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Draft CDR Rules – Consent and operational enhancement amendments - Public

EnergyAustralia is one of Australia's largest energy companies with around 2.4 million electricity and gas accounts in NSW, Victoria, Queensland, South Australia, and the Australian Capital Territory. EnergyAustralia owns, contracts, and operates a diversified energy generation portfolio that includes coal, gas, battery storage, demand response, solar, and wind assets. Combined, these assets comprise 4,500MW of generation capacity.

We welcome the opportunity to respond to Treasury's consultation on its exposure Draft CDR Rules containing the consent and operational enhancement amendments. Our submission on selected key issues is below.

Clean energy transition demands innovation and provides a strong case for an Energy trial plan exemption

EnergyAustralia strongly supports the CDR rule changes to exempt trial energy plans from CDR data sharing obligations. However, we consider that the draft definition of trial plans, based on the banking definition, is too narrow and needs to be broadened. Below we discuss the case for needing a trial plan exemption, and propose changes to Treasury's draft definition.

It is critical for the energy sector to have a permanent class exemption for trial energy plans established in the rules, due to the following reasons:

- The energy sector is going through a clean energy transition which will involve a high level of transformation and innovation rarely seen in any industry.

- This transformation and innovation will see the retail market shift from fairly standardised retail plans selling electricity supplied from large scale generators in the grid, to energy plans involving the supply of electricity from renewables at the customer's home i.e. residential solar PV, or closer to the home (e.g. community batteries). We are still in a nascent stage, needing to prove the economic viability of these products and their appeal to customers (with only early adopters participating). There is therefore a strong need for this innovation to be tested and trialled.

- Trial energy plans should not be subject to CDR data sharing because:

    - These trial plans will not fit into the data standards (data fields) set up in the CDR. This is because newer trial plans involve supply of a product, *other than the supply*

of electricity. For example, the supply of a virtual power plant proposition (discussed more below) or a bundling with the sale of the asset e.g. solar PV or battery.

- Even if the data standards are updated to reflect newer propositions, as trial plans are developed, further updates to the data standards will be required. This would require Retailers to identify the data standard changes and the Data Standards Body (DSB) to then make those changes. There is little point in Retailers and the DSB doing this work, for trial plans that are temporary and likely to be substantially revised or wound up. []

- Trials need to move at speed. [ ] Ensuring meaningful CDR compliance for these trials (including updates to data standards) would delay this process and undermine innovation.

- Revealing the underlying data and product structure of trial plans via CDR to an ADR (which could be a competitor energy retailer) could disincentivise investment in those products to begin with, discouraging innovation in the market. While pricing transparency via the CDR is beneficial, in these instances, only a small number of customers are affected for a limited period. We also believe that these customers, having signed up to a trial, are unlikely to be engaging with the market or needing CDR services for the time they are in the trial.

- From a process perspective, in the absence of a permanent class exemption in the CDR Rules, energy retailers seeking exemptions for trial products need to apply to the ACCC for individual exemptions. This is a process that takes up to three months and again delays trials. EnergyAustralia has applied for 5 of these exemptions since its CDR data sharing obligations commenced. [1] This is cumbersome for the ACCC to administer.

In view of the above, there is a strong case for an energy trial plan exemption in the CDR Rules, which is separate and different from the banking exemption.

Trial plan - Customer number threshold needs to be increased

We consider the current definition of energy trial plan is too narrow and needs to be broadened, due to the following factors:

- In the banking sector, the scope of the CDR is limited to products that are 'publicly offered', which provides some relief for limited scope trials. For example, trials marketed to employees or existing customers only would not be covered by the CDR as they are not publicly offered. However, the CDR for the energy sector does not have this same definition, which means the detrimental impacts of CDR compliance on innovation in the energy sector are more pronounced. This generally warrants a broader exemption for trial energy plans to address this impact.

