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Dear Mr McAuliffe and Ms Breen,

Consumer Data Right (Energy Sector) Designation 2020

EnergyAustralia welcomes the opportunity to provide a submission to Treasury's consultation on the Exposure draft of the Consumer Data Right (Energy Sector) Designation 2020 (**Draft Designation Instrument**).

EnergyAustralia is one of Australia's largest energy companies with approximately 2.5 million electricity and gas accounts in NSW, Victoria, Queensland, South Australia, and the Australian Capital Territory. We also own and operate a multi-billion-dollar energy generation portfolio across Australia, including coal, gas, and wind assets with control of over 4,500MW of generation in the National Electricity Market (**NEM**).

The Draft Designation Instrument is an important and defining mechanism in the CDR regime. It defines the potential scope of information or data sets that will be subject to the Consumer Data Right (**CDR**). While we expect that the data sets will be further refined in the *Competition and Consumer (Consumer Data Right) Rules 2020* (**CDR Rules**) and by the work of the Data Standards Body in the CDR Standards, it is important to ensure that there is a clear policy foundation for the data sets in the Draft Designation Instrument. Treasury aims to have the Designation Instrument finalised by 30 June 2020. We urge Treasury to consider extending this timeframe to allow a more considered development of the Draft Designation Instrument. If this cannot be done, then we urge Treasury to consult further with stakeholders before deciding on the Final Designation Instrument.

The key points in our submission below are:

- The Draft Designation Instrument should be amended to clarify that the electricity referred to is electricity sourced from the grid (as opposed to electricity from solar photovoltaic (solar PV) systems installed at a customer's premises).
- The defined term Arrangement should be limited to electricity *sold* (*and not supplied*). This would appropriately limit the concept of Customer to the person buying electricity and ensure that it does not extend to other people that may reside and take supply at a premise (i.e. the "Resident Model"). The latter carries unacceptable risks because a Customer cannot consent to the disclosure and use of information authorised by another resident. This means that there would be difficulties in ensuring that residents who are not already account holders are appropriately authorised to take these actions.
- The extension of Arrangement and Customer should be through the concept of Additional Account holders only. In our view, the concept of Associate should be removed throughout the Draft Designation Instrument.
- The references to information about sale or supply of electricity and related products are very broad, compared to the corresponding Banking Sector Designation equivalent -

"information about use of a product". In our view, this would likely lead to confusion about the scope of this section, as well as practical difficulties with its application.

- The description of billing information (in section 8(3)) should be changed. We question the relevance of information about an "account held by the customer with the retailer" and "a payment or transaction made". These concepts are relevant for the banking sector when the key feature of the product is the bank account, but this does not translate to energy where the account is ancillary to the sale of electricity. We also note lack of standardisation will need to be addressed for billing information as retailers will have different data structures, naming conventions and format for this data.

  Information about related goods or services (in section 8(1)(b)) could capture data about demand response and energy management services, when this does not appear to be the intent, and has not been within the contemplated scope of priority datasets of the CDR for the energy sector to date. We suggest that information about related goods or services should focus on features that are closely related to the sale of energy or are an additional characteristic of it e.g. GreenPower (https://www.greenpower.gov.au/) or carbon offset products.

- Examples of exclusions or carveouts from the Materially Enhanced Information exception (in section 11) (for National Metering Identifier (NMI) Standing Data and Metering Data, Distributed Energy Resources (DER) Register Information and billing information) should be provided to help clarify how the carveout will operate.
- Also, the Materially Enhanced Information exception should be extended to customer information to cover customer analytics. Further, the exception for Materially Enhanced Information should be changed to ensure it is sufficient to capture the categories of information that are commonly considered as enhanced or value-added within the energy industry.
- In relation to the data set about plan information, the references to plans for classes of people and Tailored Plans should be aligned with the existing concepts under the *Retail Pricing Information Guidelines* – Generally Available Plans and Restricted Plans.

- Separately, we also note that Product Data Requests (which any person can make) should not extend to data about Tailored plans or plans that are not generally available to the public (i.e. Restricted Plans).

- The Draft Designation Instrument identifies both the Australian Energy Market Operator (**AEMO**) and Retailers to be the data holder for Metering Data, when this should be AEMO only, particularly given AEMO's role as Gateway for that information.

Please note that we have used capitalised terms in this letter where the terms have been defined elsewhere in the letter, or where there is a corresponding definition in the Draft Designation Instrument.

We thank Treasury for their time in discussions about the Draft Designation Instrument to date. If you would like to discuss this submission further, please contact Selena Liu (Selena.Liu@energyaustralia.com.au or 03 8628 1548).

Regards,

Melinda Green
Head of Customer Value Management

Introduction

Below we set out EnergyAustralia's submission in relation to the Draft Designation Instrument. We have structured this submission to reflect our feedback on specific defined terms in the Draft Designation Instrument. This is then followed by our feedback on key concepts and an annexure which outlines examples regarding the concepts of "Primary Account Holder" and "Additional Account Holder" as used in the energy sector.

