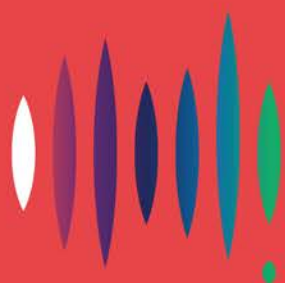


Consumer Access to Energy Data

Response to Government Consultation

March 2018



**ENERGY
CONSUMERS
AUSTRALIA**

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Creating consumer access to data as a right needs to be supported by clear legal provisions and easy to use processes.

Introduction

Energy Consumers Australia (ECA) is the national voice for residential and small business energy consumers. Established by the Council of Australian Governments (COAG) in 2015, our objective is to promote the long-term interests of consumers with respect to price, quality, reliability, safety and security of supply.

The fulfilment of that objective requires energy consumers to pay no more than necessary for the quality and reliability they prefer. Achieving this outcome requires a market in which consumers can participate fully.

ECA notes that access to data about their energy services can assist consumers in making decisions. Data alone may be insufficient, and the use of tools provided by other service providers may also be required.

Recognising this, ECA released a discussion paper in July 2017 *Electricity Meter Data Portability* that focussed on providing third party access to meter consumption data (ECA, 2017).

Since that discussion paper was released there have been three major developments:

1. The Australian Government has announced its initial response to the Productivity Commission review on Data Availability and Use, including that it will introduce an economy-wide Consumer Data Right (CDR) which will be first implemented in banking, energy and telecommunications;
2. The Australian Treasury has released the review of Open Banking and advised that implementation of the economy wide CDR will be informed by the Government's response to the findings of the Open Banking Review; and
3. The COAG Energy Council (EC) has funded a consultant's report in support of the National Energy Productivity Plan objective to improve the exchange of market data. This is a different objective to the general Consumer Data Rights approach in the first two projects.

The last two of these are currently seeking public submissions and this paper is provided in response to both.

The submission begins with a review of each of the four projects referred to above. This is then followed by a consideration of the priorities for the realisation of the Consumer Data Right as it applies in energy. The final section of the submission outlines Energy Consumers Australia's

recommendations to progress the implementation of the Consumer Data Right.

Summary of our conclusions

Consumer access to tools that can access their energy data is critical for consumers to make choices and to deliver a new and better market. In recognition of this fact ECA has been advancing its own proposals to improve authorised third party access to consumer data.

Government responses to the PC Review and the Open Banking Review have converged in recent months, and a parallel consideration of the implementation of the Consumer Data Right for energy is now underway. These are welcome developments and we now have the opportunity to understand how they fit together and agree a coordinated and effective approach.

Our view is that there are significant benefits in an economy-wide implementation of the Consumer Data Right, including better levels of privacy protection, data standards, consumer acceptance and ease of adoption by service providers. Within this approach recognition needs to be made of the specific circumstances relating to sectoral data sets. The development of rules and standards by industry and then created and enforced by the ACCC and OIAC will provide a strong yet flexible arrangement.

We see little value in pursuing an energy sector specific approach to accreditation managed by AEMO as proposed in the HoustonKemp report for the COAG Energy Council. We also see any further development by AEMO of its data holdings as simply another Data Holder to which the consumer has a right.

Consequently, our recommendations to the two consultation processes are:

1. The COAG Energy Council Project not pursue the AEMO based solution and instead endorse the Treasury proposals for the development of an economy-wide Consumer Data Right with common processes and standards, as this will provide confidence in the processes for accreditation and authorisation of third parties.
2. The COAG Energy Council note the recommendation of the Project and record its support for the economy-wide Consumer Data Right, the prioritisation of energy and the need for the priority services to be available from mid-2019 to further develop the retail and distributed energy resource markets.
3. The Treasury implementation of the Consumer Data Right immediately expand the working groups on standards and processes to include energy with Open Banking for initial implementation rather than a sequential implementation.
4. The Australian Government ensure in the 2018-19 Budget that additional resources are provided to the ACCC and the OIAC to implement the Consumer Data Right for banking and energy by mid-2019.