- The customer threshold of 1000 customers is too low and will exclude many genuine trials today. This is because energy trials need scale:

[1] Consumer data right exemptions register | ACCC

- Most customer trials today will involve a Virtual Power Plant (VPP) proposition. This means retailers can aggregate many customer assets like residential batteries, to operate like a virtual power plant to:

    - Supply "network support services" to distribution network service providers (DNSPs). DNSPs own and operate the poles and wires that carry electricity to the home. VPPs provide network support services to DNSPs, which help to balance voltage and power quality issues caused mainly by excess export of solar energy during the middle of the day. VPPs can also spread out peak demand to avoid costly network upgrades for peak periods. Trials for network support services need scale to provide any meaningful benefit to DNSPs. For example, EnergyAustralia's recent trial partnership with Ausgrid is using community batteries to store energy from residential solar PV. [It will require the acquisition of 13,000 customers (and 2,000 existing customers) to match the 20 MW battery capacity being trialled].

    - Supply wholesale services. VPPs can also provide energy and ancillary services to the wholesale market. This again requires aggregation at scale. To participate in wholesale markets, current rules require VPP providers to aggregate a minimum of 5MWhs in one state/territory.[2] This roughly equates to *at least* five hundred 10Kwh residential batteries *per state,* and in reality, requires a greater number given residential batteries are not fully available all the time. i.e. possibly around 3,000 batteries across three states.

- This need for scale is being reflected in EnergyAustralia's applications for individual CDR exemptions. In the main three exemption applications, EnergyAustralia requested a customer number volume of [

  ]. The ACCC has provided exemption caps of 1,000 customers for two exemptions, and notification at 2,000 customers for the other one. The latest reason for the low cap, is that Treasury's CDR rules will set the appropriate threshold and make the need for the exemption redundant.

- In view of the above, **we recommend that Treasury adopt a 5,000 customer number limit per trial energy plan.** This is a reasonable number considering:

    - the natural scale needed for trials,
    - it is half the number of the retailer threshold in the CDR rules (below which small retailers are exempt from CDR obligations);
    - it is broadly in line with current network support service trials; minimum thresholds to participate in the wholesale market; and individual exemptions applied for with the ACCC; and
    - in reality, many trials are above this number (as per EnergyAustralia's experience above) so it reflects a reasonable balance.

Trial period needs to be significantly extended

[2] E.g. using Integrated Resource Provider or Small Generator Aggregator mechanisms.

Energy trial periods are typically longer than 12 months. This is because trial products often take time to sign a sufficient number of customers, as trial plans often involve the purchase of higher cost assets e.g. solar, battery which is a considered purchase, compared to traditional energy products that do not involve these assets. Alternatively, customers need existing assets, and this means there is a limited pool of customers with these assets, in particular batteries. An example of how long it can take to acquire trial customers is our trial product Solar Home Bundle (discussed above). [
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The energy sectors' own trial waiver set up in the national energy regime (to exempt trial projects from the national law or rules) has a maximum limit of 5 years.[3] This provides some gauge as to the length of trials in the energy sector. While the national energy trial mechanism is different and requires individual applications to be lodged, we believe the upper limit of 5 years is a useful precedent which could be adopted in the CDR Rules. **We therefore recommend a trial period limit of 5 years, in line with the national energy regime's trial waiver.**

Further, we take trial period to mean the time that the *product is offered to the market i.e. the period in which customers can sign up.* This period should be different to the contract term of the trial energy plan, but we note that the CDR rules conflate the two by defining:

> "1.5 Meaning of trial product
>
> (2) **Such a plan ceases to be a trial product at the earlier of the following times:**
> ***(a) at the end of the trial period;***
> *(b) the time (if any) at which the plan begins to be supplied to more than 1,000 customers "*

We interpret this as meaning, the product stops being a trial product at the end of the trial period, so an energy trial plan can only have a contract term which lasts 12 months, but this could be shorter where the customer signs up towards the end of the trial period i.e. with one month to go. **This will not be workable for the energy sector, and we strongly suggest the above red wording be removed.**