We note that EnergyAustralia has previously provided specific comments on the *Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2019* (**Banking Designation Instrument**). Where relevant, we have expanded on some of our comments in the Banking Designation Instrument, as they continue to relate to the Draft Designation Instrument.

Arrangement - source of electricity

The definition of Arrangement in the Draft Designation Instrument is one under which "*electricity is sold* by a retailer, *or supplied in respect of connection points, for the premises* of a person". In our view, for the reasons set out below, this definition should be adjusted to clarify the source of the electricity.

We understand that Treasury's intent is to refer to electricity that is supplied from the national electricity grid i.e. where the load is settled through the wholesale electricity market administered by AEMO.[1]

This is separate and different from electricity supplied which is not sourced from the grid but is supplied from "Behind the meter" devices. For example, electricity generated by a solar PV system (which may be owned by a retailer and installed at a customer's premises) and sold to that customer under a "power purchase agreement"[2] and therefore may be "supplied" for the premises, but would not be a transaction that is settled through the wholesale electricity market.

We understand that the intent is not to capture this "non-grid" electricity and suggest the drafting should be changed by defining "connection points" (by reference to the definition of that term in the *National Electricity Rules*) and clarifying that the electricity "sold" is also electricity supplied from the connection point.

This upfront clarification in the definitions is important so that it is clear throughout the Designation Instrument that data from "Behind the meter" devices is not within the current scope of the CDR.

Customer – sale or supply

The Draft Designation Instrument refers to an Arrangement "under which electricity is sold by a retailer, *or supplied* in respect of connection points…". The definition of Customer also refers to a person "to whom electricity *is supplied…"*.

This drafting appears broad enough to allow people other than the Customer buying the electricity (**Primary Account Holder**) to have rights to disclose and authorise use of CDR data. One idea that has been mentioned to industry is that this group of people refers to residents at a premise who are supplied electricity but are not the customer buying it (the "**Resident Model**"). We understand that Treasury's intent is different again – seeking to include people who are supplied electricity (i.e. residents at a premise) but only where they *are also Associates* (as that term is defined in the Draft Designation Instrument).

EnergyAustralia does not support a "Resident Model" even if it were limited to Associates. Allowing for the possible extension of the CDR via the "Resident Model" raises a number of key risks:

- it would be difficult to authenticate that a person is residing at a premise. One suggested method is to allow authentication based on the NMI, existing retailer and post code. This is

[1] See for example, the definition of "interconnected national electricity system" under the *National Electricity Law*.

[2] While "power purchase agreements" can be defined in many ways, they generally involve a contract between two parties, one which generates electricity (the seller) and one which is looking to purchase electricity (the buyer).

concerning as these details can be easily found on a customer's bill and do not verify where a person resides;

- the access of CDR data by a resident (particularly Metering Data and data derived from Metering Data) creates an unacceptably high risk of misuse of data, as it does not provide a mechanism for the Primary Account Holder to consent to disclosure or use of their own CDR data. Metering data and data derived from it could disclose the likely whereabouts or typical daily movements of the Primary Account Holder and other residents raising issues regarding family violence and theft; and
- lastly, we question whether a resident (who is not the Primary Account Holder paying for the energy) is likely to be, or should be, using the CDR regime in the first place. We suggest that there would be limited interest by these residents and limited ability to act on the information or services provided or facilitated by the CDR. Therefore, the costs of building to a Resident Model may outweigh the low customer benefits which require CDR take up by residents that are not account holders.

More generally, and by way of comparison, the inclusion of the term "Associate" in the Banking Designation Instrument was intended to address instances where products are provided to joint account-holders, among others.[3] This model is inherent in the drafting for that instrument and the CDR Rules. For example:

- section 7 of that instrument extends to information about use of a product by "[a] person's associate, where that product has also been, or is also being, supplied to the associate" (this wording directly links the provision of the product to that associate); and
- this is supplemented by a regime for joint-account holders in the banking-specific sections of the CDR Rules, which limits the scope of application further (and contains measures to ensure that joint account holders cannot grant authorisation on behalf of another account holder unless that other account holder has elected to allow this to occur).[4]

In the Draft Designation Instrument, the adoption of a "Resident Model" appears to go well beyond this limited use case, permitting access to other Associates that are not named account holders. If a resident wished to interact with the CDR regime, and the Primary Account Holder was willing to make them an "**Additional Account Holder"** (or joint account holder as it is also referred to), then this would be easy and quick to arrange via their retailer. We expect that most retailers are already providing Additional Account Holder/joint account holder arrangements. This is a simple, effective and, importantly, a more secure way to ensure that the CDR implementation in the energy sector does not contain loopholes that will impinge on Customer's privacy, safety and security.

Further, the effect of the use of the term Associate in the Draft Designation Instrument, alongside the terms Arrangement and Customer, are less clear than the Banking Designation Instrument. For instance, the definition of Associate refers to "…an associate of the customer, to whom electricity is supplied in connection with the arrangement". It is not clear from this definition (in conjunction with the definitions of Customer and Arrangement):

- whether the *Associate* or the *Customer* is the person "…to whom electricity is supplied"; and
- as a result, whether the broader "Resident Model" is intended to apply (allowing access by the Customer and any of its Associates that are supplied electricity at the Customer's premises), or rather a model more closely aligned to the Banking Designation Instrument and CDR Rules, which limits the scope to certain joint account holders.

