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Treasury Laws Amendment (Consumer Data Right) Bill 2018

AGL Energy (**AGL**) welcomes the opportunity to make a submission in response to the draft legislative amendments to enact the Consumer Data Right (CDR) in Australia.

AGL support the principle that consumers should have access to and control over data that directly relates to them. We also support the principles underpinning the framework which is to encourage innovation, promote competition and have customer focused outcomes.

However, AGL consider there are real risks to consumers and competition that need to be fully considered before progressing the proposed amendments. These include risks to privacy, data misuse, stifling innovation and a need to protect vulnerable consumers more so than consumers who are more engaged in the market. These risks are explored more in the body of our submission. A rushed regulatory framework will likely result in a number of unforeseen or unintended consequences for both consumers and competition and has the risk of substantially impacting vulnerable consumers.

As such, we strongly urge Treasury to provide an appropriate timeframe for consultation to allow participants to fully analyse and provide feedback to identify and address any unintended consequences for consumers and competition.

A robust consultation process increases the likelihood that the economy achieves a well-designed regulatory regime that facilitates:

- access and control to allow consumers to seek value from their data,
- preserving incentives for efficient investment and innovation in data from businesses
- fostering trust from the community in data use and privacy.

The broad scope of the draft legislation, beyond previous reports or recommendations, poses a real risk to achieving this. The proposed changes also represent substantial policy changes across a number of areas that have not previously been considered or consulted on including:

- Substantial changes to Privacy regime including potential dual/conflicting privacy obligations under the Australian Privacy Principles and the Privacy Safeguards.
- Expansion of Privacy elements to corporations.
- Expansion of definition of data and incorporation of fees set by the ACCC that may have serious impacts on innovation and competition.
- Multilateral contracts instead of robust regulatory regimes.

AGL is also concerned with the fact that the details to be included in the designation instrument and rules is where most of the complexities arise. This makes it difficult to fully scope the draft legislative

amendments for the potential impacts to consumers or competition. We note that these changes are substantially broader than had previously been considered through the PC and Open-Banking reports particularly relating to the inclusion of derived data which the PC had previously recommended only be included through consultation with industry.

There is also deep complexity with the interrelation and potential overlap of the Privacy Act and the Privacy Safeguards, that need more time to be fully considered to understand the impact on business operations and the efficiencies in requiring businesses to meet two similar privacy regulatory regimes for different but inter-related purposes. That is, Privacy Safeguards for CDRs and Privacy Laws for the collection and storage of customer data for other business functions, such as setting up accounts, billing, service delivery etc.

We do not consider that previous consultation processes, including the PC report[1] and Open-Banking review should be a substitute for best practice consultation with industry sectors. Industries need to be appropriately consulted for matters impacting their own areas, not to rely on a process that existed for another purpose. We would also suggest that, while useful for insights into the energy sector, the HoustonKemp report[2] should not be a considered an alternative to robust consultation processes, particularly as this report began for a purpose other than the implementation of the CDR.

We also note that the cost benefit analysis is only now being completed and is not as comprehensive as would be expected. This is a flow-on effect from prescribing a very broad reaching framework with the expectation that ACCC set rules to limit the scope.

A summary of concerns is provided below, with more detailed information in the attachment. Should you have any questions in relation to this submission, please contact Kathryn Burela on 0498001328, kburela@agl.com.au.

Yours sincerely

[Signed]

Elizabeth Molyneux

General Manager Energy Markets Regulation

[1] Productivity Commission, *Data Availability and Use Report*

[2] HoustonKemp Economists, *Open Consumer energy data - Applying a Consumer Data Right to the energy sector*, June 2018.

