13 September 2021

Consumer Data Right Division
Treasury
Langton Crescent
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By email: data@treasury.gov.au

Dear Consumer Data Right Division

Consumer Data Right in the energy sector – proposals for further consultation

Thank you for the opportunity to comment on *Consumer Data Right in the energy sector – proposals for further consultation*.

The comments contained in this letter reflect the feedback of the Energy & Water Ombudsman NSW (EWON), Energy & Water Ombudsman SA (EWOSA), Energy & Water Ombudsman Queensland (EWOQ), and Energy and Water Ombudsman Victoria (EWOV). We are the industry-based external dispute resolution schemes for the energy and water industries in New South Wales, South Australia, Queensland, and Victoria.

We reiterate our support for the overall objectives of the Consumer Data Right (CDR) and its extension to the energy sector. The CDR has the capability to empower energy consumers and drive competition in retail energy markets.

Since August 2019, throughout the development of the energy sector amendments, we have actively engaged in discussions with Treasury around the issue of how CDR Energy complaints should be best received, investigated and resolved. This includes significant work with Treasury representatives with respect to the complexity of energy data and the need for the most appropriate assignment of jurisdiction for those complaints. As such, we have also commented on proposed amendments to the *Competition and Consumer (Consumer Data Right) Rules 2020* (the CDR Rules) which directly relate to internal dispute resolution (IDR) and external dispute resolution (EDR).

Proposal 1 and stakeholder question 1 – all NEM retail customers are eligible CDR consumers, irrespective of size

CDR Rules – Division 1.3, 1.10B; Schedule 4, Part 2, 2.1-2.3

The proposal to enable all retail customers in the National Energy Market (NEM) to benefit from CDR data sharing in the energy sector is fully supported, irrespective of the customer's size or existing data access arrangements. Introducing energy sector-specific eligibility requirements relating to a consumer's electricity consumption could unfairly exclude large businesses from the benefits of the CDR.

We understand that the initial implementation will be limited to electricity retail customers in the NEM with a view to including other data sets in the future. We understand this decision was based on factors such as focusing the roll out on data sets which cover most consumers in the energy sector and those that can be accessed most efficiently within the existing CDR frameworks.

We strongly support the future inclusion of additional data sets, particularly electricity data for embedded network customers, as well as gas metering and product data. We recommend the inclusion of additional data sets occur in the near, rather than far future. This will provide equitable access to the benefits of the CDR to energy consumers who would otherwise be excluded.

Secondary data holder information sharing for complaints or disputes

CDR Rule – Division 1.5, 1.25

We support the requirement outlined in Division 1.5, 1.25 that, to the extent it is reasonable to do so, a secondary data holder must provide information relevant to a consumer complaint or dispute relating to shared data responsibility when requested by a primary data holder. This requirement should apply regardless of whether the complaint or dispute has been raised via internal or external dispute resolution (IDR or EDR).

Internal Dispute Resolution (IDR) requirements

CDR Rule –Schedule 4, Part 5, 5.1

We support the alignment of the IDR requirements for accredited persons in the energy sector with those in the banking sector based on IDR Regulatory Guidance issued by the Australian Securities & Investment Commission (ASIC). ASIC's IDR Regulatory Guidance sets a higher benchmark for banks than energy companies have under current energy laws and represents better IDR practice. ASIC's IDR Regulatory Guidance includes a specific and comprehensive list of documents which must include mandatory promotion of EDR options for customers, ensuring customers are better informed about their rights.

We note that Regulatory Guide 165 is in the process of being replaced by Regulatory Guide 271 (issued 2 September 2021 to come into effect 5 October 2021). As Schedule 4, Part 5, 5.1 specifically refers to Regulatory Guide 165, we suggest amending and/or future-proofing the wording.

The IDR requirements for energy retailers as data-holders are aligned with the National Energy Retail Law and the Energy Retail Code (Victoria) requirements for complaints handling and dispute resolution procedures. While this may be aimed to avoid complications that could arise if retailers were required to adhere to different standards for CDR complaints, we would hope that energy retailers would take this opportunity to strengthen their IDR processes to the level required by the Regulatory Guidance applicable to the Australian Financial Complaints Association (AFCA). Ideally, customers should be afforded the same high level of complaints management and dispute resolution from all entities participating in the CDR regime.

External Dispute Resolution requirements

CDR Rule – Schedule 4, Part 5, 5.2

Schedule 4, Part 5, 5.2 requires accredited persons in the energy sector to be members of AFCA. Energy Retailers as data-holders are required to be members of the relevant state energy Ombudsman schemes (or participate in the appropriate dispute resolution process for jurisdictions with no energy Ombudsman), as are retailers who are or become accredited persons which do not provide energy sector data outside the energy sector.

Since August 2019, we have provided extensive information, supporting data and guidance to Treasury representatives about the benefits and drawbacks of establishment of different EDR options for the CDR in the energy sector. Prior options which we fully explored included the option to require all accredited persons and data-holders in the energy sector to exclusively be members of AFCA; and the option to require all accredited persons and data-holders in the energy sector to exclusively be members of the relevant state-based energy ombudsman schemes.

The current option is a hybrid of these two options and is industry focused and not consumer focused. It creates an unnecessary additional level of complexity for customers who, in the future, experience dissatisfaction with accredited data recipients which are not energy retailers, but which chose to enter the CDR energy market. In particular, the current option will mean that effective dispute resolution will be more complex and confusing for consumers who will be required to put their energy complaints to different external dispute resolution offices depending on the complaint's scope. This is not a positive consumer experience.

Telecommunication retailers such as Dodo and more recently Telstra, have obtained energy authorisation from the Australian Energy Regulator and/or the Essential Services Commission Victoria. These companies accept that moving into the energy market requires them to become members of energy Ombudsman offices as well as the Telecommunication Industry Ombudsman (TIO). Likewise, Origin Energy has expanded into the ISP market and obtained membership of the TIO. Accordingly, entities which, through CDR, enter the energy market, should meet all consumer protection requirements for that market including energy Ombudsman membership. This approach should minimise consumer confusion and effort and provide a level playing field for entities in the CDR market.

We will, of course, work closely with each other and AFCA to develop effective information sharing and customer referral protocols which underpin effective management and maximise customer satisfaction in relation to CDR energy complaints.

We would welcome the opportunity to engage further with Treasury with the objective of establishing the most effective CDR energy external dispute resolution solution.

Yours sincerely

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