[3] See Explanatory Materials – Treasury Laws Amendment (Consumer Data Right) Bill 2019 and Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2019 (14 June 2020), available at: https://treasury.gov.au/sites/default/files/2019-06/t364234-explanatory-materials.pdf.

[4] See CDR Rules , Schedule 3, Part 4 – Joint Accounts, available at: https://www.accc.gov.au/focus-areas/consumer-data-right-cdr-0/commencement-of-cdr-rules.

To clarify the effect of these provisions, we consider that:

- the terms Arrangement and Customer should only refer to the sale component of energy and the customer buying energy under that sale. This would align it with the concept of "customer retail service" under the *National Energy Retail Law* and Victorian equivalent[5] being the "sale of energy by a retailer to a customer at a premises"; and
- the term Associate should be removed entirely, with the effect that a person is only a CDR Consumer under the Draft Designation Instrument where that person is a named Account Holder, either a Primary Account Holder as noted above, or an Additional Account Holder. The concept of an Additional Account Holder is described in the following paragraphs.

People other than the Customer or Primary Account Holder

EnergyAustralia does not seek to narrow access to the CDR for people who have a reason to have access and would benefit from that access. Our main concern here is to protect the information and interests of our customers and that means ensuring that the CDR does not allow inappropriate access which energy retailers go to considerable lengths to protect. Having said that, we consider it is possible for the CDR to be appropriately extended to people other than the Customer (Primary Account Holder) in a way that protects the privacy, safety and security of the Customer.

EnergyAustralia supports extending the CDR to people other than the Primary Account Holder through the construct of "**Additional Account Holders**", which are also referred to as joint account holders by some retailers.

Energy retailers currently use Additional Account Holders to recognise people other than the Primary Account Holder and to provide them authority in relation to the account. An example of different Additional Account Holders is set out at the end of this submission. At EnergyAustralia, approximately 29% of electricity accounts and 25% of gas accounts have an Additional Account Holder of some type associated with an account, along with the Primary Account Holder.

Retailers are likely to have implemented authorisation/consent processes to allow an existing Primary Account Holder to consent to the addition of another Account Holder. In Victoria, these arrangements will also already be compliant with family violence obligations that apply to retailers.[6]

The Explanatory Statement to the Draft Designation Instrument[7] states that "including an Associate in the designation reflects there can be more than one account holder on an electricity account…".[8] However, we would prefer that the Draft Designation Instrument directly recognise Additional Account holders rather than rely on the definition of Associate and further refinement in the ACCC's CDR Rules. This is because the definition of Associate includes the relatives of the customer e.g. spouse, siblings and children, which we do not consider appropriate for the energy sector.

Treasury has verbally clarified that the Draft Designation Instrument only applies to Associates (relatives) residing at the premises, but as noted above we do not consider this is clear under the current drafting, and we still consider that the preferable approach is to allow for the extension of the CDR via Additional Account Holders (and removal of Associate), to adequately address family violence concerns and the additional risks we note in the paragraphs above.

As noted above, over 70% of EnergyAustralia accounts do not have an Additional Account Holder, yet presumably a large proportion of this 70% would have other adults residing at the premises for some or all of the time. This indicates that for a large proportion of accounts, the Primary Account Holder has not authorised Additional Account Holders at the premises, and these Primary Account Holders could be exposed to the risks of the "Resident model" without their consent or knowledge.

Treasury already appears to be considering Additional Account Holders under the section relating to billing information (section 8(3)(d)) and we suggest that this formulation can be used to extend the definition of Customer as an alternative:

[5] Section 2, *National Energy Retail Law.* In Victoria, the *Energy Retail Code (Vic)* defines customer retail services to mean "the sale of energy by a retailer to a customer at a premises".
[6] https://www.esc.vic.gov.au/media-centre/new-protections-energy-customers-experiencing-family-violence;
[7] https://treasury.gov.au/sites/default/files/2020-05/explanatory_statement_for_consultation.pdf
[8] Above, page 2

> "(d) an authorisation given by the customer or associate in connection with an account mentioned in paragraph (c), *including information about the persons who are authorised to use or access, or view information relating to, the account*".

The proposed amendment would result in a new defined term "Additional Account Holder", which replaces the use of Associate in most instances, defined as follows:

> "a reference to an ***additional account holder*** is a reference to a person, normally resident at the same premises as the customer, who is expressly authorised by the customer to use or access, or view information relating to, the account, in accordance with the retailer's procedures for permitting such access".

The term "expressly" and reference to the "retailer's procedures" have been included to clarify that an Additional Account Holder should only be permitted to access the account on the basis of a formal, express authorisation (and not an informal authorisation that cannot be verified).

