the AEMO role becomes.
 - The principle of reciprocity will undermine the purpose of a gateway. For example, if an ADR becomes a subsequent DH under reciprocity, then to share the valid energy CDR data the ADR will need to either:
 1. Build systems to feed into the gateway (much as an energy retailer will) but will not be an energy market participant (e.g. for the purposes of paying fees). This would also unnecessarily increase their CDR costs and may introduce a barrier to entry/expansion in the market (costs become prohibitively high), or;
 2. Circumvent the gateway to provide for the data to be shared in the economy-wide model. This would mean that over time, the AEMO gateway becomes less necessary and be used by a smaller number of participants.
- Customer authentication should be managed by retailers. Customers have a direct relationship with retailers and are therefore the first point of contact with respect to their energy needs. As such, retailers and customers have already established authentication and engagement processes which customers are more likely to trust. Customers may also wish to revoke their consent either digitally or through other contact points (such as telephone), which can be facilitated by retailers and not AEMO (as they do not have a customer call centre or the relevant customer data needed to manage such a request).¹³ This is increasingly important as the CDR regime will eventually apply to both online and offline customers.

We suggest that it is premature to consider how the CDR framework can be expanded into other areas or have a broader scope. Until more is known through the energy designation process, and the outcomes of ACCC amending the CDR Rules, the impacts of the AEMO gateway model and how it will interact with the economy-wide model and consumers will continue to be an uncertainty.

¹² <https://www.accc.gov.au/system/files/ACCC%20-%20CDR%20-%20energy%20-%20data%20access%20models%20position%20paper%20-%20August%202019.pdf> p2

¹³ See for example the ACCC draft Rules amendments, April 24. This is updating customer revocation to be both through the dashboard or alternative communication method (e.g. by phone, written, email).



Existing scope for expansion

We consider it important for the Inquiry to consider how broad the existing CDR framework is under the CDR legislation as there may already be sufficient discretion to broaden scope in ways that have not been fully considered.

The ACCC has significant scope for the operation of the CDR framework through the development of the CDR Rules, which can then require participants to adhere to data standards developed through the DSB. Both the banking and energy sectors will be subject to expansions in captured data, data holders and general rules as future versions of the ACCC Rules are developed. Some areas of expansion include:

- *White label products* – the ACCC recently discussed their position on white label products under the CDR which would potentially expanded data sets, and those bodies recognised as data holders.¹⁴
- *Non-accredited data recipient and intermediaries* – the ACCC recently consulted with stakeholders about whether the CDR Rules should extend to non-accredited data recipients (such as lawyers, accountants etc).¹⁵
- Consideration to establish or develop frameworks that will support a national approach to digital identity (this was the subject of a recent DSB discussion).
- *Eligible consumers* as we note above, the CDR is not limited to online customers. While eligible consumers in banking were defined as being online, the ACCC are considering whether the CDR in energy should allow for both online and offline customers to engage.
- *Access for data* can be scaled up or scaled down in the rules. For example, the energy sector only applies to some Australian jurisdictions and does not allow for consumer direct access to their data through the CDR systems. The ACCC noting that consumers can already access large amounts of data under existing energy rules and laws. The extent to which sector specific laws and regulations allow for consumer data access should be immaterial to the development of a national CDR framework that seeks consistency and fairness for consumers.

Cost benefit analysis

Cost-benefit analysis (**CBA**) are an essential part of undertaking best regulatory practice and policy making.¹⁶ Before considering ways to leverage the CDR infrastructure, the Inquiry and decision-makers need to consider the practical nature of an interoperable regime across different sectors and fully consider the costs on each expected sector.

The CBA's must consider the policy objectives of a seamless consumer experience and how this is balanced against creating an interoperable system that only fully considered the banking sector

¹⁴ See for example DSB data holder minutes – 7 May

<https://github.com/ConsumerDataStandardsAustralia/standards/wiki/Meetings>

¹⁵ <https://www.accc.gov.au/focus-areas/consumer-data-right-cdr-0/accc-consultation-on-facilitating-participation-of-intermediaries-in-the-cdr-regime>

¹⁶ See for example the Australian Government position on cost-benefit analysis

<https://www.pmc.gov.au/resource-centre/regulation/cost-benefit-analysis-guidance-note>



when being devised. Undertaking a CBA for each subsequent sector, including the energy sector, is important where the foundations of an existing framework are to be applied.¹⁷

The CDR Act exempts the energy sector from being consulted with about their designation if the Federal Treasurer makes a designation before 1 July 2020.¹⁸ In previous submissions on this topic we noted that the supposed CBA completed for the energy sector was done before the draft bill was first developed in 2018, and without an understanding of the scope of the CDR framework (including the data sets, data holders, inclusion of a designated gateway, new concepts such as privacy safeguards, derived/value added data etc).

