

Secretariat  
Statutory Review of the Consumer Data Right  
The Treasury  
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### **Statutory Review of the Consumer Data Right Issues Paper**

The Australian Energy Council ('AEC') welcomes the opportunity to make a submission to Treasury's *Statutory Review of the Consumer Data Right Issues Paper* ('Issues Paper').

The AEC is the peak industry body for electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. AEC members generate and sell energy to over 10 million homes and businesses and are major investors in renewable energy generation. The AEC supports reaching net-zero by 2050 as well as a 55 per cent emissions reduction target by 2035 and is committed to delivering the energy transition for the benefit of consumers.

The AEC has actively participated in the development of the Consumer Data Right ('CDR') in energy. Our members are data holders across all tiers, with tier 1 retailers readily preparing for commencement on 15 November 2022. While this means we cannot yet reflect on the CDR's operation in the energy sector, we can consider the efficacy of the policymaking process to date. In the AEC's view, the journey so far not been entirely smooth and there continues to be areas of confusion that data holders are working through with regulators. Some of these challenges can be attributable to the CDR's nascency, however it is also because of unreasonable expectations over how fast the CDR can expand. This review should consider how cost-benefit principles can be better embedded within the CDR to deliver more efficient future outcomes for its participants.

#### **Purpose of Statutory Review**

Section 56GH of the *Competition and Consumer Act 2010* (the Act) requires there to be an independent review of the CDR's operation and a report handed to the Minister before 1 July 2022. The AEC supports the inclusion of such a review mechanism and believes it should be a recurring mechanism, rather than a one off, perhaps required every three years. At this early stage, the utility of this review is rather limited. While the AEC understands the obligation to conduct the review at this time, reading through the Issues Paper, there appears to be considerable duplication between its focus questions and previous consultations, such as the *Future Directions Discussion Paper* and *Strategic Assessment Consultation Paper*. This is unfortunate and illustrates the need for a more comprehensive review at an appropriate juncture – potentially an action to come out of this review.

#### **Objects of Part IVD**

The Issues Paper asks whether the objects of Part IVD of the Act 'unintentionally narrow' the CDR's future capabilities, but does not give examples how the current wording limits flexibility. Reading through section 56AA, the AEC considers that there could be some amendments to reflect the CDR's future trajectory. Section 56AA(a) currently reads as:

*To enable consumers in certain sectors of the Australian to require information relating to themselves in those sectors to be disclosed safely, efficiently and conveniently:*

This could be amended to:

*To enable consumers in designated sectors or datasets of the Australian economy to access information relating to themselves safely, efficiently and conveniently:*

When determining whether the disclosure is efficient, the ACCC should be required to give weight to economic efficiency and the likely costs and benefits of a customer accessing that data.

### **Future Implementation of the CDR**

Reiterating the views expressed in previous AEC submissions, speculation about the CDR's future capabilities must be tempered by an appreciation of the likely consumer uptake and a commitment to upholding strong customer protections. Keeping this in mind, the AEC encourages Treasury to ensure any use cases presented to this Issues Paper are:

- a) Likely to benefit a reasonable portion of customers. Right now, customer awareness of the CDR is low.
- b) Proportionate to the costs. Developing more use cases does not lead to greater benefits if customer uptake is minimal. This is particularly important in scenarios where the use cases propose to amend already functioning processes within sectors.
- c) Respectful of customer protections. Lowering existing customer protections to enable use cases may not negatively impact every customer, but the number of negatively impacted customers will surely increase.

The energy industry has seen in the past, through the Victorian rollout of smart meters, the negative cost impacts of policies that promise exciting use cases but fail to eventuate. A 2015 [review](#) from the Victorian Auditor-General found that few of the promised benefits had been realised, while Victoria's electricity consumers had paid an estimated \$2.239 billion to fund the rollout. The AEC considers it is important then that Treasury properly assesses how the initial framework in energy is functioning before implementing any expansion. A rushed expansion risks placing unreasonable costs and regulatory burden on future tiers as they prepare to commence.

### **Division of Responsibilities**

Something the AEC believes this review should consider is the division of responsibilities between key players, namely Treasury, the ACCC, Data Standards Body (DSB), industry, and industry regulators and operators (in energy's case, the Australian Energy Regulator (AER), the Australian Energy Market Commission (AEMC), and the Australian Energy Market Operator (AEMO)). While engaging on important CDR issues, the AEC has sometimes found it unclear what body or organisation was the responsible decision maker and there appeared to be administrative confusion between the respective bodies over who held responsibility for which roles. At times, this has had reduced the quality of consultation and made it difficult for data holders to receive the guidance they need on grey areas in the CDR ecosystem.

As part of its response to question five, the review should look at how the delivery of functions under the CDR can be improved. The AEC considers that the starting point should be placing stronger obligations on Treasury to refer to the industry regulator. Under section 56AE of the Act, Treasury is required to consult with the 'person or body that the Secretary believes to be the primary regulator of the sector that the instrument would designate'. This obligation was not undertaken in energy because the Minister designated the energy sector as a priority sector (along with banking and telecommunications).

The AEC believes this requirement to consult should become a rolling obligation for future CDR expansions, in particularly write access and the other reforms being considered in the Future

Directions Inquiry. Giving the industry regulator (in energy, the AER and the AEMC) greater prominence is advantageous because of their intimate knowledge of the sector and its rules, and responsibility for monitoring compliance. The AEC would expect the industry regulator to be responsible for assessing the costs and benefits of recommendations about dataset expansion, and how it interacts with existing regulatory frameworks in the sector (e.g. identifying possible privacy or customer protection concerns).

Any questions about this submission should be addressed to Rhys Thomas, by email [Rhys.Thomas@energycouncil.com.au](mailto:Rhys.Thomas@energycouncil.com.au) or mobile on 0450 150 794.

Yours sincerely,



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