Topic	Position	Summary AGL position
Designation timeframes 56AC	Amend	Explicitly exempt banking designation from timings to give certainty to other sectors on the intent of this amendment.
Emergency rules 56BQ	Remove	No justification for emergency rule setting as drafted (note higher requirements applied to Product Safety bans and standards).
Best Practice Regulation 56AD	Add	Require Regulation Impact Statements to be completed for designation instruments and ACCC Rules.
Consultation requirements 56BO	Amend and remove	56BO(1) should apply to the making and amending of Rules. It should also include best endeavours for consulting industry beyond requiring publication on website. 56BO(3) to be removed in its entirety. Ensure that full and robust consultation processes are required through the designation instrument and development of CDR rules to ensure that previous consideration on the scope of data is not taken as consultation.
Data definition scope 56AF	Limit	Should not be broader than the Privacy Act. Specifically, the PC report recognised the commercially sensitive nature of imputed data and it was not provided for in the scope of Open-banking review or included as part of the Government's announcement on 9 May 2018. The provision of fees is insufficient to protect competitive market.
Fees 56BC(d)	Refine	Competitive markets should set values for Intellectual Property. Prescribed fees may be detrimental to competition and innovation.
Government inclusion	Explicitly address	Addressed with example in body of submission. Government bodies should not be able to set policy that allows the collection of data that will be covered by the CDR through other mechanisms, and to offer comparator/switching services without being required to be Accredited Data Holders and Accredited Data Recipients.
Consent		Should be informed and explicit. For energy, should be aligned to the National Energy Retail Law and National Energy Retail Rules.
Monitoring 56FF		AGL do not support multilateral contracts as this poses real risks to competition and will impact costs. AGL strongly recommend that the framework be altered to ensure that sector specific regulators are responsible for monitoring and ensuring compliance and managing disputes/requests through a centralised portal, with default terms/standard contracts as between the portal/regulator and the participant.
Reporting requirements 56BG	Amend	Recommend a mechanism to allow reporting to be aligned with existing designated sector reporting requirements (for example Australian Energy Regulator Performance Reporting). This would support a framework in line with the above recommendation.
Dispute resolution	Clarity	Need to acknowledge complexities in utilising existing dispute resolution mechanisms (funding, user pay, inconsistent decisions across state-based bodies). Make a recommendation to create National Ombudsman for Energy. If this is not accepted, then the ACCC Rules should stipulate that existing ombudsman schemes are bound by the guidance issued by the OAIC and ACCC in relation to CDR.

Draft legislation

Designated sectors 56AC

AGL recommends that 56AC(3) either be removed or amended to explicitly apply to the banking sector. Our understanding through the roundtable hosted by Treasury on 21 August 2018 was that this clause was added because the Open Banking processes was so advanced and agreed implementation was set for July 2019. Making the legislation clear on this matter will provide a level of certainty to other sectors that sufficient time for consultation and development of designation requirements is available.

ACCC consultation 56BO

AGL recommends that the scope of 56BO be extended to ensure that industry is appropriately consulted when industry specific CDR Rules are being developed as well as technical standards. AGL recommend that the legislative framework explicitly require the Australian Government Regulator Performance Framework[3] as the basis for consultation.

The legislation should require the ACCC to take best endeavours to engage industry participants in the consultation process; beyond publishing on their website. By including a best endeavours test, the ACCC would not be obligated to seek out all potential participants but would need to demonstrate the steps it took to reasonably identify and engage those participants. This is the process that is undertaken by the ACCC when reviewing or developing mandatory standards and bans for Product Safety to develop a list of key stakeholders to engage when a review commences. Given the wide-reaching impact of these Rules, the standard for consultation should be no less.

AGL recommends that 56BO(3), which allow for Rules to be valid without the necessary consultation processes, should be removed in its entirety. The inclusion of this section would allow best practice consultation to be circumvented and AGL can see no purpose that this inclusion can serve.

56BO(1) should be amended to apply to both the making of, and any subsequent changes/revisions or deletion of ACCC Rules.

Further, the ACCC is required by the Office of Best Practice Regulation (OBPR) to complete Regulation Impact Statements when developing or reviewing regulation, such as mandatory standards and bans for product safety. AGL consider that this same obligation should be placed under 56AD, both through the designation instrument and the ACCC rules for Division 2.