CDR projects

As mentioned above, including ECA's own discussion paper, there are four identifiable CDR projects underway. As will be discussed, the overall Australian Government CDR approach has now been merged with the Open Banking workstream.

This review of these projects is not intended to be a thorough review of each, but instead to provide a framework to reach conclusions about the productive way forward on CDR for energy.

ECA's discussion paper

ECA's paper was motivated by a very specific objective, facilitating access to electricity consumption data. We recognised that a consumer's metering data can facilitate decision making and market participation in two areas; determining the bill impact of alternative offers and maximising the value of consumer investment in distributed energy resources, and hence contributing to system-wide optimisation.

We also recognised that the value of the data wasn't solely in the possession of the data by the consumer, but also the ability of a third-party service provider to access the data as part of providing a service to the consumer.

Our most important recommendation in the discussion paper was for the government comparator websites (*Energy Made Easy* and *Victorian Energy Compare*) to include a 'button' that would fetch a consumer's energy data to undertake comparisons of different plans. This is the functionality provided in the USA through the '*Green Button Connect My Data*' model. This tool is essential to enable cost reflective network tariffs to be reflected in innovative retail price structures.¹

The discussion paper noted the number of energy sector reports that had identified the need for this data, including the Climate Change Authority (CCA)/Australian Energy Market Commission (AEMC) combined report (CCA & AEMC, 2017) and the Finkel review (Finkel, et al., 2017).

The discussion paper sought a process to build on the existing right of consumers to their meter data from retailers or networks, including the ability to authorise third party access.

The process outlined in the paper had three principle features:

1. A common process for managing the accreditation of third parties and the process they need to follow to obtain customer authorisation that could be extended to other data types.
2. Utilise the B2B e-hub developed by AEMO in response to the Shared Market Protocol consultation (AEMC, 2015) and subsequent B2B rule change made by the AEMC (AEMC, 2016).

¹ In this paper ECA uses the term 'tariff' to refer to the charges networks place on retailers and 'prices' to refer to the charges retailers make to consumers.

3. Was designed as an industry-led solution to meet consumer expectations.

The discussion paper took the view that there was no need for the consumer to access the information from multiple sources (i.e. both networks and retailers) and chose to focus on networks. The assumption was that networks had benefit in achieving a more rapid implementation of cost reflective prices and a more competitive retail market. It was also perceived that consumers could be subject to unwanted win-back marketing if they obtained data from retailers. Further, retailers that are vertically integrated with generation (as the biggest retailers are) do not appear to have an incentive to help consumers use less.

In our conversations with networks subsequent to the release of the discussion paper, there was a high degree of caution about the direct and reputational privacy costs and issues involved in relying on a third party's assertion that they had appropriate authorisation.

As our conversations continued however, it became clear that networks were well advanced in their ability to support a real-time transaction of historic meter data and that the implementation of a B2B transaction would be possible once the system changes to introduce the new e-hub were implemented (that is 1 December 2017).

AEMO identified that the proposed transaction over-lapped with proposals being considered by the Australian Government on behalf of the COAG Energy Council. ECA deferred further consultation on its proposal pending the outcome of this consultation.

Consultation with consumer advocates on the proposal identified the single greatest concern was misuse of data in cases of domestic violence. The two biggest risks in these cases are the use of data to match a person to an address and the ability to use data to identify patterns of movement. The first of these can be mitigated by only requiring the meter identifier to request the meter data. The second can be mitigated by restricting third party use of data to applications that only present back summaries of the data.

Productivity Commission Consumer Data Right

The Financial System Inquiry (the Murray inquiry) reported in November 2014. Recommendation 19 of the Inquiry on 'data access and use' was for a "[r]eview [of] the costs and benefits of increasing access to and improving the use of data, taking into account community concerns about appropriate privacy protection."

