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Via email: data@treasury.gov.au

Consumer Data Right – energy sector designation instrument Response by the ACT Civil and Administrative Tribunal

The ACT Civil and Administrative Tribunal Energy and Water (ACAT EW) is the jurisdictional energy ombudsman for the ACT. ACAT EW also manages an energy and water hardship program for ACT customers who face disconnection or restriction of supply after failing to comply with utility hardship programs.

ACAT EW makes the following observations about the *Consumer Data Rights (Energy Sector) Designation 2020* instrument and suggestions about possible refinements to assist consumers (including vulnerable persons) benefit from it without the risk of having inappropriate information about them being disclosed.

Purpose

The stated purpose of the consumer data right is to provide individuals and businesses with a right to efficiently and conveniently access specified data that relates to them held by businesses, and to authorise secure access to this data by accredited third parties. It is designed to give customers more control over their information leading, for example, to more choice in where they take their business, or more convenience in managing their money and services. (Explanatory Materials (EM) p1)

“Associate”

The EM to the proposed instrument states that “associate” has the meaning given by section 318 of the *Income Tax Assessment Act 1936* (ITAA). The effect is to include a customer’s relatives, partners in a partnership, and a spouse or child of a partner. Thus, the term has wide coverage, but it does exclude the spouse of a partner who is living separately and apart from the partner (ITAA s 318(7)). The purpose of including “associate” in the designation instrument is to reflect that “there can be more than one account holder on an electricity account, or that the primary account holder may grant access to the account to a relative or spouse.” (EM p 2)

The instrument does not make it clear when and how information about an associate can be released and to whom. Section 7(1) of the instrument states that it applies to information about a person who is, or at any time was, a customer or associate. It does not require consent to inclusion of the information about the associate at the time when it was provided by the customer to the data-holding entity.

Including “an associate” might be an overreach and could cause concern in some circumstances, such as family break down or elder abuse.

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Rather than introducing a definition of “associate” for the conduct of the scheme, might it be preferable to introduce a system of release of information to the customer account holder and authorisation by persons associated with the account (who may be joint customers or consumers in the property, and who may not be related to the principal)?

Energy Made Easy

With the release of the new version of the AER Energy Made Easy website, customers are now able to enter their National Meter Identifier (NMI) into a data field on the website and then information about consumption at that NMI is accessed from AEMO’s database. Consumers are then offered information about competing energy deals based on their actual energy usage.

A stated purpose of the consumer data right (see above) is for consumers to play a more active part and check what electricity deals are in the market place. It appears that promoting the upgraded Energy Made Easy site may be more appropriate for this purpose than the consumer data right.

However, if the purpose of the consumer data right in energy is to enable consumers to share their energy data with third parties, (for example, solar installers or builders (i.e. a wider market)) in order to purchase other products, then the information that can be shared under section 8(2) and (3) appears to be more than is needed.


For example, the description of information to be shared under section 8 includes:

- a. payment information
- b. information about whether the customer is experiencing hardship
- c. any discounts applicable, including concessional arrangements.

It might be preferable to enable the customer to choose the level of information provided to third parties depending on who it is shared with. For example, one level where only consumption and tariff class is shared with builders and solar providers, and another where retailers can access information which will make switching retailers easier for the customer.

If you wish to discuss these matters further, please contact me.

Yours sincerely



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President

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