[3] See https://www.jobs.gov.au/australian-government-regulator-performance-framework

Emergency rules 56BQ

AGL do not support the emergency rules power as currently drafted at 56BQ, as it expands beyond the needs of the CDR framework.

The exposure draft grants the ACCC powers to make rules without prior Minister consent in emergency circumstances.[4] The example provided in the Treasury explanatory materials is *a previously unforeseen practice which presents an imminent risk of harm to consumers*. We note that there are existing powers under the Competition and Consumer Act (CCA) regarding 'without delay' as covered by product safety that demonstrate a real likelihood of imminent risk or harm to consumers that is likely not met with data rules. AGL do not consider that the emergency rule making powers are appropriate for the ACCC in this context, as no evidence or information has been provided as to what circumstances could present an imminent risk of harm to consumers.

Product Safety

Under s132 of the CCA, the Minister is able to issue a Notice for an interim ban without delay. This is a power of the Minister, which is exercised through recommendations provided by the ACCC.

Two examples of previous interim bans without delay relate to the imminent and real risk to life from defective hoverboards in 2016, and the imminent and real risk to life and public safety from certain consumer goods containing synthetic drug substances in 2013.

The hoverboard interim ban without delay was issued after evidence of frequent occurrences of fires caused by hoverboards were identified. Four house fires, two resulting in the complete destruction of homes, in a 2-month period were caused by faulty hoverboards. In this circumstance, the ACCC completed a prior 24-hour consultation with industry regarding the scope of the ban before the Notice was issued by the Minister. The ACCC could not issue the ban without prior consent.

It is unclear why a circumstance relating to data could impose a greater threat to health and safety to a product and yet would have lower requirements and safeguards on the ACCC to enact.

Consumer Data Right scope

Definition of consumer

AGL do not support the expansion of the definition of consumers to include corporations of any size. The CDR was intended as a human right and was not contemplated in the PC report or Open-Banking review so it's inclusion seems unnecessarily broad. We are not aware of any previous consideration or recommendations to justify the expansion to corporations of all sizes or evidence supporting the inclusion.

[4] Treasury Law Amendment (Consumer Data Right) Bill 2018 – Exposure Draft Explanatory Materials, p26

AGL understand that some stakeholders have recommended limiting this definition to be in line with the Privacy Act of individuals or small businesses with an annual turnover under $3 million. While this makes more sense, the energy sector has its own definition of small and large businesses based on energy usage on an annual basis.

We therefore recommend that the legislation retain the definition as prescribed in the Privacy Act, or as otherwise prescribed by existing definitions in the designated sectors laws, rules and regulations.

Data scope

AGL considers that value-added consumer data and aggregated data sets should not be included in the scope of the CDR data definition and is discussed below.

Derived data 56AF(1)

Derived or imputed data should not be captured in the CDR definition. Through previous consultations and discussions, it has been acknowledged that there needs to be a limit on data scope. Specifically, the PC Data Use report[5] stated:

> *Data that is only imputed by a data holder to be about a consumer — that is, data that has been created by a data holder through the application of insights or analysis such that it cannot reasonably be considered the consumer's data — should be included in consumer data only with industry negotiated agreement. Illustratively, if an insurer had determined through its own analysis that people who drink a lot of milk and eat red meat are very good car insurance risks compared with those who buy petrol at night and drink spirits,* ***we would not expect that information to be included in the data to be transferred, unless an industry agreed on its inclusion. (emphasis added)***

A broad definition of derived or imputed data may act as a deterrent to product and service innovation by Data Holders if there is a possibility that the imputed data underpinning the innovation would need to be shared with a competitor or used for competitive purposes. Further, derived data may also be problematic in relation to issues of privacy. This is because derived data is often based on aggregated data sets may be able to be reverse engineered to reveal personal information about numerous individuals or commercially sensitive information, particularly if the derived data is derived from certain subsets of primary data – for example, where the data set is small.

