

Daniel McAuliffe
Consumer Data Right
Structural Reform Division
Treasury
Langton Crescent, Parkes, ACT 2600

Email: data@treasury.gov.au

31 May 2020

Dear Mr. McAuliffe,

Consumer Data Right – Energy Sector Designation Instrument (Exposure Draft)

The Australian Energy Council ('AEC') welcomes the opportunity to make a submission to Treasury on the *Consumer Data Right – Energy Sector Designation Instrument* ('Designation Instrument' or 'Exposure Draft').

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 Designation Instrument is an important step in the progression of the Consumer Data Right ('CDR') being applied to energy. By laying out the datasets that customers can access, the Designation Instrument effectively determines the scope of the CDR. Future consultation on issues like data standards will be guided and limited by the Designation Instrument. While the Instrument can be amended later down the road, the original text will ultimately shape the customer's initial experience with the CDR.

The AEC has some concerns then that the Designation Instrument for energy is being rushed to meet a 1 July deadline. This leaves little time to resolve any issues that stakeholders might have with the Exposure Draft. From the AEC's viewpoint, the Exposure Draft appears to have expanded the scope of the Designation Instrument beyond what was originally consulted on to include matters such as hardship information and bundling arrangements. Furthermore, the meaning of materially enhanced information for data holders in energy has not received the same level of attention as it did in banking. The AEC encourages a second round of consultation like in banking to clarify what data is and is not materially enhanced.

Timing constraints

Treasury has foreshadowed on its website that it will finalise the Designation Instrument by 30 June 2020. With consultation on the Exposure Draft closing on 31 May 2020, this will leave Treasury with only a month to read submissions and respond to any issues that stakeholders have identified. This constrained timeframe appears to be in place so Treasury can have the Designation Instrument ready by 1 July 2020 to avoid doing a sectoral assessment.¹ For comparison, there were two rounds of consultation on the Designation Instrument in banking that took place over a period of nine months. This may be partly because Treasury was developing a Designation Instrument for the first time, however it nonetheless

¹ See the transitional arrangements for the energy sector as set out in the *Treasury Laws Amendment (Consumer Data Right) Act 2019*.

provided stakeholders with the opportunity to see how their initial feedback had been incorporated into the second Exposure Draft.

Given that the Designation Instrument will shape future consultations, the AEC encourages Treasury to allow stakeholders to provide feedback, even if informally, on a second Exposure Draft before it is finalised and published. This is to ensure all issues have been appropriately resolved.

Definitions relating to arrangements

The note in section 5 has expanded the definition of arrangement to cover sales of electricity with ‘other related goods or services’, including bundled packages. When read in conjunction with section 8 and 9(4), it is not clear if and to which data sets Treasury intends for non-electricity data to be captured and to what extent. It was the AEC’s understanding that the provision of data was to be limited to electricity, with the only exception being product information that is already available on Energy Made Easy.

Designation of sector subject to the consumer data right

Section 6(3) has earmarked 1 July 2018 as the earliest date from which retailers must hold information relevant to the Consumer Data Right. It is not entirely clear if section 6(3) is mandating 1 July 2018 as the relevant date for holding information or the actual date will be announced later but will be no earlier than 1 July 2018. Irrespective of the intended meaning, given that the CDR is unlikely to commence until at least 1 July 2021, retailers could potentially be required to hold customer data for three years (or more).

The AEC recommends that the timespan for captured data align with the National Energy Retail Rules (‘NERR’). Specifically, sections 28 and 132 of the NERR require a retailer to hold historical billing data for a customer for a period of two years. Alignment with the NERR will reduce compliance costs for data holders while ensuring the customer’s access to data remains the same. Furthermore, in terms of the wording of the provision, compliance would be made simpler if it was generalised (i.e. the ‘previous two years’) rather than from a specific date. There are issues with using a specific date when the commencement date for the CDR in energy has not been confirmed.

Specified classes of information

Section 8(3) of the Exposure Draft appears to have extended the scope of billing information beyond what was originally consulted on. Treasury’s Priority Energy Datasets Issues Paper released in August last year did not make mention of concessional or hardship measures, which the Exposure Draft has now listed as billing information (s8(3)(f)). The AEC does not oppose the inclusion of such information if it helps with the early identification of vulnerable customers, but notes there are questions regarding validation and privacy that require time for Treasury, accredited data recipients and data holders to work through. Consumer experience testing should also be undertaken to ensure that consumers understand, and are comfortable with, sharing that type of information with third parties.

Exclusion – materially enhanced information

The AEC is generally supportive of the drafting of section 11 but would like to see the inclusion of examples as has been provided for banking. Specifically, there is an added subsection, section 11(3), in the banking designation instrument that provides a list of examples of information that is not materially enhanced. This is supplemented by an Explanatory Statement that provides examples of information that *is* materially enhanced.² The AEC notes that Treasury undertook a second round of consultation aimed at better understanding what is and is not materially enhanced information, and this likely contributed to

² *Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2019*, Explanatory Statement, p7.

the clarity that the banking designation instrument provides in this area. We would ideally like to see this degree of consultation replicated for energy, or at the very least, an energy-specific set of examples included both within the Exposure Draft and accompanying Explanatory Statement.

Furthermore, and noting that the Exposure Draft has adopted the same wording used in banking, it may be worthwhile to clarify the meaning of 'significantly' in the sentence 'rendered the information significantly more valuable than the source material' (s(11)(1)(b)(ii)). The ACCC's recently published Compliance and Enforcement Policy could be an appropriate document for this.

Maintaining the relationship between retailer and customer

When considering future datasets, the AEC encourages Treasury to bear in mind the overarching objective of the CDR: to create an economy-wide data right that customers can use to make decisions based around their circumstances. How the CDR operates in each sector will be slightly different and in energy's case, the Australian Energy Market Operator ('AEMO') serves as a gateway for the flow of data (otherwise known as the gateway model). However, the core rules that govern areas like consent and authentication should remain as closely aligned as possible across sectors to enable the economy-wide system. Floated ideas, such as two-tiered eligibility, risk potentially isolating the energy sector from the broader system. This will make it challenging for energy businesses to maintain their relationship with the customer and could undermine the principle of reciprocity (if outside businesses are able to access energy data but not be required to share their own data sets with energy).

The AEC urges Treasury to continue to closely engage with other government departments, the ACCC, AEMO and relevant market participants to ensure a coordinated timeframe for implementation of these reforms in a manner that meets the overarching objective of the CDR.

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
General Manager, Retail Policy