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13 September 2021

Consumer Data Right Rules Amendments (Version 4)

The Australian Energy Council ('AEC') welcomes the opportunity to make a submission to Treasury's *Consumer Data Right Rules Amendments (Version 4).*

The Energy Council is the industry body representing 20 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia, sell gas and electricity to over ten million homes and businesses, and are major investors in renewable energy generation.

The release of the Version 4 Rules is a significant milestone for it sets the parameters for how the Consumer Data Right ('CDR') will apply to the energy sector. It had been signalled that the Rules would be released earlier in the year; the approximate six-month delay of the release, followed by the announcement that the CDR for some data holders will commence in October 2022, has placed considerable pressure on industry readiness. This pressure is magnified by some of the proposals in the Version 4 Rules going against stakeholder expectation, and the short consultation period to respond to these proposals.

This submission expresses the AEC's view that there are outstanding issues with the Version 4 Rules that require resolving or, at the very least, further and timely explanation about how they will work in practice. The current period of consultation will not provide for this, especially given Treasury's intent (as expressed at the CDR Design and Strategy Forum held on 24 August) to submit a final draft of the Rules to the Minister within a month of consultation closing. The AEC encourages Treasury to invest in additional, and targeted, consultation with the energy sector to improve industry preparedness and minimise costs for consumers.

Large customers

The AEC understands that Treasury's proposal to set no maximum threshold consumption is due to concerns that it may unfairly exclude some genuine Small and Medium Enterprises (SMEs) with higher-than-average electricity consumption. Treasury has acknowledged it does not have full visibility over the issue and is seeking feedback from stakeholders about whether a threshold can be set that mitigates these concerns.

Mindful of Treasury's concerns, the AEC believes for energy consumers, the appropriate threshold for eligible consumers should be those that consume less than 160MW/h per year. The Australian Energy Market Operator's (AEMO) *Metrology Procedure* makes clear that the majority of NEM jurisdictions place a consumption limit of 160MW/h per annum on the type of meter a customer uses. Any customer that exceeds this limit requires a different metering type that is configured by the network to accommodate higher voltage.

Data from Energy Consumers Australia's *Small and Medium Enterprise Retail Tariff Tracker Project* shows the estimated average consumption of SMEs in selected NEM network areas. While the numbers contained in the table below are averages, they are all substantially lower than the proposed threshold of 160MW/h, ensuring that the vast majority of customers would have access to the CDR,

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without unreasonably imposing costs on industry by requiring that all customers be eligible. These costs are discussed further below.

Table 1: Estimated average consumption and typical tariff types for selected NEM network areas[1]

Jurisdiction	Network	kWh/annum	Common tariff/meter type
NSW	**Ausgrid**	13,000	**EA050** (single rate)
NSW	**Endeavour Energy**	27,299	**N90** (single rate)
VIC	**Citipower**	36,209	**C1G** (single rate)
VIC	**Powercor**	21,674	**ND5** (interval tariff)
VIC	**Ausnet Services**	24,724	**NEE12** (single rate)
VIC	**Jemena**	21,858	**A200** (single rate)
VIC	**United Energy**	23,629	**LVM1R** (single rate)
QLD	**Energex**	16,628	**8300** (demand tariff)
SA	**SAPN**	14,262	**2 rate** (peak/off-peak rate)
TAS	**TasNetworks**	25,315	**TAS22** (single rate)
ACT	**Evoenergy**	32,257	**General network** (single rate)

Treasury should also bear in mind that the continued uptake of solar panels and energy efficiency installations should see energy consumption decline, increasing the number of eligible customers.

There are various alternative solutions to a consumption threshold that Treasury could implement within the rules to ensure that the CDR for energy focuses on those customers that will benefit the most. One possible approach may be to have a definition based on whether a customer receives bundled or unbundled electricity pricing. While the final definition could use different terminology, a customer on bundled pricing can be considered an SME (included in the CDR regime) and a customer on unbundled pricing can be considered C&I (outside the CDR regime). This type of distinction would align with the IT systems many retailers already have in place where mass market customers are provided with "bundled"/simple pricing data, and C&I customers receive "unbundled"/sophisticated and bespoke pricing data. An eligibility model based around the level of data sophistication was used in banking, so following a similar model would maintain consistency across sectors and minimise compliance costs without diluting participation.

Given the tight timeframes under which this consultation takes place, the AEC encourages Treasury to undertake further consultation on viable approaches to define eligible consumers with respect to large businesses. There may be approaches that utilise metering types, product offerings, or customer size that are able to be effectively identified within retailer systems in a cost-effective manner.