It was also based on the HoustonKemp report that was initially developed for the purposes of reviewing data sharing requirements under the National Energy Retail Rules (NERR) and Law (NERL) not an economy wide CDR framework, and the subsequent retrofit of this report for the purposes of CDR was not appropriate or fit-for-purpose.

We do not support the exemption within the CDR Act, and have raised concerns over the limited and incomplete analysis undertaken for energy sector impacts¹⁹. While Treasury released a draft designation instrument mid-May for the energy sector, there is no consideration or adjustments to costs to the energy sector and we do not expect there to be any due to the exemption.

Given the above points, it is difficult to provide any insight into costs and benefits of any proposed future expansions of the CDR regime.

Interoperability across data standards and CDR Rules

Interoperability of the CDR framework, and the development of consistent, national or global approaches to digital matters such as information security, can help reduce costs to industries overtime.

However, we note that designing a system that is interoperable between many different sectors is highly complicated and can end up being cheaper for the first sector and more expensive for subsequent sectors.²⁰ In the case of the CDR, the development of the CDR Act, general rules, accreditation and data standards, was consulted heavily and primarily with the banking sector. As subsequent sectors, such as energy become designated, the expectation is that these rules, standards and systems will apply to them – but decision makers acknowledge some minor changes may be made if there is direct conflict with a specific sector.

However, allowing new CDR designated sectors the ability to design a system that suits their own needs will lessen the financial burdens experienced by those sectors, but will create an ever changing set of obligations for existing-designated sectors who must amend their systems and processes to accommodate new sectors. Neither approach is without flaws, but clear and consistent

¹⁷ This is a concern that AGL has raised throughout multiple submissions to Treasury, the ACCC and Data61, see for example [AGL submission to CDR banking rules 10 May 2019](#), [AGL submission to Treasury Banking designation, 12 July 2019](#).

¹⁸ Treasury Laws Amendment (Consumer Data Right) Bill 2019, Schedule 1, Item 3.

¹⁹ We have raised issues with the HoustonKemp report in a number of our submissions (see for example above).

²⁰ Data61 suggests that the data standards are industry-agnostic, however until December 2019, only had a banking advisory committee that were engaged in the development of these standards.



messaging should have occurred from the outset of the CDR work, particularly with known sectors to be designated (e.g. energy and telecommunications).

The introduction of a gateway model for the energy sector can only further complicate the interoperable nature of the CDR framework, which may have been outweighed with the theoretical benefits (mentioned above) but these have since proven inaccurate.

Recommendations

- Require a fulsome cost-benefit analysis of the live/current CDR regime is undertaken, including for the energy sector, to determine if expansion is necessary or cost-effective.
- Recognise that the AEMO gateway model in energy may hinder the success of the CDR regime unless appropriately limited to ensure that retailers still manage the relationship with the customer.
- Recommend improved governance structures for decision-makers when designating new sectors.
- Expand the regime in ways that facilitate interoperability for both digital and non-digital customers into the future.

Customer Switching

It is difficult for industry or policy makers to determine the scope of consumer benefits until the CDR regime is live. While the CDR Bill and policy information has focused on the theoretical benefits of allowing consumers access to information and therefore leading to increased consumer switching rates, we do not currently have evidence that this will occur.

The experience in the United Kingdom (**UK**) Open Banking to-date is that there has been relatively low consumer awareness and uptake of the system, and there does not appear to be any increase in consumers incentive to switch or in businesses adapting to the open data model.²¹ We encourage future expansions of the CDR system to be based on evidence, rather than assumptions of consumer behavior.

Energy switching

Increased regulation in the energy sector has minimised 'large savings' opportunities from churn, simplified offers and provides more information to consumers to make informed decisions. Price dispersion has been minimised due to increased regulation around pricing obligations throughout Victoria and the National Energy Customer Framework (**NECF**) jurisdictions (Queensland, New South Wales, South Australia, Tasmania and the Australian Capital Territory). While switching is still identified as a way for customers to save money, increased regulatory interventions has minimised the gap between the most expensive energy plans and the cheapest.²²

²¹ See for example [FinTech Futures article](#) and the [Financial Times article](#) 1 year from Open Banking launch (January 2019).

