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30 July 2021

Consumer Data Right Division
Treasury
Langton Cres
Parkes ACT 2600

Submitted electronically: data@treasury.gov.au

Re: Consumer Data Right rules amendments (version 3)

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to respond to the Treasury's consultation on draft amendments to the Consumer Data Right rules (CDR Rules) (version 3 of the CDR Rules).

Red and Lumo have consistently supported the CDR and recognise the likely benefits it will generate for Australian consumers. We also acknowledge the ongoing challenge for the Treasury to create a regulatory framework, particularly for the accreditation of data recipients, that balances data security with the administrative burden of accreditation and ongoing compliance.

However, we continue to advocate for a cautious approach to data sharing, particularly as the Treasury is yet to consult on draft rules for the energy sector. We are concerned that by trying to accommodate specific business models and use cases, Treasury is creating a more complex framework. Consumers and many other stakeholders are likely to struggle to understand where the boundaries of the CDR Rules and the accreditation framework start and end, particularly where data is accessed or used by those who fall outside its scope (e.g. trusted advisers). Aside from a general loss of confidence, it may be difficult for many consumers to understand the precise nature of regulatory obligations and avenues of recourse in the event of data breaches. In the case of trusted advisers, the integrity of the scheme also relies on the monitoring activities of regulatory agencies, such as the Australian Securities and Investments Commission, and for them to undertake a role that wasn't foreseen in the early stages of the CDR.

We acknowledge that contractual and other agreements between authorised entities and their agents are common across all industries and they should be permissible under the CDR Rules. In the energy sector, however, authorised retailers (or licensed retailers in Victoria) remain primarily responsible for their actions and those of any agents with whom they have an arrangement to provide services, and they are the focus of any enforcement action for breaches under the relevant energy laws. Similarly, the same authorisation requirements and ongoing obligations apply to the primary service provider regardless of any contractual arrangements for service delivery. This is our preferred approach as it is relatively straightforward for all parties to understand.

A further challenge is for the Australian Competition and Consumer Commission's regulatory administration. The more complex the accreditation framework, the greater the challenge for regulators to understand the flow of data and its use between unrestricted and restricted data recipients, and those who are not accredited under the CDR Rules.

We recommend that the Treasury undertake further analysis and continue to consult on a simpler framework that accommodates different business models but does not include different levels of accreditation. However, if it chooses to proceed with the proposed amendments, then there should be clear obligations on data recipients and their agents to disclose to consumers who can access and use their data, how they are accredited under the CDR Rules and what the consumer can do in the event of a data breach. Data recipients should also include this information on their customer's dashboard.

Treasury proposes a disclosure requirement when a data recipient shares data with a trusted adviser but this should apply more broadly. Furthermore, the obligation on data recipients should be strengthened to require them to determine whether a trusted adviser is in the prescribed class, rather than just take reasonable steps. We acknowledge that this will add to the administrative and compliance burden but at this stage of the CDR's implementation, it is necessary to maintain confidence and to ensure that consent is informed.

As a final point, we encourage the Treasury to reconsider its proposal to set the pre-approval option—i.e. to automatically allow an individual joint account holder to independently share data—as the default for joint accounts. As we noted in our informal response to Treasury's recent consultation, our preference is to ensure consumer confidence in the CDR in the early stages of implementation by retaining strict controls on data sharing and use.

About Red and Lumo

We are 100% Australian owned subsidiaries of Snowy Hydro Limited. Collectively, we retail gas and electricity in Victoria, New South Wales, Queensland, South Australia and in the ACT to over 1 million customers.

Red and Lumo thank the Treasury for the opportunity to respond to the proposed amendments. Should you wish to discuss aspects or have any further enquiries regarding this submission, please call Geoff Hargreaves, Regulatory Manager on 0438 671 750.

Yours sincerely

A handwritten signature in black ink, appearing to read "Ramy Soussou".

Ramy Soussou
General Manager Regulatory Affairs & Stakeholder Relations
Red Energy Pty Ltd
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