Delicate or sensitive information about the Customer or Associate

We note that there is certain information within the scope of the Draft Designation Instrument that may be considered sensitive or delicate (whether or not it is "sensitive information" under the *Privacy Act 1988* (Cth) (**Privacy Act**) or the State and Territory equivalents), and may be deserving of a higher level of protection compared to other information.

While we support the inclusion of the following sensitive or delicate information within the scope of the CDR under the Draft Designation Instrument, we note that its use and disclosure should be appropriately limited and we suggest some clarifications:

- information indicating that a customer has a life support requirement (including rebate or concession information relating to life support and medical conditions) under the *National Energy Retail Rules* and Victorian equivalent[9] should be treated carefully and may need to be subject to additional restrictions under the CDR Rules (this information would likely be considered "sensitive information" under the Privacy Act). This is likely to be relevant under section 7(2)(b);
- any family violence concerns noted in relation to a customer should only be considered within scope of the CDR if this information can be used to assist with the management of CDR data by non-retailer CDR participants to minimise any family violence risk (i.e. the handling of this information by ADRs and AEMO (in a context where they are directly interacting with customers));
- concession and rebate information should only be considered within the scope of the CDR to the extent it indicates that the customer is receiving the concession or rebate and the amount. This appears to be the intent behind section 8(3)(g), however, some narrowing of the provision may be necessary given the breadth of the catch-all term "billing information". Concession and rebate information relating to life support or medical conditions should be afforded additional protections as noted in the first dot point;
- hardship information should only be considered within the scope of the CDR to the extent it indicates that the customer is considered a hardship customer under the applicable laws. As currently drafted, section 8(3)(f) refers to "a concessional measure put in place in respect of a customer experiencing hardship". We ask Treasury to clarify this reference and suggest that this section should instead refer to whether a customer is participating in a hardship program in accordance with the *National Energy Retail Rules* and Victorian equivalent.[10] However this status should not refer to other information such as adjustments to the customer's debt (i.e. debt waivers) or other retailer actions under that retailer's hardship policy. We see this as distinct and irrelevant to the overall value of an energy plan which should be the focus of the CDR.

[9] *Energy Retail Code* (Vic)
[10] *Energy Retail Code* (Vic)

Further, we consider that the information covered by the last two dot points (above) is at a higher risk of misuse in a way that discriminates against financially vulnerable customers, as it goes to their propensity to pay and potential bad debt levels. Appropriate protocols around the use of that information should be established to ensure Authorised Data Recipients do not misuse the information to discriminate against those customers. Alternatively, this matter could be addressed in an energy specific regulation applicable to third party service providers (for example, within the CDR Rules or under a separate instrument).

Time dimension of current and historical data sets

Separately, we also suggest that Treasury should be cognisant that the time dimension of different data sets will need to be different. Information about a customer should be current, however it is appropriate that other information such as a customer's meter type (from NMI Standing Data) and associated Metering Data may relate to a historical period and may be different to the information that relates to a customer's current meter (particularly where that customer has moved premises).

Information about sale or supply of electricity and related products

Sections 8(1)(a) and (b) of the Draft Designation Instrument refer to "…information *about the sale or supply* of electricity" and "…information *about the sale or supply* of related goods or services".

This is very general drafting that might not reflect Treasury's intent. In contrast, the equivalent section 7 in the Banking Designation Instrument applies to "information about *the use* of a product" which we see as clearer, narrower and more specific than information "about *the sale or supply*" and is directly connected to the customer's actions. In effect, the Banking Designation Instrument refers to an aspect of the supply of a product, being its use, while the Draft Designation Instrument for the energy sector does not – this raises interpretation issues for energy sector participants seeking to understand the scope of the CDR to their activities, particularly in the light of recent case law.[11] It also means that it is difficult to determine what is covered in the sections other than the identified example data sets (NMI Standing Data, Metering Data, DER register information, and billing information (subsection 8(2) and (3)).

We also note that the terms NMI Standing Data Schedule, Metering Data and DER Register Information are each defined by reference to their meaning in the *National Electricity Rules* which refers to other instruments. Treasury should ensure that any changes to the definitions in the *National Electricity Rules* and those other instruments do not automatically flow through to the Designation Instrument, where this is not intended. The Final Designation Instrument for the energy sector should adopt the approach used in the Banking Designation Instrument, by describing the relevant products and the specified classes of information directly (without relying on classification of that data under a separate instrument that may change over time – such changes may occur for purposes unrelated to the CDR, unintentionally expanding the scope of the CDR without full consideration by relevant stakeholders, or approval by the Minister).

NMI Standing Data

EnergyAustralia notes that the Data Standards Body is consulting on NMI Standing Data payloads which will further define the specific data payloads for the NMI Standing Data category in the Draft Designation Instrument.[12] We understand that the Data Standards Body is taking an expansive approach in the Designation Scope Assumption and Field Inclusion/Exclusion principles that apply to these specific payloads. We will provide views to the Data Standards Body, but note here, that from a policy perspective, our view is that data falling under the NMI Standing Data category should be limited to data that could possibly be relevant to a CDR use case.