²² See for example the Australian Energy Regulator report *Affordability in Retail Energy Markets*, September 2019 – appendix C which includes a review of offer ranges across distributors pre and post the DMO implementation. Also see the Essential Services Commission of Victoria final decision for Thwaites (Clear and Fair Contracts) which notes much lower price dispersion in the Victorian energy market.



The ACCC REPI report made a recommendation to speed up switching, which resulted in a rule change process by the Australian Energy Market Commission (**AEMC**) and AEMO for introducing a faster switching framework in energy. Further, the roll out of digital meters also leads to faster switching. In Victoria, where there was a mandatory roll out of digital meters to customers, customer switching generally occurs within 2 business days (post the 10-day cooling off period for change of mind).

Additional regulation, such as the Best Offer obligations in Victoria (which require retailers to place information on customer communication about whether they are on the best generally available energy plan, and how much they could save by switching) also give more power to the customer.

Churn rates are relatively high for energy compared with the banking sector, and the energy sector has had government run comparison sites for several years (EnergyMadeEasy (**EME**) and Victoria Energy Compare (**VEC**)) that have facilitated consumer switching. Further, the growth of third-party comparator sites have also fuelled increased switching in the energy sector. We also note that recent reforms have introduced reference price comparisons in both NECF jurisdictions and Victoria, which make it easier for consumers to compare offers and therefore feel more confident in switching.

We recommend an assessment of the CDR system once it is live for banking, as well as an assessment of the energy environment for consumer benefits in switching to determine switching benefits.

Recommendations

- Look at the benefits intended to be delivered across the CDR in the context of known sectors to be designated.
- Specifically, consider the energy environment (increased regulation, decreased price dispersion, government comparators and high churn than banking) to determine validity of presumed increased switching benefits as a direct result of CDR.

Read access

Tiered accreditation

While we have previously supported a single tier of accreditation for the simplification of the system, we recognise that tiered accreditation can assist with access to generic product information. This is less relevant in energy as all generally available product information is available on government websites EME and VEC.

The management of accreditation in a tiered model under ACCC would need to ensure that consumers continue to be protected in the event of a status change of an ADR. For example, in the event of an ADR having their accreditation revoked or their access level lowered, their holding or ongoing access to data through CDR arrangements with the data holder must be managed by the ACCC, rather than being the responsibility of the data holder (e.g. disclosure of CDR data to an ADR that can no longer access specific customer data under an ongoing arrangement is not the fault of the data holder).



Non-accredited data recipients

In our submission to the ACCC on their proposal to allow in the Rules for non-accredited third parties (such as accountants) to access CDR data through the CDR framework we do not support the expansion until the CDR system is operational and consumer comprehension is assessed under read access with ADRs.

Non-accredited data recipients should only be able to access publicly available product reference data (such as the generic tariff information), in which case a tiered model of accreditation would make more sense.

However, if the ACCC does expand the regime to allow non-accredited data recipients access to consumers personal CDR data, we recommend that the same obligations and privacy safeguards that apply to ADR's should apply to their access and use of data.²³

Offline customers

While the current banking designation defines an eligible CDR consumer as someone who has an online account with the bank (amongst other criteria), the CDR legislation does not limit the scope to online customers. As we noted above, there are currently considerations by the ACCC and DSB as to how offline energy consumers could be considered eligible under energy designation.

We question the sophistication of models that will be able to deal with different tiers of accreditation where the CDR is no longer limited to digitally enabled consumers, and how these consumers will be able to manage the read access by ADR's (if a dashboard, a mechanism for protection and control for consumers under CDR, are not appropriate or practical).

Recommendations

- Tiered accreditation for publicly available product reference data would be appropriate
- Any system for managing accreditation status changes by ADRs must be managed by the ACCC (e.g. a data holder should not be in breach for the provision of data to an ADR who has a lowered status of accreditation).

Write access

Allowing the write access under the CDR regime would be positive for businesses offering comparison and switching services for customers. Write access would also be positive for some consumers who were able to understand the terms and conditions of providing enduring consent rights to a business. These customers will be able to minimise time costs for effort spent searching for the best deal across multiple services including mortgages, loans, phone, electricity, gas insurance and broadband.