At the Treasury Roundtable hosted on 22 August, it was stated that the above was not intended and the expectation is that this will be limited by the designation instrument and Rules. The stated intent

[5] Productivity Commission Data Availability and Use – Overview p16.

of this broad definition was to future proof the legislation for market sectors and data-sets that haven't yet been considered.

Our expectation is that in following the position of the PC report, imputed data would only be included by exception and through industry consultation and agreement. AGL therefore recommend that the scope of definition in the draft bill be altered to capture this position. If derived data is to be disclosed, it should be limited to situations where the derived data meets express criteria prescribed by the legislation or the Rules made for the purposes of this subsection and following public and industry consultation on such criteria. Further, the requirement to disclose derived data should also be subject to clear exceptions and an ability to refuse access, including if the derived data may reasonably reveal personal information of another individual or commercially sensitive information.

For example, it could be agreed that credit screening through an agency whose core purpose is to provide accredited credit rating services should be readily available CDR data, but analysis on customer credit basis completed by data-holders, such as to improve services and products and potentially provide targeted credit management, hardship and payment options support to their customer, should not be included. In such circumstances, the data-holder is using the data to create value for its existing customers and attract new customers by differentiating its brand from competitors.

Relates to 56AF(4)

Another complicating element of the definition of CDR data includes that such data will fall within the definition if it "relates" to a consumer. This makes the definition broader than the Privacy Act (which speaks to information about an individual) and is intended to capture data that falls outside the definition of personal information such as metadata. The explanatory materials speak to the situation where information is primarily about a good or service but may reveal information about a consumer's use of that good or service then it relates to the consumer. AGL do not support this definition and consider that the definition should remain in line with the Privacy Act with the intention of reviewing in 2-3 years for the need of any extension.

Fees 56BC(d)

Depending on the scope of the definition of data under the sector designation, fees could ultimately reduce innovation, particularly where the industry disagree with the ACCC on the value they place on intellectual property or that the fee is not commensurate to the work or value of the data.

AGL recommend that **56BC(d)** be removed. In competitive markets, fees should be set by participants through commercial negotiations and an understanding of the resourcing and time required to develop the value-added data.

Government and NGO data collection and use

Our understanding of the draft amendments will mean that in some instances, governments and non-government organisations (NGOs) may be captured as Data Holders for the purposes of 56AG.

Example – NSW Government

NSW Social code – data collection

The NSW Government uses the Social Code to provide the framework for the delivery and track energy rebates to NSW residents from energy retailer. Amongst other changes, the NSW Government made changes to the Code in 2017 to obtain individual customer information as part of the performance reporting obligations of the Code.

Under these changes, the NSW Government now collects individual consumer information, deidentified through a SHA encrypted string (aka a SHA code), that includes:

- Usage information
- Billing information
- Marketing information
- Credit and payment plan information
- Concessions details

Services NSW – data collection and use

The NSW Government announced that NSW Services Centres will provide NSW residents with the ability "to quickly change electricity deals via Service NSW's free 'One-Click Energy Switch'" service.

Services NSW is a network of services centres (116) across NSW that provides a one stop shop for NSW residents to manage their NSW Government services (i.e. book drivers licence test, pay fines, register birth of child, apply for Senior Cards etc).

Consumers will be encouraged to bring in a copy of their bill which will be scanned and stored by Services NSW. The bill will be used as a basis to compare and make product recommendations to NSW residents that use the service. Importantly, the proposed service will also include a product recommendation follow up 'health check' with the customer after a period of time (e.g. 6 or 12 months).

The above example demonstrates that this creates a substantial and real conflict, where NSW Government would essentially be a data holder under the definition, a data recipient (if accredited) and a policy setter and rule maker for energy. Collection of data for the purposes of monitoring success of government programs does not necessarily fit within the definition of the CDR regime, however if the government collects the data and then uses that data to provide services to consumers then this should be captured. AGL's expectation is that Data Holder obligations should extend to the public sector, including government departments, regulators and government enterprises that collect CDR data that relates to consumers and is captured by the definition of consumer CDR data in the designation instrument.

