



PO Box 4136
East Richmond VIC 3121
T 131 806
F 1300 661 086
W redenergy.com.au

PO Box 4136
East Richmond VIC 3121
T 1300 115 866
F 1300 136 891
W lumoenery.com.au



14 October 2022

The Treasury
Langton Crescent
Parkes ACT 2600

Submitted electronically: data@treasury.gov.au

Re: Consultation - expansion of the Consumer Data Right and operational enhancements

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to make this submission to the Treasury's consultation on exposure draft amendments to expand the Consumer Data Right (CDR) to telecommunications and support participation by business consumers. We have limited our comments to those amendments that directly impact the energy sector and energy consumers.

We support the CDR and recognise its potential to generate significant benefits for energy consumers. For example, it is expected to make it easier for consumers to participate in the competitive market by comparing different offers, and make more informed decisions about whether to invest in distributed energy resources to better manage their energy consumption.

However, the success of the CDR—in whatever way this can be assessed—depends on consumers understanding what protections apply to their data, who can access data under what circumstances, and what they can do in the event of a data breach. The more complex the framework, the harder it becomes for them to make this assessment. This might be the case where the Rules allow more complex business models for data recipients and where data can be shared with entities who are not directly bound by the CDR Rules. Furthermore, it can become harder for regulators to monitor compliance and take appropriate action where data breaches occur. The security and integrity of our customers' data is a high priority for us.

It is on this basis, we have some concerns about aspects of the proposed amendments and encourage the Treasury to undertake further analysis and additional consultation before finalising the changes. In particular, the proposed business consumer disclosure consent will allow businesses to consent to their CDR data being shared with specified persons and unaccredited third parties. Treasury explains this could include 'bookkeepers, consultants and other advisers who are not classified as trusted advisers under the current CDR Rules'. Treasury also explains that this consent would also allow disclosures to software providers that offer important services to small businesses in Australia.

In our view, this will create confusion for consumers about where the CDR Rules start and end, and what will happen if their data is compromised. The Rules allow disclosure to trusted advisers because they are subject to strict controls through other legislative instruments. However, it is not clear this is the case for all entities who Treasury suggests could receive CDR data through the proposed business consumer disclosure consent.

Another issue to consider for business consents is how the extension of the maximum period, i.e. from 12 months to 7 years, will interact with any changes to broader privacy obligations that we might observe in the coming months. Under the CDR, data holders are obligated to keep records of consents to release data and details of which employees are currently able to or have given consent in the past. This is likely to change substantially over a 7 year period and could include individuals who have since left that business. Treasury will need to ensure that any changes to CDR Rules are future proofed and remain consistent with changes to other legislation relating to data collection and retention.

A further area of complexity (and potential confusion) is the role of CDR representatives and Outsourced Service Providers (or OSPs) in the CDR framework, both of whom are unaccredited but provide services on behalf of the Accredited Data Recipient. In the case of CDR representatives, they are often the entity with whom the consumer is directly engaging. We welcome the proposed clarification of the respective roles of these entities within the Rules and the confirmation that it is the Accredited Data Recipient who remains primarily responsible for the actions of any related party. Furthermore, we support the Treasury's suggestion that OSPs should comply with relevant privacy safeguards under a CDR outsourcing arrangement. We recommend that the Treasury undertake further analysis and consultation to ensure consumers are aware of the more complex arrangements the amended Rules would allow for. These more complex arrangements must also be a particular focus of regulatory oversight.

Finally, we welcome the Treasury's proposed inclusion of an exemption for data holders from having to disclose data arising from trials and pilot programs under the CDR. This exemption recognises that these programs are frequently a first step towards developing more innovative service offerings that ultimately benefits consumers and that CDR disclosure could undermine such innovation. Therefore, we recommend that these provisions apply across all CDR sectors.

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 1.2 million customers. We thank the Treasury for the opportunity to comment on the proposed changes. Please contact Geoff Hargreaves, Regulatory Manager on 0438 671 750 if you have any further queries or want to discuss this submission in more detail.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Stefanie Monaco".

Stefanie Monaco
Manager Regulatory Affairs
Red Energy Pty Ltd
Lumo Energy (Australia) Pty Ltd