

Secretariat
Inquiry into Future Directions for the Consumer Data Right
Treasury
Langton Crescent
Parkes ACT 2600

Submitted via email: data@treasury.gov.au

29 May 2020

Dear Mr. Farrell,

Inquiry into Future Directions for the Consumer Data Right

The Australian Energy Council ('AEC') welcomes the opportunity to make a submission to Treasury's Issues Paper ('Issues Paper') on the *Inquiry into Future Directions for the Consumer Data Right* ('Inquiry').

The AEC is the industry body representing 24 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

The AEC has been an active stakeholder and participant in the Consumer Data Right ('CDR') consultation process to date. We have consistently voiced support for introducing the CDR into the energy sector and wider economy. If implemented correctly, it can enhance competition and empower consumers to make more personalised choices. It is yet to be seen whether the regulatory framework underpinning the CDR will deliver these outcomes.

Thus, while the AEC welcomes the forward-thinking intent of this Inquiry, it also encourages caution when considering expanding the functionality of the CDR. The CDR has not commenced full operation in any sector and will not do so until at least 1 July 2020. This means understanding how consumers respond to and interact with the CDR can only be speculative and any unintended consequences will not be known until well down the track.

These uncertainties are compounded by the global outbreak of COVID-19, which has made it difficult to confidently plan for the future. Australia's response to the virus is having, and will continue to have, substantial implications for businesses and has already resulted in the open banking timeline being delayed.¹ As providers of essential services, energy businesses are particularly vulnerable to the impacts of this pandemic and are currently diverting all available resources to assisting impacted customers and maintaining security of supply. When compiling the final report and recommendations, the Inquiry should be mindful of the ability of businesses to adjust in these challenging times. Monitoring international developments will be worthwhile to see how other countries are managing their equivalent data right during this crisis.

Bearing these uncertainties in mind, the submission below outlines the AEC's view on what this Inquiry should consider when advancing future directions.

¹ Madison Utley, 'Open banking timeline again postponed', Australian Broker, 28 April 2020, <https://www.brokernews.com.au/news/breaking-news/open-banking-timeline-again-postponed-271092.aspx>.

Every sector has unique opportunities and challenges

When analysing the ‘future purpose, use and vision of the Consumer Data Right’,² the AEC encourages the Inquiry to consider how this might vary from sector to sector. Each sector has unique characteristics that present different opportunities as well as challenges for the CDR’s operation. For the energy sector, it has different operational requirements to banking due to the central role the Australian Energy Market Operator (‘AEMO’) plays in the market. Potential innovations to accreditation, such as tiered accreditation or providing non-accredited third parties with data, will need to consider these sector-specific circumstances.³

In terms of customer behaviour, customers do not engage with each sector in the same way. An illustrative example of this is the level of digital literacy in banking compared to energy. While internet banking has grown in prominence to now be a preferred form for many customers, this has not occurred to the same extent in energy. There has been an increase in customers using digital technology to monitor and manage their electricity bills, but many still use paper form.⁴ This should be recognised when weighing up how to introduce new functionalities into the CDR in a manner that is ‘inclusive of the needs and choices of all consumers’.⁵

Lastly, the CDR’s phased implementation means each sector will have varying degrees of maturity in navigating the CDR ecosystem, as well as varying degrees of customer trust and confidence in the system. A phased approach to implementing certain initiatives that depend on customer confidence, such as write access, may therefore be necessary.

Switching

The AEC supports efforts to encourage customer engagement in the competitive market and making it easier for customers to switch to a better offer. While we are hopeful that the CDR will make switching more efficient and convenient, it is unknown at this stage how customers will respond. Previous reforms introduced to change customer behaviour and encourage market engagement have struggled to achieve the desired response. For example, Energy Consumers Australia reported in 2017 that ‘fewer than 1% of Victorian consumers opted-in to time-of-use pricing following the introduction of flexible pricing some 4 years ago with the deployment of smart meters’.⁶ Thus, even with significant promotion of the CDR, discernible changes to customer behaviour in the short-term are unlikely. This is another reason why the AEC encourages caution when making decisions to expand the CDR without solid evidence that the customer benefits outweigh compliance costs.

There are also some drawbacks to using third party providers as the main drivers of switching. Many third party providers operate on a commission-based business model and do not advertise all offers and products available in the market. For the competitive market, there are risks that smaller retailers will be unfairly disadvantaged because their offers are not included on comparator websites or ranked lower because they pay the third party less. For the customer, they may not receive the best offer available to them, undermining confidence in the regime. Ideally, the CDR will encourage new entrants

² Treasury, ‘Inquiry into Future Directions for the Consumer Data Right’, Australian Government, Issues Paper, March 2020, p1.

³ ACCC, *Competition and Consumer (Consumer Data) Rules 2019*, Exposure Draft, March 2019, rule 7.5.

⁴ ACCC, ‘Retail Electricity Pricing Inquiry – Final Report’, Australian Government, June 2018, REPI Report, p289.

⁵ Treasury, ‘Inquiry into Future Directions for the Consumer Data Right’, Australian Government, Issues Paper, March 2020, p1.

⁶ Energy Consumers Australia, ‘Taking advantage of electricity pricing signals in the digital age: householders have their say’, Queensland University of Technology, July 2017, p21,

https://energyconsumersaustralia.worldsecuresystems.com/grants/821/Segmentation-model-for-engaging-consumers-digitally_final-report.pdf.

into the third party market that challenge the current commission-based business model, but whether this occurs is not yet known.

Read access

Explicit informed consent is recognised as a key protection in the retail energy market. It is included in the National Energy Retail Law, which mandates that energy retailers must obtain and record a customer's explicit informed consent when switching a customer. The AEC believes the principle of explicit informed consent should apply to accredited data recipients under the CDR if they are given the power to switch customers. In this respect, we have some concerns that the development of a simplified consent taxonomy may lead to a dual and inconsistent standard of consent between energy retailers and third-party providers. If this were to occur, it would potentially erode a key customer protection. The AEC therefore encourages that any consent taxonomy be consistent with the principle of explicit informed consent.

The AEC supports developing a mechanism to enable customers to track and manage their various consents. There will be some inevitable confusion in the early stages of the CDR's commencement as customers familiarise themselves with the new ecosystem. This confusion is likely to include matters of consent, such as whether the customer is granting one-off or enduring access to their data and whether they can later revoke their consent. Lower levels of digital literacy in the energy sector make these possibilities particularly heightened. Developing a type of dashboard that shows in plain language what the customer has consented to, for how long and an option to revoke that consent would improve customer confidence in the system. It would also minimise any confusion that might otherwise come from having sector-specific approaches to consent.

The AEC does not believe that tiered accreditation should be entertained at the present time. The current stringent threshold for accreditation exists to protect customers and to recognise that the CDR cannot function without customer trust.

Write access

The AEC does not currently support the expansion of the CDR to include write access. As outlined above, the CDR is currently an immature ecosystem. It has not yet been proven whether it can deliver on its intended outcomes making it impossible to assess the merits of any future expansion. For the energy sector, allowing third party providers to make decisions on behalf of the customer raises various concerns over privacy and security. These concerns are especially heightened where the third party operates on a commission-based business model and does not necessarily hold the same duty of care that exists in banking.

Any questions about this submission should be addressed to Rhys Thomas, by email to Rhys.Thomas@energycouncil.com.au or by telephone on (03) 9205 3111.

Yours sincerely,



Ben Barnes
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