Costs and benefits of including large C&I customers in CDR

The AEC is concerned that the costs of including all C&I customers as eligible consumers far exceed the benefits, if any.

While AEC members will provide further detail on their own customer and data infrastructure, the AEC understands it is common for retailers to manage small customers and large customers using different systems. This is due to National Energy Market rules that place significantly differing obligations on providers managing these two customer classes. Small customers have a highly

[1] Energy Consumers Australia, 'Analysis of small businesses retail energy bills in Australia', June 2021, https://energyconsumersaustralia.com.au/wp-content/uploads/SME-Retail-Tariff-Tracker-Final-Report-June-2021.pdf.

prescriptive regulatory regime, with providers focused on billing and collecting debts of very large numbers of customers in a systematic manner. For large customers, retailers offer highly personalised services, often using relationship and account managers. Mass market systems built to comply with small customer obligations are not able to manage this flexibility. Given this variability in processes, some providers opt to only provide energy to one class of customers. It cannot be assumed that the only differences between the provision of energy services to large and small customers is the volume of energy they consume.

Given this, the AEC expects that the costs to provide data under the CDR to all customers, including very large customers, will effectively double the implementation efforts of retailers, and for some who only sell energy directly to very large consumers, require systems they otherwise would never use to be built to implement the CDR.

Furthermore, the AEC considers that the benefits of extending eligibility to large customers does not offset these costs because it will not deliver any tangible positive outcomes. The large customer market today is effectively serviced by using energy brokers who act as intermediaries between customers and retailers to identify personalised energy offers. There is little evidence that this customer cohort would benefit from access to the CDR. Other than metering data, the AEC expects all information held by a data holder will be personalised for the customer, unable to be shared using the CDR's generic data standards. These constraints minimise the benefits available to large customers.

Metering data

The Consultation Paper makes clear that Treasury is committed to AEMO being the sole data holder for metering data. While the AEC acknowledges this direction, we reiterate our position that this is no longer the most efficient arrangement given the shift to a peer-to-peer data sharing model. Adding a third party to the data sharing model creates unnecessary complexities with respect to processes like dispute resolution and correction of data, especially since AEMO is not a customer-facing party. These complexities are further magnified due to the reluctance to place any responsibilities on AEMO in how they handle customer data. From the AEC's perspective, the capability of retailers to provide the same metering data to customers makes AEMO's involvement difficult to justify.

Nonetheless, given that AEMO will remain the sole metering data holder, there are some areas Treasury should clarify to help mitigate these complexities:

- What checks will be placed on AEMO to ensure the metering data matches the NMI.
- Whether it will be a rule or technical standard that determines the time period AEMO has to provide the data. Treasury should recognise that any expectation it has for retailers to cross-check the data will significantly slow the data sharing process.
- What happens in the event AEMO fails to comply with the rules or standards. Data holders should not be made responsible if AEMO fails to provide the data in accordance with the rules or standards in place.

Correction of AEMO data

The AEC does not support creating a separate CDR process for the correction of AEMO data. The existing NEM process is fit-for-purpose and prescribing its use will avoid the unnecessary duplication of data correction processes, as well as the costs of needing to build and then train staff to be familiar with an additional process.

The AEC also reiterates its earlier comments that the designation of AEMO as sole metering data holder adds avoidable friction to the CDR process. It would be both more efficient and cheaper to

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place “data accuracy” responsibilities on retailers via designation of the dataset, rather than enforcing a cumbersome backstop for data correction in the event AEMO cannot fulfill its obligations.

Dispute resolution processes

The AEC has concerns with the decision in the Version 4 rules to designate multiple external dispute resolution (EDR) schemes for customers engaging with the energy CDR. While the AEC understands Treasury is seeking to minimise barriers to engagement for ADRs seeking to participate in the energy CDR, the designation of the Australian Financial Complaints Authority (AFCA) as the EDR body for complaints regarding non-retailer ADRs is likely to result in poorer customer outcomes. To that end, the AEC considers that the customer detriments outweigh the benefits the approach delivers in reduced costs for ADRs.

The AEC expects that customers will intuitively seek redress for any dispute with an ADR engaging in the energy CDR with the relevant energy ombudsman in their jurisdiction. These bodies have a deep understanding of the energy market and its technical infrastructure, and appear most likely to be able to resolve customer complaints about issues relating to the access and use of their energy data. However, under the rules, the energy ombudsman schemes will not have powers to investigate these complaints, and instead be required to refer the complaint to AFCA.

