

28 August 2020

Consumer Data Right team
Australian Competition and Consumer Commission



Lodged online

Dear Sir or Madam,

Submission to Consumer Data Right - Energy rules framework consultation

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in New South Wales. Established in 1982, PIAC tackles systemic issues that have a significant impact upon people who are marginalised and facing disadvantage. We ensure basic rights are enjoyed across the community through litigation, public policy development, communication and training. The Energy + Water Consumers' Advocacy Program represents the interests of low-income and other residential consumers, developing policy and advocating in energy and water markets.

PIAC welcomes the opportunity to respond to the ACCC's consultation paper on the Consumer Data Right (CDR) rules framework for energy.

Consumer Data Right for energy in general

PIAC has been involved in the application of the Consumer Data Right (CDR) to energy and welcomes the opportunity to provide input to the draft designation instrument for energy.

PIAC supports greater engagement in the electricity market by those customers who wish to do so. However, greater engagement must not be an obligation for consumers. Disadvantaged and vulnerable consumers who are less engaged, either by choice or circumstance, must not be penalised and must still receive fair and reasonable energy services.

Introducing the CDR to the energy sector can improve access to useful data for participating consumers and their agents. It may provide numerous benefits, ranging from simpler and more informative comparison of energy retail products (including different tariff structures) to better sizing of distributed energy systems to household usage.

The CDR in the energy sector must reflect the unique characteristics of energy products, retail relationships and energy data as distinct from other sectors such as banking. For instance, energy data (especially energy consumption data) is typically less sensitive than banking data and the protections framework must reflect this to allow protections that are commensurate to the risk of consumer harm.

Further, there may be multiple people at the premises who are directly affected by the choice of retail product in addition to the account holder, such as other family members or housemates, and it must not be unnecessarily difficult for appropriate people to be able to make use of CDR functionality whilst protecting against the potential misuse of energy data.

Energy data available under CDR and consent to share

While, generally, energy data is less sensitive and its misuse has less risk of harm to consumers than data available in banking, there are some particular

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data sets that may raise privacy and other issues. These include retail billing data, the eligibility for or use of concessions, being a life support customer, or making use of hardship and payment support programs.

Sharing this data may allow a greater degree of identifiability than the consumer is prepared to offer and may prejudice the offer the consumer may receive (for instance, a price comparator website not offering more competitive retail offers to customers who have received payment support in the past).

The protections around data sharing must reflect this risk of consumer harm. For instance, where the consumer is asked to consent to sharing such data, it must be clearly and explicitly flagged as potentially sensitive so the consumer can make an informed decision whether or not to proceed. It would need to highlight or otherwise draw attention to the sensitive data type being requested (for example, as a separate line item and not hidden or grouped within a larger, generic group) and a concise and easily understood explanation of why it may be sensitive.

For less sensitive data, such as metering data, PIAC supports using a less intensive authorisation and consent process that reflects the lower risk of consumer harm.

For example the AER's Energy Made Easy and Victorian Energy Compare websites allows consumers to automatically extract their metering data for retail product comparisons. This allows energy usage data to be obtained without requiring personally identifying information of the account holder and instead allows a family member or housemate to also access this data and compare energy retail products.¹

Authentication model

The consultation paper prefers Model 1 for authenticating consumer data requests, which requires each retailer to develop and maintain their own authentication system. While this model means that authentication is carried out by the customer's current retailer and may benefit from using this existing relationship, it also raises issues that may undermine the potential benefits of CDR data access.

Requiring authentication from the customers' current retailer may be off-putting if the customer is seeking access to their data for a retail price comparison. It may also give an opportunity (or at least the perception of an opportunity) for the current retailer to engage in customer win-back or saves if they think there is a risk of losing that customer to a competitor.

Customer win-back is the practice of an incumbent retailer, on becoming aware that another retailer has acquired their customer through market customer transfer processes, contacting that customer and offering to match or better the deal offered by the new retailer. On the surface, win-back appears to offer an immediate benefit to the customer in question, in the form of a cheaper energy contract. However, the practice appears to drive up the cost of customer acquisition for new retailers, at best making it hard for them obtain a viable market share, and at worst deterring them from entering the market altogether. As the same time, the cost of customer retention for the incumbent retailer is relatively low.

This model also places additional costs on retailers, which may not be feasible for smaller retailers and therefore discourage new entrants and favour larger incumbents. It may be problematic to ensure consistency in consumer experience and level of protection as, in practice, different retailers may differ in the quality of their authentication systems.

¹ These require only the postcode, National Metering Identifier (NMI) and current retailer to automatically import the usage data to provide customised retail price comparison.

PIAC recommends the ACCC reconsider the use of Model 2, which makes more use of AEMO's role as a central gateway for energy data under the CDR. This helps avoid many of the issues described above, provides a more consistent customer experience and level of protection, and may lower the overall implementation costs by making use of economies of scale.

Continued engagement

PIAC would welcome the opportunity to meet with the ACCC and other stakeholders to discuss these issues in more depth.

Yours sincerely,

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