



7 September 2018

BY EMAIL: data@treasury.gov.au

Mr Daniel McAuliffe
Structural Reform Group
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Mr McAuliffe

Treasury Laws Amendment (Consumer Data Right) Bill 2018

Energy Queensland Limited (Energy Queensland) welcomes the opportunity to provide comments to Treasury on the exposure draft of the *Treasury Laws Amendment (Consumer Data Right) Bill 2018*.

Energy Queensland is a Queensland Government Owned Corporation that operates a group of businesses providing energy services across Queensland, including:

- Distribution Network Service Providers (DNSPs), Energex Limited (Energex) and Ergon Energy Corporation Limited (Ergon Energy);
- a regional service delivery retailer, Ergon Energy Queensland Pty Ltd (Ergon Energy Retail); and
- an affiliated contestable business, Yurika Pty Ltd.

This submission is provided by Energy Queensland, on behalf of its related entities described above and is available for publication.

Given the current transformation of Australia's energy system and the drive to empower consumers to make informed decisions regarding their energy consumption, it is important to ensure that a workable solution is developed to enable the intended benefits. Energy Queensland supports the intent of a new consumer energy data access scheme but believes that a more comprehensive assessment of the cost and benefits should be undertaken to ensure that provision of data in accordance with the legislative framework set out in the exposure draft legislation will match intended

consumer benefits and not result in duplication of data provision obligations already enshrined in energy laws.

In addition, Energy Queensland makes the following specific comments for consideration:

- **Interaction with the National Electricity Rules and National Energy Retail Rules**

The National Electricity Rules (NER) and the National Energy Retail Rules (NERR) already deal quite extensively with information flows between electricity industry participants (ie retail and distribution entities) and customers and the confidentiality of customer data. For example:

- The NER contain provisions to protect “confidential information” and specifically provide that the following types of data are confidential information: energy data, metering data, NMI Standing Data , information included under a scheme for a NMI Standing Data Schedule as referred to in clause 3.13.12A, information in the metering register and passwords.
- Under Rule 8.6 of the NER, each Registered Participant must use all reasonable endeavours to keep confidential any confidential information that comes into the possession or control of the Registered Participant or of which the Registered Participant becomes aware. Civil penalty provisions apply if confidential information is disclosed, used, reproduced etc except as permitted by the NER.

Under clause 8.6.2(d) of the NER it provides that Rule 8.6 does not prevent the disclosure, use or reproduction of information to the extent required by law. This would appear to permit the disclosure of otherwise confidential information in accordance with the CDR legislation. However, it is not clear whether the consumer data right (CDR) legislation would override any conflicting obligations in the NER or NERR.

Under the NERR, there are no equivalent confidentiality obligations. Instead there are various obligations on electricity retailers and distributors to provide energy consumption and historical billing information to customers.

Consideration will need to be given to whether the NERR obligations can operate in parallel with the CDR regime or if it would be more appropriate to remove the NERR obligations and rely solely on the CDR rights. The latter option may be preferable to avoid confusion and remove potential duplication of compliance costs for energy industry participants. Energy Queensland’s preference would be for the CDR regime to offer access to similar data sets to those already available under the NERR to

minimise the costs of upgrading existing data storage and access systems for CDR compliance.

Unlike the banking and telecommunications sectors, the Commonwealth does not have Constitutional power with respect to the electricity sector and so is not able to legislate all aspects of the regime as it applies to that sector. The electricity sector's key legislation is a national scheme that is implemented through individual State and Territory legislation. As such, amendments to that legislation and underlying rules (e.g. the NER and the NERR) must be undertaken by the Australian Energy Market Commission (AEMC) and individual State and Territory legislatures. Energy Queensland would welcome early advice on how Treasury proposes to address this interaction.

- **Provision of historical data**

The proposed first CDR designation date for the banking sector is 1 July 2019 and will apply to the four largest Australian banks. Treasury proposes to designate the remaining banks from 1 July 2020. In paragraph 1.41 of the Exposure Draft Explanatory Materials it states that Authorised Deposit-taking Institutions (ADIs) will need to transfer data collected or generated from 1 January 2017.

Energy Queensland is concerned if a similar designation approach is taken for the energy industry and there is a requirement to provide data that predates the CDR designation date. This may require the collation of historical data into the data format prescribed by the data standards so that the relevant energy industry data holder can provide the data within the relevant timeframes specified in the consumer data rules.