[11] See for example the decision in *Privacy Commissioner v Telstra Corporation Limited* [2017] FCAFC 4, in which the Full Federal Court considers the term 'about' in some depth. Although that case relates to the term "personal information" under the Privacy Act, if the same interpretation were used in conjunction with the phrase "about the... supply… of electricity", this may result in a broad range of general operational data created by retailers or other market participants (e.g. distributors or metering coordinators) in the course of supplying electricity being unintentionally captured by the CDR.

[12] https://github.com/ConsumerDataStandardsAustralia/standards/issues/109

Billing information

We note the inclusion of the term "billing information" (section 8(3)), which expands the scope of information captured by section 8 more generally.

In practice, retail energy bills contain both regulated and unregulated content. Unregulated content will not be standardised across retailers in both nomenclature and format e.g. some items will be merged for some retailers but appear individually for others. In respect of regulated content, the *National Energy Retail Rules*[13] and *Energy Retail Code* (Vic)[14] require certain billing items, but these do not specify the names for the billing items nor their format. To that extent, regulated content is also not standardised.

Where billing information is included within the scope of the CDR, the CDR Rules and Standards will need to standardise the naming conventions of billing items for the CDR regime and ensure they make sense for both ADRs and customers. To the extent that billing information may be structured differently for different retailers, the CDR should take an agnostic view on these matters and flexibly allow for all retailer data structures in the backend, while allowing standardisation for the data transmitted in the CDR regime.

We also note that some examples of billing information do not appear to be appropriate for electricity services and we question their relevance for use cases in the energy sector. For example:

- "an account held by the customer with the retailer in connection with the arrangement" would be appropriate for the banking sector where an account is a key feature of the banking product and information about it is relevant (i.e. balance of a bank account, debits and credits on the account), and where it is common for customers to maintain multiple accounts. However, this does not translate to the energy sector, where the products are energy services and the account is a supporting, ancillary service; and

- we make the same comment in relation to "a payment or transaction made in relation to the arrangement". This is appropriate for the Banking Designation Instrument (which includes "information about a transaction") because the transaction or payment is directly relevant to the use of the banking product. However, it does not have the same relevance for energy services. Information about a customer's payment of their electricity bill is not a central feature of the sale of electricity in the same way as the charges applied to an account are. Rather, it is the billing information that is of more importance (not information regarding when the bill has been paid).

Also, we note that it is unclear what "a breakdown of an amount charged" is referring to, and "a discount applied in respect of the arrangement" appears to overlap with a category under section 9 (subparagraph 9(1)(c)(i) "a feature or benefit of the arrangement, including a discount or rebate"). We suggest that Treasury makes it clear in the Final Designation Instrument whether certain CDR data would apply under both, or just one or the other, of these definitions.

We also wish to flag that the Minister for Energy and Emissions Reduction has submitted a rule change request to the Australian Energy Market Commission which proposes changes to regulation of bill contents and format (in the states that participate in the National Energy Customer Framework).[15] These changes could standardise inconsistent bill format and nomenclature, and potentially simplify or reduce billing information for customers. The CDR could leverage any standardisation that results from any rule change, and the ACCC and Data Standards Body should be aware that billing items and the underlying data may change or be removed by retailers as a result (where they are no longer mandated to appear on the bill).

While it will be possible to standardise some aspects of energy bills, we note that it may be difficult to apply standardisation to bills without hindering how product and service offerings are constructed in the energy industry. There is already a wide variation already evident in innovative or sophisticated

[13] Rule 25 of the *National Energy Retail Rules*

[14] Section 25 of the *Energy Retail Code (Vic)*

[15] https://www.aemc.gov.au/sites/default/files/documents/rrc0036_rule_change_request_pending.pdf . The National Energy Customer Framework states/territories are Queensland, NSW, Victoria, SA, ACT and Tasmania.

offerings such as demand response, battery and electric vehicle and other bundled or subscription offers.

Replacement data

We also note that the definition of both billing information and Metering Data will need to include replacement bills, Metering Data corrections and updates to Metering Data following an estimated read, with the most recent and accurate data to apply for the purposes of data requests. We suggest this is a matter that should be addressed in the CDR rules.

Information about related goods or services

Section 8(1)(b) refers to "information about the sale or supply *of related goods or services (if any)* to such a customer or associate pursuant to the arrangement". This is also a very broad term and as drafted could cause confusion and lead to outcomes that are difficult to apply in practice or result in a CDR regime that is far broader than the original intent.

For example, "related goods or services" may refer to products related to the supply of electricity such as demand response and electricity management services, which are provided by retailers and non-retailer service providers. These services manage the storage, consumption, and discharge (where applicable) of electricity by devices. If these services were captured by Section 8(1)(b) then this may:

- result in Metering Data and billing information associated with demand response and electricity management services being subject to the Designation Instrument and the CDR; and
- raise level playing field issues where non-retailer suppliers of those services would not be required to disclose this data, but retailers would have to.