However, these benefits also come with risks, and raise several matters that must be fully explored before recommending a CDR framework shift to allow write access, including:

²³ See [our submission to the ACCC](#) consultation on intermediaries and non-accredited data recipients access to CDR data under the CDR Rules, January 2020.



1. Consumer comprehension and engagement
2. The structure of the energy sector
3. Best interest obligations

At this stage, we do not believe write access in the energy sector is an appropriate step forward given these matters, which we discuss in more detail below.

Customer comprehension and engagement

To be able to benefit from *write access* a customer needs to be able to provide explicit informed consent (EIC) to the business providing this right. This extends beyond the scope of EIC as it currently exists in the energy sector, because the consent will allow future activity and changes by a business. This means that a customer's comprehension and active engagement with the consent's framework needs to be deeply understood to be able to identify risks to certain consumers (such as those who are culturally and linguistically diverse). This may become as confusing as the initial industry the consumer was attempting to navigate but with an added loss of autonomy.

By providing third parties the authority to control the life administration needs of consumers, the government would be placing the obligation on the customer to understand the operation of a third party and their use of CDR data and therefore simply replacing one life administrative task (e.g. compare and switch) with another (e.g. researching third parties, understanding enduring consent, ability to revoke, business structure and commissions etc). This also introduces new risks for consumers in relation to consumer complacency, comprehension and potential unscrupulous behavior by businesses.

Research and case studies on consumer comprehension and engagement below provides evidence as to whether Australian consumers are sufficiently advanced to understand write access.

Case study: Government 'approved' Centrepay and consumer detriment

- The 2013 Department of Health review of the Centrepay arrangements that formed part of Centrelink provides an important case study into consumer detriment as a result of reliance on a misunderstanding of the Centrepay services offered through businesses. Specifically, the review found that consumers believed that the provision of the Centrepay service was an endorsement by the government of the business model/services offered by businesses.
- Below is a summary of the ACCC/Australian Energy Regulator joint submission to this process.

Consumer Policy Research Centre (CPRC) study into customers and privacy policies²⁴

- Suggests that consumers often blindly agree to Privacy Policies and Terms of Services without being aware of the risks. Experts argue that many people simply give consent whenever they are shown a consent request.
- 67 percent of consumers indicated that they still signed up for one or more products even though they did not feel comfortable accepting the terms and conditions. Research into these types of matters will be essential to ensuring consumers are protected under the CDR.

CPRC research into preconditions of effective consumer engagement²⁵

²⁴ See CPRC report into data digital economy - <https://cprc.org.au/2018/07/15/report-consumer-data-digital-economy/>

²⁵ See CPRC report into preconditions for engagement - https://cprc.org.au/wp-content/uploads/Preconditions_Full_Report.pdf



- Noted that any provision of data to third-party comparators, portals and online “concierge” services will require rigorous privacy and consent provisions to build consumer trust, and to ensure that consumers are extracting the benefits from these data transfer arrangements.
- When assessing the decision-making and choice process undertaken by consumers, regulators and policymakers would benefit from shifting from information disclosure requirements to consumer comprehension testing, alongside deeper analysis of the decision-making process itself.

We also note that there are other factors that may impact customers’ ability to properly engage with the digital arrangements including consumers with restricted or limited digital access (e.g. may rely on public facilities and services. While a unique experience, the COVID-19 pandemic has severely impacted and isolated those without digital access at home) including the elderly, non-English speaking background, newly arrived migrants, refugees, people with lower incomes etc.²⁶ How these consumers can access, understand and engage with the tools to empower them under the CDR regime, such as the dashboard remains unresolved. It is AGL’s view that this must be addressed before seeking to expand CDR to include write access.

There is a risk that third party providers will not act in the best interest of their customers. The Banking Royal Commission found financial planners/advisers (who have specific obligations of best interest under the law) were not always acting in the best interest of their clients and in some cases after the initial contact the customer had no further contact.²⁷ It was noted that even with best duty obligations in place, these advisors often pursued a “good enough” outcome for both themselves, their entity, and the client.

Energy engagement and information disclosure

Increased energy regulation for information disclosure, plain English, prominence of information, standardised statements and display and access of information are all part of attempting to respond to a need to assist vulnerable customers and those with comprehension and engagement issues. The ACCC REPI report also found that energy information is complex and difficult to compare, and as such a reference price was introduced with the objective of making it easier for customers to compare.

