

7 September 2018

Daniel McAuliffe
Senior Advisor, Structural Reform Group
The Treasury, Langton Cres
Parkes, ACT 2600

By email: Data@TREASURY.GOV.AU

Consultation on Exposure Draft: Treasury Laws Amendment (Consumer Data Right) Bill 2018

The Australian Energy Council (the Energy Council) welcomes the opportunity to comment on the exposure draft of the Treasury Laws Amendment (Consumer Data Right) Bill 2018.

The Energy Council is the industry body representing 21 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 Energy Council supports the development of a Consumer Data Right (CDR) in the energy sector. A comprehensive data right, supported by an appropriate regulatory framework, has the potential to support competition in retail energy markets and improve outcomes for customers. Access to energy consumption data, energy export data and fee and pricing information can enable consumers to compare offers in retail energy markets based on actual consumption profiles. Improved data access has the potential to aid the development of new products, services and business models, and accelerate the transition towards customer-centric energy markets with a broad range of energy services catering to diverse customer needs. This submission sets out some high-level comments on the current Treasury exposure draft and the broader CDR framework insofar as their application can be translated to energy.

Context for the Energy Sector

The Energy Council and its members have been engaging with the Commonwealth Department of Environment and Energy (DOEE) and the COAG Energy Council, responding to the “Facilitating Access to Consumer Electricity Data” report prepared by HoustonKemp.¹ We are concerned that certain provisions in the exposure draft may not be directly translatable to energy, and may limit the ability for the energy sector to develop the most efficient and effective CDR framework as the reform progresses. In our industry the Australian Energy Market Operator (AEMO) plays a unique role in the operation of the market, not necessarily present in the banking sector. The HoustonKemp report suggests a framework where AEMO acts as a platform through which Data Holders and Data Recipients interact. This intends to deliver on the goals of the CDR while harnessing the power of the current systems already utilised by energy market participants. It is unclear whether the legislation as proposed in the exposure draft would enable this model as AEMO does not fit into either category of Data Holder or Data Recipient.

¹ <http://www.coagenergycouncil.gov.au/publications/call-submissions-facilitating-access-consumer-energy-data>

To clarify the framework supported by the Energy Council, we attach a response provided to the DOEE on the HoustonKemp report (confidential).

Consultation

In order for these goals to be achieved, the CDR regulatory framework must be developed in consultation with the energy industry. At this early stage, the Consumer Data Rules should be developed broadly, in a manner that does not presuppose the characteristics of future industries. This will allow for the framework to be practical, balanced and deliver outcomes for consumers. The data relevant to consumers in the energy industry is distinct and unique when compared to other industries and a regulatory framework must be tailored to fit the challenges and opportunities it presents. We hope that industry is given ample opportunity to work with government and other stakeholders throughout the development of the CDR regulatory framework as the process transitions to the energy sector.

To that end, the provisions in the Exposure Draft must reflect a stronger commitment to consultation requirements on the Data Rules. We question the drafting of section 56BO(3) which can exempt the ACCC from the consultation requirements that are set out in section 56BO(1). As an alternative, section 56BO(1) should set out minimum consultation requirements and specifically refer to industry. This consultation should be followed both in the initial development of the rules but also in their subsequent variation and alteration.

Data and Derived Data

The Energy Council is concerned that the scope of data capture by section 56AF is unduly broad, and may lead to unintended consequences should it be applied to the energy sector. The CDR should only apply to datasets that are required to enhance competition. In the energy sector, businesses use data to innovate and value-add for customers in order to distinguish their product or service. This innovation is a key method of differentiation in the market and enables retailers to tailor services to a customer's particular needs. We note that the broad definition of derived data goes beyond what has previously been considered in the Productivity Commission and Open Banking reports. It would be against the objectives of the CDR and an unintended consequence if the broad definition of derived data were to result in a disincentive for businesses to use data to innovate and differentiate their products and services. On this issue we question whether it is appropriate for the ACCC to determine fees per section 56BC(d) in a competitive market. The market is the more appropriate mechanism to determine the appropriate fees to be charged for value added datasets.

Data that is captured by section 56AF(2) is potentially very broad, and without a clear indication of how the rest of the regulatory framework will function, this creates significant uncertainty around the potential impact and function of the CDR in the energy sector. We believe it is critical for the proper function of the CDR that businesses are given clarity on what data will be covered by the regulation, an approach that is too broad has the potential to dis-incentivise competition and innovation.

Other issues

We question the need for the Emergency Rules in section 56BQ. There is no evidence to support a need for emergency rule making powers that can be made by the ACCC without consultation or the minister's consent.

We do not support extending the definition of consumer to corporations. This will substantially affect the operation of the consumer data right and may lead to unintended consequences. Further it will substantially complicate the implementation of the CDR at this early stage of a significant reform.

We look forward to continuing to work with government on implementing a functioning and robust CDR.

Any questions about our submission should be addressed to Oliver Williams Oliver.Williams@energycouncil.com.au or by telephone on (03) 9205 3111.

Yours sincerely,



Ben Barnes
Director Retail Policy
Australian Energy Council