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Consumer Data Right rules - expansion to the telecommunications sector and other operational enhancements

AGL Energy (AGL) welcomes the opportunity to comment on Treasury's consultation on draft amendments to the Consumer Data Right (CDR) Rules to implement the expansion to the telecommunications sector and support other operational enhancements.

We are a leading integrated essential service provider, delivering over 4.2 million gas, electricity, and telecommunications services to our residential, small, and large business, and wholesale customers across Australia. We are a market leader in the development of innovative products and services that enable consumers to make informed decisions on how and when to use their consumer (or distributed) energy resources to optimise their energy load profile and better manage their energy costs.

AGL strongly believes that individual consumers should have access to and control over data that directly relates to them. We have been an active participant in the banking consultation for the CDR to date, to provide context and considerations for CDR application to energy. We believe competitive markets function best when consumers can make informed choices. Therefore, we are a strong advocate of the principles behind developing a consumer data right to empower consumers.

We welcome the introduction of the CDR to the telecommunications sector and have provided further comment on our general interests in the attachment below. Specifically, we comment on the expansion to the telecommunications sector and certain aspects of the operational enhancements that may present challenges in implementation.

If you have any queries about this submission please contact Emily Gadaleta, Regulatory Strategy Manager at egadaleta@agl.com.au.

Yours sincerely,

Chris Streets
General Manager (a/g), Policy, Markets Regulation and Sustainability



Exclusion of secondary users should be extended to nominated representatives

Schedule 5 of the Amending Rules does not make use of the concept of a secondary user. Treasury has noted unlike other sectors such as banking, a data holder in the telecommunications sector has a relationship only with an account holder, rather than with all end users of the products it supplies.

Similar challenges will be present in liaising with nominated representatives. We have encountered issues in the implementation of the energy CDR in relation to nominated representatives. In energy, accounts are established in relation to the meter identifier number and assigned to an individual. Therefore, energy data holders do not have digital authorisation processes for nominated representatives as an individual, as this is only available at an account holder level.

Where a customer holds an individual account and is also a nominated representative, this creates unique challenges if the customer is recorded with two contact records in the source system. In order to implement nominated representative functionality, it will require substantial system changes. AGL recommends that nominated representative challenges are very similar to that experienced with secondary users and should also be excluded from the telecommunications CDR.

Extension of consent duration for CDR business consumers

Clarity is required on the obligations surrounding the addition of the business consumer disclosure consent in the CDR system. While we are generally supportive on the ability for business consumers to extend their consent duration beyond 12 months, more information is required on the impact of the extension on privacy risks and whether it will require new obligations on data holders to keep a record of data that has been shared over longer periods of time.

The extension of the consent duration for CDR business consumers increases privacy risks for our customers with longer historical records of their data being allowed to be held. Businesses who hold customer data across the spectrum are re-examining privacy practices in light of the recent Optus data breach. The Office of the Australian Information Commissioner has stated in relation to the breach that "...collecting and storing personal information that is not reasonably necessary to your business breaches privacy and creates risk. Only collect what is reasonably necessary." Treasury should further examine the benefits provided to business consumers in not having to re-establish consent on a 12 month basis against the risk of possible privacy breaches of CDR data.

Trial products

AGL supports the exemption from data sharing obligations for publicly offered pilot products to be extended to the energy and telecommunications sector. However, the current exemptions that apply to the banking sector are not fit for purpose in an energy or telecommunications context. Any new regulations under CDR data sharing obligations should be in line with existing parameters for trials in both sectors to reduce regulatory complexity and costs to implement. AGL considers then, at minimum, consideration must be given to how trials are treated under the CDR aligns with sector-specific regulation.