We understand that the inclusion of this data set in the CDR is not the intent, but rather that section 8(1)(b) is intended to focus on non-price benefits offered above the core electricity service to entice a customer to sign up, e.g. movie vouchers, external loyalty scheme points. In our view, this overlaps with the description of a "feature or benefit including a non-monetary benefit" under section 9(1)(c) and suggest section 8(1)(b) is redundant if it is intended to focus on these non-price benefits.

Instead, we consider that section 8(1)(b) could be redrafted to focus on features that are closely related to the sale of energy, or are an additional characteristic of the supply of energy (such as GreenPower[16] or carbon offset products[17] – we suggest these services be made examples in the Draft Designation Instrument). In addition to a narrowing of the drafting, further clarifying examples could be provided to exclude services from the section. For example, exclude services which are unrelated to the sale or energy such as energy management services, demand response, and energy efficiency products.

Materially enhanced information exception

We consider that data enhancement may fall within two categories, simple aggregation, categorisation or other ways to "cut" the data, and more sophisticated enhancement requiring the application of analysis or algorithms which may be considered proprietary value-added data. The definition of materially enhanced information is a critical means to ensuring that datasets do not include the latter proprietary value-added data.

We consider this materially enhanced data is the property of the data holder (or that the data holder otherwise retains valuable rights, including intellectual property rights, in relation to that data), and the market should be permitted to place a fair value on the data holder's rights in relation to that data and promote further investment in creating value-added data. The threat of regulation (via subjecting that data to the CDR and by operation of the CDR regime deeming all of that data "non-

[16] GreenPower is Australia's government managed accreditation program helping the nation transition to renewable energy above and beyond legislated targets. GreenPower accredited renewable energy is electricity which produces no net greenhouse gas emissions. For more see: https://www.energyaustralia.com.au/home/electricity-and-gas/green-energy-plans

[17] For example, see https://www.energyaustralia.com.au/home/bills-and-accounts/go-neutral

chargeable data") would deter this investment in the sector. Innovation and competition would be negatively impacted to the detriment of customers.

We understand that section 8(4) excludes Materially Enhanced Information from the overarching categories of information about the sale or supply of electricity and related goods (section 8(1)) so that the CDR does not apply to these categories, unless the information falls within sections 8(2) and (3) (NMI Standing and Metering Data, DER Register Information and billing information). We refer to this as the **Materially Enhanced Information Exception**.

Carve-outs from the Materially Enhanced Information Exception

Compared to the Banking Designation Instrument, the carve-outs from the Materially Enhanced Information Exception in the Draft Designation Instrument are very broad, as they relate to whole data categories.[18] As a result, any information carved-out under the Materially Enhanced Information Exception is made subject to the CDR (even if that information would otherwise be "Materially Enhanced Information").

We expect that these carve-outs may be further refined by the ACCC in the CDR rules, but note that it is difficult to comment on the appropriateness of the carve-outs that are set out in the Draft Designation Instrument, given the breadth of these items. By way of comparison, the Banking Designation Instrument specifically refers to data items that are carved-out, in a manner which is clearer and more certain.

Separately, we note that the physical nature of energy means that it is not possible to measure exactly where all electricity is consumed. As a result, the categorisation or classification of data is common analysis or insight that is performed on energy data (which forms Metering Data) by energy retailers and other participants in the sector. Because of this requirement for some level of analysis, and the fact that this analysis is often required to ensure that Metering Data is usable, in a wide range of circumstances data that is generated in the energy sector may be considered "Materially Enhanced Information" to some extent.

We suggest that the Final Designation Instrument for the energy sector should provide some examples of what is carved out from the definition of Materially Enhanced Information (and therefore designated CDR data), particularly for Metering Data and billing information that is subject to lower level enhancement such as categorisation, grouping or filtering. Some further examples:

- on one view, the assignment of Metering Data to a customer could be an enhancement (as Metering Data is only associated with an NMI and the retailer keeps the customer record) but there would likely be a question as to the materiality of this enhancement;
- energy retailers may analyse Metering Data to estimate which appliances are using energy, as it is not possible to exactly track which appliances are actually using the energy (unless the appliance itself tracks this). We would consider this insight or analysis results in the information potentially being Materially Enhanced Information which is no longer Metering Data (and not carved out), and therefore should not be designated CDR data.

Extend the Materially Enhanced Information Exception to Customer information

We ask Treasury to apply the Materially Enhanced Information Exception to information about a Customer or Associate (section 7) to ensure that partly derived or derived information using Customer information combined with other information (e.g. plan information) to provide customer analytics, is not designated CDR data. These analytics may indicate the likelihood a class of customer might take up certain energy plans.

Drafting comments regarding "Materially Enhanced Information"

The definition of Materially Enhanced Information reflects the drafting set out in the Banking Designation Instrument. We previously provided feedback to Treasury on the drafting of this term in

[18] That is, sections 8(2) and 8(3) of the Draft Designation Instrument, which relate to NMI Standing Data, Metering Data, DER Register Information and billing information (including each of the sub-elements of billing information set out in sections 8(3)(a)-(i)).

the Banking Designation Instrument and consider that these points remain relevant to the Draft Designation Instrument.