Unless similar consumer protection obligations are placed on third party providers consumers would continue to be disadvantaged under write-access in the energy sector. These energy specific consumer protections are imposed on retailers, and as energy provision diversifies, the scope of the NECF consumer protections becomes more skewed, which is why the AEMC is currently undertaking a review of this.²⁸

It is important to also understand the reason for consumers’ lack of engagement. IPART, the NSW independent regulator tasked with monitoring and reporting on the energy sector, found that

²⁶ See for example the following news articles

- <https://www.abc.net.au/news/2020-03-24/coronavirus-closes-schools-online-learning-no-internet/12082580>;
- <https://www.theguardian.com/world/2020/apr/13/coronavirus-covid-19-exposes-cracks-us-digital-divide>
- <https://www.weforum.org/agenda/2020/04/coronavirus-covid-19-pandemic-digital-divide-internet-data-broadband-mobile/>

²⁷ <https://www.afr.com/policy/kenneth-hayne-duty-to-client-and-selfinterest-pull-in-opposite-directions-20190204-h1auo5>

²⁸ <https://www.aemc.gov.au/market-reviews-advice/consumer-protections-evolving-market>



around 23% of customers do not participate in the market²⁹. This analysis did not delve into whether there were barriers due to time costs, comprehension, lack of interest or other matters. To be able to determine whether consumers will truly benefit from write access in the energy sector, there needs to be better understanding of the make-up of customer reasons for being actively engaged or disengaged in the first place (which can include customers who make a conscious effort to be disengaged). The CPRC has previously addressed this topic stating:

*“a common concern raised is that customers are disengaged from the market because it is too time-consuming, complex or confusing to compare offers. However, there is a distinct group of consumers who may be disengaged due to reduced capacity – for example, learning disabilities, mental health issues, experiencing trauma of an accident or domestic violence – creating temporary or permanent barriers to engagement. Alternately, other customers may be disengaged from the market because the current service delivery is meeting their needs, or because the issue is simply unimportant to them”.*³⁰

Customer engagement can also be difficult to promote even when real and direct benefits are offered to customers. We note that the Victorian Government offered Victorian residents \$50 for accessing the VEC website. Even with the financial incentive, the program was extended (from the initial 6 months, to 24 months) due to the low uptake. Retailers can also find it difficult to get consumers to engage on matters that can benefit them financially such as accessing concession and utility relief grants, see the case study below.

Case study: Concessions and grants assistance

In the energy sector, government schemes allow eligible customers to access utility relief grants (a lump sum payment to go directly towards their energy bills). The parameters of these schemes will vary depending on the jurisdiction. Customers can directly benefit from applying for these grants, but the application process can be daunting, confusing or considered invasive to privacy due to the types of information that is required by some schemes to be shared. For example, a customer may need to provide information on the current savings, income and details on their outgoing expenses to determine eligibility.

In a review of the relief grant arrangements in Victoria, stakeholders noted that the engagement rate is very low for customers in submitting forms, with only about 50% of the forms sent to customers being completed and lodged with the department of health. One energy retailer noted that when they undertook an outbound campaign to offer to fill the form for the customer, they only had a 5% take up rate for outbound calls as people felt uncomfortable providing their financial information, even where they may benefit from receiving the grant, and about 50% for inbound calls.

For both read and write access, the consumer dashboard becomes an important tool for consumer protection and control but the current direction of a gateway model for the CDR application in energy puts this at risk for the following reasons:

- 1) If AEMO is responsible for the consumer dashboard (e.g. a centralised dashboard managed and branded by AEMO) then this will risk consumer utilisation of a tool that is meant to protect them. In fact, the Privacy Impact Assessments (PIA) done for the CDR pointed to the use of a dashboard as a primary way to protect consumers under this regime. By having an entity unknown to the consumer responsible for the dashboard, increases the risk of

²⁹ [IPART Compliance and Monitoring](#) publication, May 2018

³⁰ See CPRC preconditions report, p.17



consumer disengagement or distrust. Consumers are much more likely to engage with a system with a trusted brand and that they already have a relationship with.³¹

- 2) If the ACCC utilise the CDR Rules to expand the CDR to both online and offline customers before another mechanism of control and protection is introduced, then offline customers are even more likely not to be protected using a dashboard. Offline customers will not call AEMO nor do AEMO have the infrastructure to be able to assist these customers (they do not have either a customer call centre or customer information). Off-line customers are more likely to call their retailers, further reducing the validity of a centralised and AEMO managed dashboard.