(a) Trial products in the energy sector

Trials are a key element of energy sector in its pursuit to promote innovation in the transition to a low emissions and consumer centred sector. Treasury should work with the Australian Renewable Energy Agency (ARENA), the Australian Energy Regulator (AER) and the Essential Services Commission (ESC) to understand the ways in which they regulate trials to support innovation and the development of products in the energy sector. Typically, energy trials are conducted over at least a 12 month period in order to test and account for seasonal changes in energy consumption and behaviour patterns of consumers. However, most trials conducted in the energy sector are carried out over longer periods of time.



The AER and the Essential Services Commission in 2022 both launched their regulatory sandboxing mechanisms to allow for trial waivers to provide a workaround to enable innovators in the energy sector to test business models that would be blocked under current regulatory frameworks. The AER and the ESC have stated that the duration of a trial waiver will be determined on a case by cases basis and will be for no more than five years. The AER is currently accepting applications for trials requiring relief from Victorian energy frameworks on behalf of the ESC under the Victorian Regulatory Sandboxing function.

AGL recommends that Treasury work with ARENA, the AER, and the ESC to determine the best definition for a trial exemption in the energy sector and the meaning given to a trial product by rule 1.10E be amended for energy specific requirements.

(b) Trial products in the telecommunications sector

We are not aware that trial products exist in the telecommunications sector except that the Australian Communications and Media Authority (ACMA) issue trial certificates under a Ministerial declaration, the *Telecommunications (Carrier Licence Exemption - Trial Network Units) Determination 2019* made under subsection 51(1) of the *Telecommunications Act 1997*. Trial certificates are applicable for up to 6 months and the ACMA may set conditions to ensure that the trial remains a genuine trial. The certificate may specify a maximum scope or scale that prevents certain activities. The criteria the ACMA assess are:

- the duration of the trial
- any previous trials for a similar service
- the reasons for the trial, such as testing technical feasibility or commercial prospects
- the effect the trial may have on competition
- any charges to end users participating in the trial
- whether the size of the trial would unreasonably affect the revenue of a carrier
- any other matters we consider relevant.

Because of the extremely low number of trial certificates issued (ACMA Communications Report shows one in 2018/19) we support the extension of the exemption from data sharing obligations to be extended to the telecommunications sector with similar provisions to those applied to the banking CDR trials. We recommend that Treasury work with the ACMA to understand any specific parameters that may be required for what conditions an exemption in the telecommunications sector should include.

Record keeping and reporting requirements

The Amending Rules create a new requirement for data holders and ADRs to keep CDR complaints, in addition to CDR complaint data. The Amending Rules will also clarify that CDR consumers are able to request copies of CDR consumer complaints they have made, as well as statistical or other data relating to CDR complaints kept by the data holder or ADR.

Treasury should provide clarity on what is meant by the new requirement for data holders to keep CDR complaints, as well as CDR complaint data. Regulated entities in the energy sector are already subject to reporting requirements to submit information and data relating to their performance to the Australian Energy Regulator (AER). The AER lists the information and data that is required to be submitted under the AER's Performance Reporting Procedures and Guidelines.¹ The Guidelines set out in Schedule 3 that regulated entities are required to submit complaints data in the 'Retail market activities report'. Treasury should examine already existing reporting requirements under each designated sector to reduce reporting complexities and overlap in regulatory requirements.

¹ [AER's Performance reporting procedures and guidelines \(retail law\)](#)



Additionally, Treasury should take into account that any considerable changes to the requirements under the Amending Rules to keep greater or varying types of data than already required will require considerable changes to CDR systems and will create additional work to be delivered in addition to work already underway.

Implementation of amendments

Any timeframes placed on the implementation of these amendments must consider the current implementation requirements placed on CDR participants. The energy CDR is going live on 15 November, with Tranche 2 deliverables due on 15 May 2023. Any timeframes for implementation that cross over with the current implementation timeframe will affect energy data holders' ability to implement the current requirements in a timely manner and will require considerable effort that will increase costs for all participants, including the end consumer. It is also likely to increase risk of failure to comply as there is a current labour shortage and finding additional resources to support broader scope of work is not possible.