To minimise double handling of data, Energy Queensland proposes that energy industry data holders are only required to provide data sets in the data format prescribed by the data standards for data created on or after the CDR designation date for the energy sector. For energy data prior to that date, the consumer will have access to historical data under the NERR.

It is Energy Queensland's understanding that the banking sector is more advanced than the energy sector in terms of its current handling of consumer data. As such, Energy Queensland also proposes that, as part of the consultation process for designating the energy sector, consideration is given to providing a longer lead before the energy sector designation date to allow sufficient time for the energy sector to establish systems and prepare for compliance with the consumer data rules.

- **Another "privacy" policy**

Under the proposed new section 56ED(4) of the *Competition and Consumer Act 2011 (Cth)* (CCA), any Energy Queensland entity which is a data holder or accredited data

recipient (CDR participant) must have a clearly expressed and up-to-date policy about the participant's management of CDR data.

Each Energy Queensland entity currently has a privacy policy as required by the *Privacy Act 1988* (Cth). It is not clear from the drafting of the legislation whether it is possible to combine the new CDR data policy with an existing privacy policy as there is the potential for considerable overlap in application. As such, Energy Queensland would appreciate Treasury providing clarity on this aspect.

- **Legal effect of data standards**

The data standards made under the proposed new section 56FE(1) of the CCA made by the Data Standards Chair will not be a legislative instrument. Instead proposed new section 56FF of the CCA provides that a contract is taken to be in force between each data holder of CDR data to which a data standard applies and each accredited person.

This contract is deemed to contain an agreement of each person to:

- observe the standards to the extent that the standard applies to the person; and
- engage in conduct that the person is required by the standard to engage in.

If a person fails to comply with a data standard then either the Australian Competition and Consumer Commission (ACCC) or a person aggrieved by the failure can apply to Court for an order about compliance with or enforcement of the data standard.

As court proceedings are quite time and cost intensive, it would be hoped that the consumer data rules and/or the data standards would contain an alternative dispute resolution which could be invoked prior to applying to Court where there is potential ambiguity as to how a prescribed data standard should be interpreted and applied. Energy Queensland suggests something similar to the current dispute process available under the NER.

- **Different transparency standards for consultations with ACCC and Office of the Australian Information Commissioner (OAIC)**

Under the proposed new section 56AE(1) of the CCA, the ACCC is required to publish on its website the results of its consultation about designating a sector.

Under the proposed new section 56AE(2) of the CCA, the OAIC has discretion whether to publish on its website the results of its consultation about the likely effect of designating a sector on the privacy of consumers.

To ensure transparency of decision making, it would be preferable for the OAIC to be required to publish the results of its consultation.

- **Who is the CDR consumer?**

The definition of CDR consumer is defined in proposed new section 56AF(4) of the CCA and states that a CDR consumer for CDR data, is a person to whom the CDR data relates if the person is identifiable or reasonably identifiable from the CDR data.

Unlike bank accounts where there will be one or more named account holders who are the only individuals who can use the account, an electricity retail contract will be in the name of one or more individuals but may relate to the supply of services used by a number of individuals in a household. Energy Queensland believes that the definition of CDR data does not make it clear whether individuals who have not entered into a electricity retail contract or hold an account with an electricity retailer have a right to access data about their household’s electricity consumption.

- **Drafting errors in Exposure Draft**

Energy Queensland has identified the following minor drafting errors in the exposure draft legislation:

Section Reference	Original wording	Proposed wording
Section 2 New 56AE(4)(b)	“undertaken public consultation”	“undertake public consultation”
Section 2 New 56ES(1) – last paragraph	“that Part applies to an act <u>of</u> practice”	“that Part applies to an act <u>or</u> practice”
Section 4 Subsection 9(1)	“Repeal the subsection”	“Repeal the subsection, <u>substitute</u> ”

Energy Queensland looks forward to providing continued assistance to Treasury in relation to the proposed designation of the energy sector. Should you require additional information or wish to discuss any aspect of Energy Queensland’s submission, please do not hesitate to contact either myself or Lucy Lovelock on (07) 3664 4758.

Yours sincerely



Jenny Doyle

General Manager – Regulation and Pricing

TelephoneL (07) 3851 6416 / 0427 156 897

Email: jenny.doyle@energyq.com.au