Until these matters are explored in more detail, with an evidence base for tangible benefits to consumers from both switching and allowing for third parties to manage consent, we do not support write access and encourage read access to be done with the consumer-business relationship in mind.

The structure of the energy sector

We note that there are several matters in the sector that have been identified by both the ACCC and the AEMC regarding consent powers to third parties such as comparators and aggregators. There are also practical and system limitations for retailers regarding verification and validation of a consumer's EIC through proxy. Indeed, this was an issue faced by CHOICE Transformer (see below for further information).

As with the above section relating to consumer engagement, until the following matters on third party conduct and the structure of the NERR and NERL are addressed, we do not support write access:

- **Duty to act in the interests of consumers** - one distinction between banking and other industries is that financial advisors and accountants are subject to 'best interest' duties and professional body rules which can be used to supplement CDR privacy safeguards and privacy laws. Therefore, such an expansion would inherently include additional protections for consumers.
- **The ACCC Retail Electricity Pricing Inquiry (REPI)** report recommended a mandatory code for comparator websites that would prevent comparators from using Preferred Partner Programs. We provide more information on the REPI in the below attachment.
- **The AEMC** currently considering recommendations for consumer protections in the NECF. Part of this consideration includes whether energy consumers should be able to provide **EIC** to a third party to interact with the energy retail market on their behalf.
It is our position that under the current EIC obligations in the NERR and NERL, retailers face validation issues for the purposes of proving EIC if it is provided by a third-party provider. For example, a signature on a form is insufficient to cover a retailer from breaching obligations under the NERR.

As with the above section relating to consumer engagement, until these matters on third party conduct and the structure of the NERR and NERL are addressed, we do not support write access.

³¹ See for example UK Energy Regulator OFGEM research into customer engagement <https://www.ofgem.gov.uk/ofgem-publications/156422>



We also note that energy customers can switch products with the same provider, or switch products and providers. Matters to be mindful of in relation to switching an energy consumer (and the reason for such stringent EIC obligations) include:

- Orchestration of market participants for customer switching (e.g. through the AEMO, metering parties (which can be distributors or private providers);
- Validation errors when customer information is transferred from third parties (e.g. a sales lead from a third-party provider), as the customer address has been captured incorrect or another data quality issue.
- Manual interventions if the customer disputes the transfer (e.g. a process known as *won in error*) which will require retailers to unpick the transfers process (often requiring manual interventions, identifying the losing retailer to arrange transfer back etc). There are over 100 work items in system of processes or issues that must be worked through when trying to undo a transfer).
- Financial implications including complications in billing (e.g. amounts used by the customer in the period in dispute, how retailers are charged network fees and how these are recovered from customers or passed through to the original retailer). This is important for where a customer transfer may occur which the customer later disputes (e.g. they do not agree with the ADR signing them up to a new retailer but only find out about it after they receive their first bill).

The retailer manages the supply risks on behalf of customers, which includes purchasing the energy, coordinating the meter reading services through the distributor or private meter data provider, and providing communication and services to customers. If a customer disputes a transfer done by a third party that they had previously ticked consent on write access to - the risks, financial burden and complications in undoing these market transactions falls on the retailer.

Other examples and considerations that can impact write access in the energy sector include:

- **CHOICE Transformer** – for a fee, a customer could use the service to handle switching between better deals across retailers for a 12-month period. Part of the reason CHOICE Transformer stated they were ending this service for customers was because of energy regulations impacting customer transfers. CHOICE noted that retailers often needed to contact the customers to get their consent to switch which slowed down the process of the service and was noted as being frustrating for customers.³²
- **NSW Switch** – the NSW Government announced a one-click switch service for NSW residents through their Service NSW offices. The NSW Government was unable to build a system to obtain EIC to transfer the customer, so they built a system that gains customer consent to obtain an offer comparison from Service NSW. Once the customer wants to take up the offer, they provide their consent to Service NSW for their details to be transferred to the retailer for the switching process to take place. The retailer then contacts the customer to obtain EIC for the switch to occur.
- **Policy development in the United States** under the Illinois Commerce Commission that issued third-party data usage guidelines that include stipulations around how an efficiency program implementer can receive customer consent for access to energy usage data.³³

³² We discussed these concepts of third party service provision (and write access) in our submission to the AEMC Consumer Protections review available [here](#)

³³ Statement at United States Senate Committee on Commerce, Science, and Transportation Hearing on Examining Legislative Proposals to Protect Consumer Data Privacy Wednesday, December 4, 2019



Recommendations

- Undertake behavioural research based in both the live CDR environment and planned expansion areas to have a better understanding of consumer comprehension and engagement matters.
- Encourage decision-makers to ensure that the voice of vulnerable and disengaged customers are included in all aspects of CDR decision making.
- Recognise the industry and regulatory structure in energy does not currently support write access for third parties in a way that would ensure positive consumer outcomes.