Trial energy plans need to have a contract term of at least one year to test the plan for seasonality, as seasons and weather are a key driver of electricity use and customer behaviour. Ideally, two years is preferable, to account for anomalies in customer usage in one specific year and the CDR already reflects this by allowing usage data up to two years. We also note that even longer term contracts are also appropriate because these contracts could involve the purchase and pay back of solar PV and battery assets. [

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In summary, we believe that the definition of trial energy plan should be changed to reflect a 5000 customer threshold and 5 year trial period (with no limits on the length of the trial energy plan *contract* – delete the words in red). This will recognise that many trials will require scale and time to acquire scale, and that the nature of energy products requires

[3] National Electricity Law section 18ZP; National energy retail law section 121G; National gas law section 30ZA. For more in trial waivers in the energy sector under the national framework, see AER - Final Trial Projects Guidelines - Regulatory Sandboxing - January 2023 | Australian Energy Regulator (AER)

longer term contracts. This is also aligned with precedents in the energy rules and current examples of trials.

We are open to discussing this topic more though, if Treasury is minded to adopt different numbers.

Nominated representatives

We understand that the Draft Rules would require Data Holders to build an online mechanism to allow an account holder to nominate a nominated business representative (NBR), where the person being nominated is engaging with the retailer online.

In practice, it will be easier for EnergyAustralia to build an online mechanism for nomination of a NBR, for all – whether the person being nominated is engaged online, or a new person (not known to the retailer). Other data holders may also default to this position.

This would require EnergyAustralia to build a new online mechanism. Importantly, while this could be undertaken as a change to our online portal, it does not make sense to, because currently EnergyAustralia's online portal is completely separate to our CDR solutions and our billing system (which our CDR solutions link to). [

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This significant cost [ ] would outweigh the foreseeable benefit of the change. Any use and benefit will likely be very low given since we built the functionality in May 2023, there has been [

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Our strong preference is for Treasury to clarify in its explanatory statement to the CDR Rules that "online" can mean an online form, which as per other draft changes to the rules would need to be prominent and readily accessible. An online form makes sense for EnergyAustralia as agents actioning an online form can directly update the billing system and therefore make appropriate updates to our CDR solution, without an extensive build. **If there are concerns about the timeliness of requests for NBRs being actioned, Treasury can simply require that NBR nominations need to actioned within a reasonable time period, or within a certain number of business days (whichever is the shorter period).**

Regarding the implementation timeframe, we ask that Treasury make changes to the rules to require implementation within **12 months *starting from the finalisation of any related data standards (CX standards or guidelines).*** Although the DSB has noted an intention not to make data standards that apply to these rule changes, we seek this further clarification, in case this changes and they make data standards. In the past, EnergyAustralia has planned solutions to comply with the Rules, and then Data Standards were made, requiring rework of our solution and shortening the time we had to implement the change.

Simplifying data holder requirements – secondary users

We support the draft change to the Rules to remove the obligation for data holders to provide an online service that allows account holders to block a secondary user from being able to disclose CDR data *to an ADR.* Providing this functionality at the *ADR level* is unnecessary, as an account holder is likely inclined to withdraw the secondary user instruction across all ADRs, rather than individual ADRs.

The making of this requirement, and then potential removal of it, suggests that there could be improvements to decision making on CDR Rules and communication between Treasury and the ACCC. [

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Consent review changes

We acknowledge the value of allowing collection, use and/or disclosure consents to be bundled, and pre-selected, where reasonably needed by an ADR to provide their service. Importantly, this should only occur where "reasonably needed".

We are satisfied that the Draft Rules explicitly set out this reasonably needed requirement for pre-selection, but we consider the Draft Rules could be clearer on this requirement for bundling of consents i.e. bundling can only be deployed where reasonably needed. Treasury states that this will be linked to the data minimisation principle, however the data minimisation principle appears to only apply in the *collection, use and disclosure of data*. Collection could be interpreted as different to *the way data is collected or the way consents are bundled to collect the data*. We recommend that the Rules could clarify that the data minimisation principle applies to the latter, even as a Note in the Rules.

If you would like to discuss this submission, please contact Selena on 03 9060 0761 or Selena.Liu@energyaustralia.com.au.

Regards

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