

7 September 2018

Daniel McAuliffe  
Senior Advisor, Structural Reform Group  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: Data@treasury.gov.au

Dear Mr McAuliffe,

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

Simply Energy welcomes the opportunity to provide feedback on the exposure draft of the Treasury Laws Amendment (Consumer Data Right) Bill 2018.

Simply Energy is a leading second-tier energy retailer with over 660,000 customer accounts across Victoria, New South Wales, South Australia, Queensland and Western Australia. Simply Energy supports the Consumer Data Right (CDR) as a means of enabling greater competition and customer engagement in the energy market. With this objective in mind, Simply Energy considers the proposed scope of the Treasury Laws Amendment is appropriately adapted in providing consumers access to their energy data in a secure manner.

In exploring the requirements of the proposed exposure draft, Simply Energy's submission briefly evaluates:

- the proposed scope of the enabling legislation;
- the adoption and development of the framework in the energy sector; and
- proposed next steps.

#### **Scope of the enabling legislation**

Simply Energy notes that as per the exposure draft, the Minister is required to consider certain factors in making a designation. That said, more direction/objective criteria need to be outlined in the legislation around what constitutes "adequate" consideration. This guidance will particularly be useful given that the Australian Competition and Consumer Commission (ACCC) and the Information Commissioner are required to report on their findings when consulted by the Minister. Simply Energy considers that there is limited value (if any at all) in imposing assessment obligations on these regulatory bodies unless the Minister is also made accountable for justifying/providing reasoning in making a designation. Simply Energy believes that consideration of the ACCC and the Information Commissioner's finding alone is not a sufficient accountability mechanism.

Further, in order to ensure the CDR framework is self-governing and will not be inadvertently inhibited by privacy requirements outside the regime, Simply Energy is of the view that for the purpose of the CDR, it is preferable to exclude the obligations of Privacy Act. Rather reliance should be placed exclusively on the Privacy Safeguards set out in the CDR framework. Having said that, data transactions not covered by the CDR should still be subject to the Privacy Act and the Australian Privacy Principles.

Simply Energy is also of the view that the scope of cl 56BQ(4) is too broad. Rather than allowing emergency rules to remain in place for 6 months without the Information Commissioner's authority, there should be a requirement for the ACCC to seek the Information Commissioner's authority as soon as practicable but no later than one month after the emergency rule is made. If no authority is granted, then the rule should be deemed invalid.

Simply Energy also understands that the ACCC will be responsible for systemic enforcements of the CDR rules, while the Office of the Australian Information Commissioner will uphold individual data and privacy rights. Although Simply Energy is supportive of this enforcement regime, due consideration will need to be given to those requirements that may be deemed civil penalties under the ACCC's rules. Simply Energy maintains that civil penalties should be used as a last resort to deter and denounce serious contraventions of the rights and obligations under the CDR.

### **Adoption and development of the framework in the energy sector**

It is acknowledged that the CDR framework will be incrementally introduced and imposed on designated sectors. Simply Energy supports the draft proposal where the rules do not apply retrospectively in terms of imposing obligations on data holders.

Simply Energy, however, considers that drafting of the rules will have the most significant impact on the energy sector in terms of imposing rights and obligations on industry participants. Before the ACCC imposes rules on the energy sector, it should be acknowledged that further work is required around the 'HoustonKemp' recommendations, which were endorsed by the COAG Energy Council without thorough operational-level consideration and industry consultation.

Further, the scope of the potential rule making powers is very broad and as noted above, it is important that the ACCC should be able to make rules that can be tailored to energy sector. As such, Simply Energy considers that there needs to be greater prescription around how the ACCC takes into account industry-specific factors when making consumer data rules. There needs to be sufficient legislative safeguards and processes to ensure the ACCC undertakes a thorough assessment and is accountable for the decisions it makes in making relevant rules.

Simply Energy understands that the ACCC will need to undertake consultation processes, but Simply Energy does not agree with the proposed drafting of clause 56BO(3). This provision is too broad and open to different interpretations. Simply Energy believes there is a risk that this provision as currently drafted provides the ACCC with a means of circumventing the consultation requirements. A lack of consultation should only be acceptable in a limited number of express circumstances, such as where the ACCC does not consider, on an objective basis, that consultation with a particular stakeholder is necessary or that in the circumstances it is not expedient to consult all stakeholders listed in 56BO(1).

Simply Energy would also like to emphasise that there will be other issues to work through in the process of refining the application of the CDR to the energy sector, including but not limited to accreditation standards, access to ombudsman schemes and other industry-specific matters.

### **Proposed Next Steps**

Simply Energy notes that in several instances the detail underpinning the requirements that will be imposed on industry have been delegated to the rules. For example:

- the rules may be set differently by sector or class within a particular sector (cl 56BA); and
- the definition of data holder (cl 56AG(1)) refers to persons outlined under the designation instrument for the sector which will be made by the Minister in consultation with ACCC and the Information Commissioner.

Hence, Simply Energy believes there will need to be substantially more industry consultation to explore issues relating to the next level of detail and to fully scope industry-level requirements.

In closing, Simply Energy would welcome the opportunity to engage with Treasury, the Government, as well as other key stakeholders such as the Australian Energy Market Operator (AEMO), the ACCC and Energy Consumers Australia (ECA), on the technical issues to achieve the CDR in the most efficient and timely manner. Simply Energy is more than happy to contribute expertise towards the drafting, finalisation as well as implementation of the rules with a view of achieving the CDR in a cost efficient and timely manner.

We look forward to engaging with stakeholders on these matters. If you have any questions or would like to engage in discussions with Simply Energy, please contact Aakash Sembey, Industry Regulations Manager, on (03) 8807 1132 or [Aakash.Sembey@simplyenergy.com.au](mailto:Aakash.Sembey@simplyenergy.com.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'James Barton', with a stylized flourish at the end.

James Barton  
General Manager, Regulation