Other matters

Below we have provided a few other points for the Inquiry to consider when making recommendations for the future direction of the CDR regime.

- **National considerations** – There are range of other digital policy developments, including the ACCC Digital Platforms review, the Federal Government’s Digital Technology Taskforce, the voluntary Code of Practice on securing Internet of Things (IoT) for customers, which this inquiry should be mindful of when formulating recommendations and approaches. For example, while the ACCC Digital Platforms review and the CDR reforms are interrelated topics, the Digital Platforms review made recommendations on changes to the privacy regime in Australia but seems to have done so with CDR as a separate program, with specific legislation and data captured.³⁴ We consider these two matters to be interrelated, and any recommendations on privacy reform and the capture of personal information should be reflected under the CDR regime. The AI ethics framework is another area where government has acknowledged the need for a risk framework to protect data.³⁵
- **International context** - International arrangements are also an important consideration for this Inquiry, such as the Memorandum of Understanding recently signed with Singapore for deeper cooperation in the digital economy.³⁶ Further, initial studies into digital innovation and opportunities as a result of COVID-19 help provide a useful insight into projected opportunities globally and technology based opportunities following the pandemic.³⁷
- **Consent taxonomy** - The potential to develop a ‘consent taxonomy’, using standardised language for consents across providers and sectors could result in re-establishing of the consent mechanisms in the energy sector, which have been built over a number of years based on compliance programs, quality assurance, testing, to ensure that EIC is captured under the energy rule and law requirements. The ACCC acknowledged the important role the energy specific EIC obligations are in keeping consumers informed and we would expect any standardisation to consider this.

³⁴ ACCC, Digital Platforms Inquiry (Final Report, 26 July 2019), p. 437.

³⁵ <https://www.industry.gov.au/data-and-publications/building-australias-artificial-intelligence-capability/ai-ethics-framework>

³⁶ Access MOU [here](#).

³⁷ Geotech article [here](#).



- **Transparency on enforcement and compliance obligations** – it is our understanding that there is a lack of clarity in the banking sector on how they are expected to demonstrate compliance. As a result, the banks are universally keeping everything (data), just in case they need it to demonstrate compliance.³⁸ We are unsure how this would be in line with existing privacy law obligations on records only being retained for as long as they are needed, or what would happen in circumstances where the customer requests that the data be deleted. Without a sound audit/compliance/reporting framework, all businesses are likely to continue to hold all data.
- **Reciprocity** – the expectations regarding reciprocity and how this will work remain unclear. However, the Privacy Guideline released by the OAIC (in reference to the ACCC banking rules), indicates that an ADR who receives and holds CDR data will become a data holder by virtue of their acquisition of this data.³⁹ It has been indicated that there will be no need to build an interim solution for metering data (e.g. that retailers should have to provide metering data until AEMO have the systems in place in 2022), but under reciprocity, non-retailer ADRs would become data holders of this data. Would these non-retailer ADRs need to build solutions to feed into the AEMO gateway (as data holders of data under the draft designation instrument)? This is not a scalable solution and would create significant complications for the energy sector.
- **Multi-service business models** – as far as we are aware, there has been no discussion on the expectations of multi-service businesses (e.g. for energy retailers are both an electricity and gas provider, and also broaden their service offerings to other products and services such as telecommunication). Multi-service business models are likely to become more common as businesses seek to diversify their market presence and options for consumers. These matters are becoming increasingly important as additional sectors get designated, and these sector bespoke needs are taken into account. For example, in energy the external dispute resolution mechanism being explored is to require participants to be members of energy ombudsman schemes for the purposes of energy CDR complaints. If a customer has a complaint about an energy/telecommunication bundled offer, would this be the responsibility of the energy ombudsman, or for the external dispute solution put in place for the telecommunications industry?

³⁸ Energy advisory committee minutes page 5 (11 March 2020).

³⁹ Refer to the [OAIC Privacy Guideline](#) Chapter B, p.16.



