

9/09/2024

RM/24/21630

James Kelly  
First Assistant Secretary  
Market Conduct and Digital Division, Markets Group  
The Treasury

Dear Mr Kelly,

### **Consultation on amendments to the Consumer Data Right Rules**

Thank you for your letter welcoming our feedback to the draft amendments to the Consumer Data Right rules.

The Essential Services Commission is Victoria's economic regulator of essential services. These services include the provision of energy to Victorian consumers. We issue licences that authorise entities to generate, transmit distribute, supply and sell electricity. We also establish and maintain codes and guidelines that outline the rules for energy licensees in Victoria. We promote and enforce compliance with these codes.

We understand the proposed changes would allow data recipients, which may include licensed energy businesses, to bundle consent requests under certain circumstances, and to exempt certain retailers' trial products from the Consumer Data Right rules. We understand that these proposed changes aim to provide efficiencies in administering the Consumer Data Right and reduce disincentives for retailers to offer innovative products.

While we do not have major concerns about these proposed changes, we note the following for consideration:

- **Regarding the bundling of consent requests.** In Victoria, the Energy Retail Code of Practice requires energy retailers to obtain explicit informed consent from a customer, prior

to entering into an energy retail contract with that customer.<sup>1</sup> This is an important protection for energy consumers who are engaging in the retail market. Customers need clear information prior to giving consent, particularly for accepting an energy contract. We consider that any bundling of consent requests for the use of a customer's data, should not be bundled with seeking explicit informed consent for transferring a customer.

For example, a data recipient should not be permitted to provide information on both data collection and the transfer of a customer in the same request for consent. We are pleased this is considered in your proposed amendments and emphasise the importance of these protections to Victorian consumers.

- **Regarding exempting certain retailers' trial products from the Consumer Data Right rules.** We understand this proposed change aims to reduce disincentives for retailers to offer innovative products that provide value to its customers. We consider it important to have a clear definition of a trial product and note the proposed definitions appear to provide such clarity. This will provide certainty for industry, and clarity on what should be exempt.

In Victoria, we note that energy retailers can only offer retail contracts that are at least 12 months long.<sup>2</sup> This may result in some incompatibility with the proposed definition of a 'trial product' as one with a period that ends no more than 12 months after the initial offering. We do not have any concerns with the definition including trial products that are limited to no more than 1,000 customers.

The views of consumer groups may be beneficial in providing feedback on the issues above. We would also recommend monitoring the effect of the rules as uptake increases, by monitoring customer complaints (particularly when consent requests are bundled).

Thank you again for the opportunity to provide feedback on these reforms. If you have any questions, please contact Aaron Yuen, Director, Analysis and Reform, Energy at [aaron.yuen@esc.vic.gov.au](mailto:aaron.yuen@esc.vic.gov.au) or 03 9032 1342.

Kind regards,



**Sarah Sheppard**  
Chief Executive Officer

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<sup>1</sup> Clauses 7 to 9 of the Energy Retail Code of Practice version 2, accessible at [Energy Retail Code of Practice | Essential Services Commission](#). Similar obligations apply in other states, under the National Energy Consumer Framework.

<sup>2</sup> Clause 99 of the Energy Retail Code of Practice version 2, accessible at [Energy Retail Code of Practice | Essential Services Commission](#).