To ensure consistency in data protection, our position is that governments should be explicitly restricted under the enabling legislation, and not through the ACCC Sector Designation process, from gathering data for the purposes of policy they have set and utilising this data for the purposes of acting as a comparator and switching service. There should also be obligations placed on governments who collect CDR data (such as through scanning customer bills at Service Centres) in the proper management, storage, security and transfer of this data under the rules.

The OAIC recently issued a binding Priviacy Code for all APS entities[6] which sets requirements for the proper management of Personal Information. AGL consider that a similar Code could be enacted to cover APS entities dealing with CDR Data. This APS Code seeks to establish best practice for privacy across the APS, specifically requiring entities to:

- Have in place a privacy management plan,
- Appoint a privacy officer to fulfil specific functions under the Privacy Act
- Appoint a senior leader as a privacy champion to provide cultural leadership and promote the value of Personal Information
- Undertake a Privacy Impact Assessment (PIA) for all new initiatives or high-risk handling of Personal Information,
- Keep and publish (on their website) a register of all PIAs conducted, and
- Have staff undertake privacy education and training.

AGL also note that there are non-government organisations that offer services that should be captured as part of the CDR regime. This may include financial counselling services, or services such as CHOICE Transformer that, for a small fee, offers consumers the opportunity to have them search the market for a better energy deal on an ongoing basis.[7] There are also potential combinations of government and non-government joint services that need to be considered in this process, such as the Victorian Government recent tender process to work with a community agency to source better deals for low income households.

Consumer Protections

AGL remain concerned that not providing adequate time to consider the impacts of this broad legislation will ultimately impact consumers the most, due to the value in, and enduring nature, of data insights.

[6] Privacy (Australian Government Agencies – Governance) APP Code 2017.
[7] https://canisaveonenergy.com.au/

Consent

The Treasury explanatory materials states that the objective of the CDR framework should not over complicate engagement, but AGL consider that simplified engagement should not be a reason to circumvent or water down consumer protections. There is substantial research that demonstrates that when being offered terms and conditions on line (such as through the access of a mobile application, or signing up to a website), consumers do not read the terms and conditions about what data will be captured or the uses of that data.

Obtaining consent

Because of the inherent value of data, and the insights it offers in relation to consumer behaviours and lifestyle, it should be protected and limited in the way it is accessed and handled. In energy, consent requirements apply broadly and have a strict obligation to ensure that consumer consent is explicit and informed when changing retailers and when signing up to certain product and service features (e.g. billing arrangements, payment channels). The Australian Energy Regulator released a compliance check in 2015 explaining the intention for explicit and informed, and to ensure the consumer has capacity to provide consent[8]. AGL see no reason why the consent requirements for CDR data should be any less stringent than these obligations.

AGL consider in relation to CDR data, consent should have entrenched protections in the Safeguards to ensure that consent is not misused by accredited third party providers. For example, consent should be limited to ensure it is not enduring (i.e. where a third party has agency for a consumer). These options include:

- One-time consent (i.e. compare the current deal against the market and make a recommendation)
- Rolling consent for a pre-determined period (i.e. multiple uses for the data requested), but that period be sufficiently limited
- Ensuring scope for both data and its use is substantially limited to protect consumers from general website terms and conditions or sign-up processes that give broad-brush consents.

This would help reduce potential consumer detriment through claims of enduring consent (i.e. that consent was obtained for the purposes of ongoing services) and will help achieve the intent of the CDR to give more power and control to the consumer over the access and use of their data.

Research on protections

The Consumer Policy Research Centre (CPRC) recently released a report on Consumer Data and the digital economy that acknowledged the big business in big data and the need to enable genuine consumer choice.[9] This report found 91 percent of consumers surveyed agreed that companies

[8] AER Compliance Check – explicit informed consent
[9] Consumer Policy Research Centre, Report on Consumer Data in the Digital Economy

should only collect the information currently needed to provide the service. The definition provided for under the draft legislation would allow for substantially more than this and would rely on Rules to limit and ultimately offer consumer protection.[10]

The most relevant finding from this report however, is that 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.