Attachment – case study: Centrepay review 2013

Centrepay is a free and voluntary service which allows individual to pay bills and expenses as regular deductions from their Centrelink payments. In 2013, the Department of Human Services undertook a review of the Centrepay program that operates in under Centrelink.⁴⁰ The aim of the review was to improve the program to deliver benefits to the 600,000 Australians that utilised the financial assistance tool.

In a joint submission, the ACCC and the Australian Energy Regulator (**AER**) made a number of key observations on consumer experiences and business conduct that are relevant/translatable to the proposed CDR framework.⁴¹ In particular, they noted that by being a government program – customers assumed that the business and the services that they offered were endorsed by the government which increased their trust and willingness to use a particular business and the Centrepay program. In some instances, the ACCC and AER noted severe customer detriment as a result of this misplaced trust.

ACCC/AER observations include:

- Data showed that many Centrepay customers did not know how they can make a complaint about a business or how they can arrange for payments to a business to be stopped.
- The prospect of a steady long-term income stream offered by Centrepay can attract less scrupulous business operators prepared to engage in misleading or deceptive and unconscionable conduct in their dealings with Centrelink benefit recipients.
 - *There is significant research and information available regarding the inherent value in consumer data.*
- Disadvantaged or vulnerable consumers who use Centrepay may be at particular risk of these unscrupulous practices as they are more likely to trust the businesses and less likely to exercise caution when faced with dishonest sales tactics.
- The ACCC noted that these impacts were noticeable in Indigenous communities through their Indigenous Outreach Program.
- Consumers agreeing to purchases from unsolicited approaches may also suffer from an absence of retained paperwork making it harder to keep track of ongoing commitments.
- In relation to the types of activities conducted by businesses that exploited vulnerable consumers under the Centrepay program, the ACCC and AER included:
 - sales practices which led to consumers being charged for goods and services where those consumers either did not know that they are authorising Centrepay payments or **where they do not consider they gave their consent for payment;**
 - businesses refusing to provide a refund to consumers in cases where the business has been overpaid due to ongoing payments through Centrepay;
 - sales practices which result in consumers paying substantially higher prices than is the norm for certain goods by authorising ongoing Centrepay payments in circumstances where the consumer has not understood the aggregate cost of these payments.

⁴⁰ <https://www.servicesaustralia.gov.au/sites/default/files/documents/report-of-the-independent-review-of-centrepay.pdf>

⁴¹ <https://www.aer.gov.au/system/files/AER-ACCC%20Submission%20to%20Human%20Services%20on%20the%20Independent%20Review%20of%20the%20Centrepay%20System%20-%208%20April%202013.PDF>



ACCC Retail Electricity Pricing Inquiry findings (summary)

The ACCC identified two key barriers to automated switching services entering and expanding in the NEM:

- 1) a general information access issue which acknowledged the CDR would assist in this matter, and
- 2) perceived restrictions due to explicit informed consent obligations in the National Energy Retail Rules and Laws.

The ACCC acknowledged that automated switching services could be beneficial to consumers if those services met the requirements of a mandatory code of conduct. The ACCC also acknowledged however, there were also risks in allowing third parties to give consent on behalf of consumers. These risks included consumers being switched without understanding that they had authorised a third party to give EIC on their behalf, and consumers not being aware of cooling-off or other rights, terms and conditions that they would otherwise be made aware of from engaging directly with their retailers.

While comparator services can be useful for consumers who are relatively engaged, there will always be an inherent conflict between the interests of retailers that are paying the comparators (the incentive to increase profits) and the interests of the consumers who use the service (the desire to achieve the lowest price).

The ACCC further noted:

- the importance of the energy regulation requiring retailers to obtain EIC from consumers
- that the design of EIC obligations under the energy regulation is to ensure the consumer is sufficiently aware of the information and obligations attached to their energy plan, and
- that the AER has taken action against retailers in the past for failing to comply with EIC related obligations.

The ACCC recommendations on third party conduct were not made in isolation. In particular, the ACCC acknowledged that simply amending the EIC obligations under energy regulation to allow third parties to give EIC on behalf of the consumer would pose significant risks to consumers who were switched inadvertently or without fully understanding the terms of the offer they were signed up to. To complement any changes in energy regulatory requirements, and to reduce consumer detriment – a mandatory code for third party provides that mirrored EIC requirements under the energy rules and laws would need to be developed. The ACCC also recommended that preferred partner programs be stopped under such a Code.