In effect, "materially enhanced information" describes a subset of "derived data" (as defined in the *Treasury Laws Amendment (Consumer Data Right) Bill 2019*) that would be excluded from the scope of CDR data under the designation instrument.

The definition on its face is limited to situations where "insight or analysis" has been applied (potentially excluding automated creation of value-added data).

In the Open Banking Report, it was proposed that "value-added customer data" should not be included in the scope of open banking.[19] The definition for materially enhanced information is similar to the definition proposed in the Open Banking Report, except for the following:

- the proposed instrument excludes "transformation" of data as one of the criteria (but it still includes the application of "insight" or "analysis"); and
- the proposed instrument increases the threshold so that the insight or analysis must render the information "significantly more valuable" (in usefulness, usability or commercial value) than the source material.

The removal of "transformation" of data in this context causes some concern, as it may exclude situations where data is transformed (e.g. from one format to another) even if that transformation results in data that is significantly more valuable. This may occur where significant knowhow or effort has been used in designing a method for transforming that data, but the creation of the data set itself (which may be an automated transformation) is relatively simple. Noting our comments above regarding the various transformations, insight and analyses that are used for the creation of Metering Data in the energy sector, it is conceivable that a "transformation" of Metering Data may create significant additional value and this activity is a valid way of adding value to that data.

Further, the threshold "significantly more valuable" differs from the description used in the Open Banking Report (which was simply, "materially enhanced"), and we consider that "material", or "in a material respect" would be better indicator of the threshold requirement.

We suggest that the term "transformation" is added to the definition of materially enhanced information (sections 11(1)(a) and (b)), and that the phrase "significantly more valuable" is amended to "more valuable in a material respect" (section 11(1)(b)(ii)).

Specified classes of information—information about Retail Arrangements

Information about Retail Arrangements and Product Data Requests

Section 9 outlines information regarding electricity plans and plans that may bundle electricity with gas. This information may relate to Arrangements for a particular class of person (**Class Plans**) or tailored to a particular person[20] (**Tailored Plans**).

Section 10 then outlines information for natural gas plans but makes clear that it does not apply to Tailored Plans.

EnergyAustralia anticipates that information in sections 9 and 10 will be used in:

- Product Data Requests (requests by any person which relate to products offered by the data holder); and/or
- Consumer Data Requests (requests by an eligible CDR consumer for CDR data that relates to them).

These two types of requests are established by the current ACCC CDR Rules, which we note will need to be amended for the energy sector.

[19] Recommendation 3.3, Review into Open Banking (December 2017), p 37.
[20] Subparagraphs 9(2)(a) and (b), *Consumer Data Right (Energy Sector) Designation 2020*

Although the ACCC has not begun energy sector consultation on the CDR Rules, in our view Product Data Requests (which any person can make) should not extend to Tailored Plans or plans that are not generally available to the public. EnergyAustralia strongly supports transparency of generally available energy plans in the retail market. However, Tailored Plans are often not marketed publicly for various reasons. This may be because the plans are very tailored to suit specific customer characteristics, they contain certain eligibility criteria, or they relate to a pilot offer for an innovative product. It may not make sense to publish Tailored Plans as the plans may be irrelevant or not cost effective for most customers or require heavy qualifications on eligibility, which are likely to confuse customers and ADRs and result in negative customer experience.

Drafting comments regarding Class Plans and Tailored Plans

The Draft Designation Instrument refers to Arrangements that are "offered or provided to particular classes of customer" or "tailored to a particular customer", which reflects the drafting in the Banking Designation Instrument.

For closer consistency with the energy regulatory regime, these two concepts could be aligned with the existing concepts of Generally Available Plans and Restricted Plans in the Australian Energy Regulator's (**AER**) *Retail Pricing Information Guidelines* (**RPIG**).[21] These definitions were developed with the energy sector over some time and are now settled and reasonably understood. Further, because these concepts are used to define obligations in respect of the AER's Energy Made Easy (**EME**) website, particularly around what offers are published, there are administrative benefits in adopting the same definitions. For example, if Class Plans were changed to align with the definition of Generally Available Plans under the RPIG, it would be easier to determine what is already publicly available on EME.

If full alignment against these definitions is not possible, we ask Treasury to consider including some of the examples from the AER's RPIG's definition of Generally Available and Restricted Plans in the definitions of Class Plans and Tailored Plans. In particular, we refer Treasury to the list of examples of Restricted Plans as set out in section 78(a)-(j) of the RPIG.

Sections 9 and 10 refer to information about "a feature or benefit of the arrangement" and "terms and conditions associated with the arrangement".[22] We suggest that one of these categories include:

- an example of "benefit period", which is a common feature of retail energy plans and basically refers to how long a benefit such as a discount will last (see AER's RPIG and the *National Energy Retail Rules*[23]); and
- contract period or term.

Both a benefit change at the end of a benefit period and contract term are key decision points for a customer and will likely have utility for ADR use cases.