For this reason, AGL support the requirement that access to data should require informed, explicit consumer consent, and that data should only be shared when the consumer has given an explicit direction to the data holder to do so.

Third party consent

Many energy third-party comparators operate on commission-based business models, some have tiered energy-provider offers (for example, SunEnergy may have paid a higher tier commission to Compare Energy for their energy offer to star on Compare Energy website and be upsold by Compare Energy agents). Commercial agreements with these companies provide energy retailers with a mechanism for seeking redress should the third party not meet the obligations for sales under the relevant laws such as the National Energy Retail Law and National Energy Retail Rules.

However, the value and importance of adequate consent laws are not limited by these agreements. Particularly where data holder commercial agreements will not require the same redress mechanisms as accredited data recipients will be governed by the CDR framework. To ensure that customers are fully informed about accredited data recipients they should be required to provide clear, unambiguous information on the following:

1. Whether they represent all offers in the market or only a selection of retailers
2. Whether they receive a commission for sale
3. Whether that commission varies based on the retailer they recommend
4. What process the agent undertook to determine that the offer is 'the best offer'.

While these matters may be addressed primarily through the CDR rules, it is important to note that there are several circumstances in which a consumer may not be informed and may suffer because of a poorly scoped or implemented CDR framework. The below example demonstrates the potential impacts of broadly defined consents, and the potential flow-on from a lack of considered and detailed authentication processes.

Example of broad consent

[10] Ibid

J-Compare is a privately-owned comparator service for banking, insurance, energy, telecommunications and superannuation. J-Compare does not represent all offers in the market, only select brands based on the size of commission provided.

J-Compare is an accredited data recipient under each designated sector. When a consumer accesses the J Compare website to look at car insurance options, they are prompted to provide their contact details to be contacted by a J-Compare representative.

To capture consent on the access of the consumer's CDR data, J-Compare has a click box asking for permission to access CDR data on behalf of the consumer, with the appropriate links to the relevant terms and conditions when submitting the information. The consumer clicks "Yes" without reading the terms and conditions.

J-Compare can now access information to provide insights such as:

- the credit profile of the consumer to determine whether they can afford 'premium' or 'tailored' offers,
- their spending habits to determine brand loyalty (this could help tailor/target advertising),
- energy usage profiles to determine when the customer is home to improve cold-call or doorknocking approaches.

Regulating CDR participants

Monitoring and ensuring compliance

AGL understand the need to have robust reporting requirements as a mechanism for monitoring for compliance. In the absence of adequate oversight of third parties, reporting will be an essential tool to track the protection of consumers and the correct operation under the CDR framework.

However, AGL is concerned about the potential for consumer data to be misused, or to be obtained through misinformation or over information.

While the reporting framework will allow the ACCC and OAIC to monitor the operation of the framework, and apply enforcement responses where appropriate, it does not help address immediate and real consumer detriment caused by direct or indirect non-compliances or disputes with the framework. This is a role that is currently fulfilled by regulators such as the Australian Energy Regulator for authorised and exempt sellers of energy but could be expanded to CDR participants within the designated sector. There are also overseeing rules through the OAIC (APP7, Privacy Act) and Australian Communications and Media Authority (the Spam Act and the Do not Call Register Act).

AGL do not support the framework seeking to use multilateral contracts between participants as it is complicated and court proceedings should be avoided where possible. Energy affordability is a major focus in Australia and frivolous or unnecessary court proceedings brought by competitors will ultimately be costs borne by the consumer. The recent implementation of Power of Choice for energy has demonstrated the difficulty, complexity and costs in establishing multilateral contracts between participants (particularly in the absence of default terms prescribed by the regulator).

AGL therefore strongly recommend that the framework be altered to ensure that sector specific regulators are responsible for monitoring and ensuring compliance and managing disputes/requests through a centralised agency.