The AEC understands that Treasury intends to implement a “no wrong door policy” to minimise any customer confusion that may result from having multiple dispute resolution channels. While this appears sensible enough, it does create an additional challenge for retailers. Retailers, as data holders, play an important role in facilitating a customer’s access to, and sharing of, their data (except for metering data, which falls under AEMO’s remit), and take full responsibility for any customer concerns related to these functions. But, data holders do not play any role with respect to how the customer uses that data – this is instead the domain of the ADR and customer.

This matters in the circumstances described above that sees customers more likely to contact the energy ombudsman rather than AFCA for matters related to energy data. This is going to place an increased workload on the ombudsman as it screens customer complaints and determines whether they fall under their remit or need to be transferred over to AFCA. Retailers will be required to subsidise the ombudsman costs associated with handling the complaint, even if it relates to the ADR-customer relationship. This does not appear to be an equitable outcome for either the retailer or customer. The AEC considers that as a matter of principle, ADRs seeking to engage in a CDR-designated sector should be members of that sector’s EDR scheme. While there would be some costs for ADRs in joining the scheme, these costs are not insurmountable and are outweighed by the better customer experience it will bring. In the example of energy ombudsman schemes, there is a small fee for joining the scheme, with all other costs variable based on individual complaints. An alternative approach, though less preferable, would be to allow data holders to recover ombudsman costs from ADRs for complaints that relate to the use of data. This recovery mechanism would also need to extend to metering data since retailers will be required to resolve disputes relating to AEMO’s data sharing.

Secondary user definition

Draft rule 2.2 proposes to grant ‘account privileges’ to a secondary user ‘if they are able to make changes to the account’. The AEC has concerns that this definition is too broad and may give an individual greater authority than the primary account holder intended. For example, an individual with limited authority to change a phone number or email address on an account may fall within this definition and therefore gain access to additional datasets. This would appear to go against the intent of the rule.

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The AEC proposes that the definition be amended so account privileges are granted only to those with 'financial responsibility' for the account. Rule 2.2 would then read something like:

"….(2) For the energy sector, a person has account privileges in relation to an account with a retailer if they ~~are able to make changes to the account (and not merely make enquiries or view information)~~ have financially responsibility for the account."

Phased application

While the AEC does not hold a preferred position on the utility of phased application, it is incumbent on Treasury to provide data holders with reasonable time to be ready. Data holders will not start developing the necessary IT systems to enable the CDR until the final rules are made public. Based on projected timelines, data holders will have less than a year to build and test their systems for a reform Treasury says will 'fundamentally change the way Australian consumers and businesses engage' and will be a 'cornerstone upon which a thriving data economy can be built'.[2] For comparison, businesses and AEMO were provided with almost four years to prepare their systems for the introduction of five-minute settlement, another fundamental system change impacting the energy market.

While some stakeholders argue data holders should begin building readiness now, the reluctance to do so can be illustrated by the decision earlier this year to shift the energy data delivery model from an AEMO Gateway to peer-to-peer model. This shift dramatically altered the responsibilities of data holders and would have made building readiness for the AEMO Gateway costly, inefficient, and of negligible utility to the circumstances now. For similar reasons, it should not be expected that first tranche data holders can begin building readiness until there is certainty over the rules (i.e. until the final rules are made public). Consideration should also be given to the differences between the banking and energy sector, namely the existence of a third party as a data holder (AEMO). This means, in addition to building compliance with the rules and technical standards, data holders will need to ensure their systems and AEMO processes are properly integrated. Previous experience (such as the Power of Choice reforms and five-minute settlement noted above) indicates that AEMO, by virtue of the complexity of being the market operator, requires reasonable time to build and test its system processes to ensure they are robust enough to perform at the high standard required. As of right now, AEMO (and data holders) are expending considerable resources preparing for the commencement of five-minute settlement and customer switching (1 October) and then global settlement (1 May 2022).

Given these pressures, the AEC has concerns that the proposed commencement date of October 2022 is sub-optimal in the circumstances and that Treasury should consider allocating more time for first tranche participants to build and test their systems. Reasonable time should enable smoother processes being in place for customers, as well as for second tranche participants looking to replicate.

Any questions about this submission should be addressed to Rhys Thomas, by email to Rhys.Thomas@energycouncil.com.au or by telephone on (03) 9205 3111.

Yours sincerely,

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[2] Treasury, 'Implementation of an economy-wide Consumer Data Right: Strategic Assessment Consultation Paper', 22 July 2021, https://treasury.gov.au/sites/default/files/2021-08/c2021-182135-strat.pdf.

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