Data holders for Metering Data

The Draft Designation Instrument identifies both AEMO and Retailers as the data holder for Metering Data. We understand that this has been based on an understanding that retailers hold meter estimates which AEMO does not have data for.

In our view, AEMO has (or will be able to access) all relevant information necessary to be the Data Holder with respect to Metering Data. We suggest that AEMO is specified as the only data holder for Metering Data, as a central point to which Metering Data Providers (MDPs) provide data to. If AEMO does not hold certain estimate data or receives them on a delayed basis, MDPs should be considered the appropriate Data Holder as they are the provider of Metering Data.

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[21] https://www.aer.gov.au/system/files/AER%20Retail%20Pricing%20Information%20Guidelines%20-%20Version%205.0%20-%20April%202018.pdf , pg. 15-16.

[22] Subparagraphs 9(1)(c) and 10(2)(c) of the Draft Designation Instrument

[23] See Australian Energy Regulator, *Retail Pricing Information Guidelines*, pg. 35 (https://www.aer.gov.au/system/files/AER%20Retail%20Pricing%20Information%20Guidelines%20-%20Version%205.0%20-%20April%202018.pdf) , and *Rule 45A and 48A of the National Energy Retail Rules*)

Retailers selling to "off market" embedded network customers

The Draft Designation Instrument applies to "Retailers" that are defined by reference to retailer authorisations and retailer under the *National Energy Retail Law* and *Electricity Industry Act 2000* (Vic). This would appear to capture Retailers selling to embedded networks under a retail authorisation or retail licence (rather than an exemption) when this may not be Treasury's intent.

Embedded networks are private electricity networks which serve multiple premises ("child connections") and are only connected to the distribution network and national electricity grid, through a "parent meter" connection point. Authorised or licensed retailers can sell to embedded networks in the same way that exemption holders sell to them – by purchasing electricity at the parent meter and on supplying that electricity to child connection points (these child connection points are often referred to as being *"off market"*). We understand that Treasury's intent is to not include *"off market"* embedded network customers and we agree with that policy position.

The regulatory regime also permits a situation where an "off market" child connection point can move "*on market*" and the customer at that connection point is able to purchase electricity from a third party retailer, however the numbers of these "on market" child connection points are very low for residential and small business customers. Once "on market" these customers are assigned an NMI and are visible in AEMO's systems. However, their billing arrangements may differ – they may receive two bills, one from their "on market" energy retailer for the electricity component, and another for network charges from the private network operator. Alternatively, they may receive one bill, and the private network operator and retailer recover costs between themselves. The private network operator can differ from site to site. Due to a significant lack of standardisation, we suggest the CDR designated data should not include "*on market*" embedded network customers as well.

We suggest the drafting of Retailer be changed to ensure that retailer supply of electricity to embedded network customers is not in the scope of the Designation Instrument. There are carve-outs for embedded network customers in the *Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019* (which relates to the Default Market Offer) and may serve as an example:

> "The consumer is not a small customer, of any type, if:… the supply is by means of an embedded network".[24]

We discuss whether embedded network customers should be included in the scope of the CDR in the mid-to-longer term in our response to Treasury's Inquiry into Future Directions for the Consumer Data Right: Issues Paper.[25]

[24] Section 6(3)(c) (https://www.legislation.gov.au/Details/F2020C00142)
[25] https://treasury.gov.au/consultation/c2020-62639 Submissions to be published.

Annexure 1

Example: Primary Account Holders and Additional Account Holders

For illustrative purposes, we set out below the different types of Account Holder that can be assigned to an account within EnergyAustralia's own experience. These arrangements are likely to be different across retailers.

Account Holder

Retailers typically have an Account Holder who has full control of the account to manage their electricity supply, and accountability for any debt that may incur on the account. Their name will appear on all bills and correspondence.

Additional Account Holders

Retailers may also have contractual arrangements to allow Additional Account Holders to be assigned to an account, upon request and as approved by both the existing Account Holder and new Additional Account Holder.

Additional Account Holders can be assigned varying levels of authority and responsibility. The below categories are an example only, different retailers may have different arrangements in place:

- **Additional Account Holder with financial responsibility:** Person has the same level of authority as the Account Holder to manage the account e.g. arrange de-energisation and re-energisation. They may appear as a second person entry in the billing system. They are held accountable, alongside the Account Holder, for any debt that may incur on the account. Their name appears on any bills and correspondence. They are also eligible to claim concessions/rebates.

- **Fully authorised (not financially responsible)** – Person can do everything on an account that the Account Holder or Financially Responsible person can, including arranging de-energisation and re-energisation service orders etc. However, this person is not Financially Responsible for the account and therefore not held accountable for any debt. Power of Attorney has this level of authority.

- **Enquiry only (not financially responsible)** – Person can discuss with their retailer and action the following: add life support registration to an account, extend the bill due date, make balance enquiries, request general tariff/product information; request when the next scheduled read date is; discuss a bill/bill adjustment; apply a concession (if the retailer has the concession details); provide a credit card payment; raise a fault service order; make and record a payment and set up direct debit (but not responsible for the debt on an account).