Dispute Resolution Mechanisms

AGL are supportive of utilising existing dispute resolution structures but consider greater clarity should be provided on roles under this new framework to reduce complexity and over-capture but also ensure consistency in approach.[11]

While not appropriate for the enabling legislation, AGL wish to note that consideration should be given to the consolidation of energy ombudsman schemes. This would help ensure consistent application of decisions for consumers and businesses.

This has recently taken place with financial services and AGL consider there will be value and efficiencies gained from following this model in energy. AGL would support the development of a National Energy Ombudsman. If Treasury do not agree with this approach, AGL recommend that the ACCC Rules should stipulate that existing ombudsman schemes are bound by the guidance issued by the OAIC and ACCC in relation to CDR.

Technical standards and Rules

Technology agnostic

AGL support the framework being technology agnostic to allow for tailoring to each designated sector. However, there are risks to business in the way the ACCC Rules and Technical Standards will apply to businesses. Particularly where the expectation is that the Technical Standards will be 'living documents'. While 'living documents' will help ensure that industry is not locked in to certain technology, it will also mean uncertainty for investment in data systems and information management tools for Data Holders.

AGL support a process that ensures that rigorous consultation and fulsome cost-benefit analysis are conducted for changes to both Rules and Technical Standards and that striving for interoperability does not come at an unnecessary cost to business. Especially, if there are already suitable data sharing models available, such as the Shared Market Protocol (SMP) for energy.

Dashboard recommendation

[11] Treasury explanatory statement p.33

AGL note in the explanatory materials, Treasury suggest that consumers could use a dashboard for managing permissions on consents granted.[12] At a high-level this makes sense, as it gives power to the consumer to be able to give and withdraw their consents as they see fit. However, consumers are time-poor, and once a permission is given, it may be given very little thought subsequently. This may be a sound approach for highly engaged consumers, but it may pose a real risk for disengaged, aged and culturally and linguistically diverse (CALD) consumers. This is also a reason to limit the consents that accredited third parties are able to get from consumers.

Our expectation is that each sector will be adequately consulted should technological requirements be imposed. We would want to ensure that decisions made for the banking sector are not automatically considered fit-for-purpose or appropriate for other designated sectors. For example, AGL use MyAccount (phone application) which allows customers to manage their energy information, account information and engage with us. We would want to ensure that these types of options are not limited by adopting one form of technology over another, for example, by recommending that a separate dashboard be utilised.

Application in the energy sector

With the high focus on energy affordability, the energy designation instrument and ACCC Rules should seek to minimise impacts to energy retailers, even at the cost of potential disruptors of interoperability. The energy market is undergoing rapid and radical regulatory change which is imposing significant and substantial costs that are ultimately borne by the consumer. Any designation in to Energy should support the use of existing models where they are deemed fit for purpose.

AGL would like to reinforce the position that the HoustonKemp report should not be considered a basis for the application of the consumer data right in energy. This report was initially developed to address inconsistency and access concerns following an energy Rule change to allow consumers to access metering data. For the application of the CDR in the energy sector, we recommend a fulsome inquiry and consultation process.

AGL supports and encourage the use of the Australian Energy Market Operators (AEMO) eHub as a gateway enabling consumers and third parties to access the data that is transacted through the eHub. There is potential for AEMO to play a central role as a gatekeeper of access to consumer data through the eHub and will avoid the unnecessary duplication and expensive build of a centralised data repository.

The Shared Market Protocol (SMP) is an existing protocol used in the eHub that:

[12] Treasury explanatory statement, example 1.11, p.22

- sorts and directs data requests to the relevant market participants
- retrieves data from different market participants
- operates in 'real time' through a single back-end interface
- includes a technical accreditation framework (managed by AEMO) allowing third party access

Drawing on existing systems architecture and data flows by extending the SMP/ eHub will be the most effective way of achieving the CDR and consumer outcomes that were recommended in the Finkel Review, ACCC Retail Electricity Pricing Inquiry Preliminary Report and most recently the AEMC's 2018 Retail Energy Competition Review.