In its response in October 2015 the Australian Government said (Australian Government, 2015):

The Government agrees to improve the use of data. This has the potential to unlock significant efficiency improvements in the financial system. We will task the Productivity Commission with reviewing options to improve accessibility to data, taking into account privacy concerns and other existing Government processes.

The Competition Policy Review (the Harper review) reported in March 2015. Recommendation 21 titled 'Informed choice' proposed (in part) "Governments should work with industry, consumer groups and privacy experts to allow consumers to access information in an efficient format to improve informed consumer choice. The proposed Australian Council for Competition Policy should establish a working group to develop a partnership agreement that both allows people to access and use their own data for their own purposes and enables new markets for personal information services. This partnership should draw on the lessons learned from similar initiatives in the US and UK."

In its response in November 2015 the Australian Government said (Australian Government, 2015a):

The Government supports allowing consumers to access information in an efficient format, especially as new technologies increase the generation of data that can improve consumer decisions but also raise consumer protection issues.

As recommended by the Financial System Inquiry (and further to the recommendations on access to data in the Commission of Audit and informed choice in the Harper Review), the Government will task the Productivity Commission with reviewing options to improve accessibility to data.

The reference was provided to the Productivity Commission in March 2016. In May 2017 the Productivity Commission (PC) report on Data Availability and Use was released (PC, 2017). The report included a series of recommendations to implement an economy wide "Comprehensive Right to access and use digital data."

The PC further recommended that "The Australian Government should introduce an outcome-based definition of consumer data that is, as an overarching objective, data that is sufficient to enable the provision of a competing or complementary service or product for a consumer." While this definition was universal, the PC identified the need for industry-specific implementation of the economy wide right:

Participants in an industry should determine the scope of consumer data relevant to their industry (where an industry in this context would be determined by a broad description of the service). This should be in the form of a data-specification agreement.

Data-specification agreements should also articulate: transfer mechanisms, and security of data, to ensure that data use is practical and robust to technology updates; and the requirements necessary to authenticate a consumer request prior to any transfer.

These agreements should be registered with the ACCC, which may offer interim approval where an agreement has been reached but other industry agreements have been prioritised for approval.

The Australian Government invited submissions to a Data Taskforce established within the Department of Prime Minister and Cabinet (PM&C, 2017).

In November 2017, Angus Taylor, Assistant Minister for Digital Transformation announced that the Australian Government will legislate a national universal Consumer Data Right, prioritising customers having open access to their banking, energy, phone and internet transactions (Taylor, 2017).

This long history has been included to note that the CDR is three years in the making.

The announcement was cautiously welcomed by the Business Council of Australia (BCA). CEO Jennifer Westacott said (BCA, 2017):

We support the principle that consumers should have greater access and control over data directly relating to them.

What is vital is that the new system is an effective, workable regime that serves the interests of consumers and supports a productive and innovative economy.

The largest retail energy businesses are members of the BCA—AGL, EnergyAustralia, Origin, Engie (owners of Simply Energy) and Snowy Hydro (owners of Red and Lumo). Three network/pipeline businesses are also members—Ausgrid, Jemena and APA group (BCA, 2018). This indirect support for the implementation of the Consumer Data Right is positive and welcome.

The PC report was focussed on wider issues than just the Consumer Data Right. In particular, it focussed on making public data sets more widely available for researchers, including the concept of 'National Interest Datasets'. This introduces some definitional challenges in energy where the vast bulk of the data is held by private sector firms or by the Australian Energy Market Operator (AEMO), which is only minority owned by the Government.

The Australian Government has not released its response to the remainder of the PC report. While the topic falls outside the scope of this paper, the associated data availability and use considerations remain important from a system optimisation and policy development perspective

ECA supports the extension of the definition of National Interest Datasets to include data held by private sector firms, including AEMO. This, however, is a different topic to the subject of the consultation on the Consumer Data Right. We look forward to participating with the Department of the Environment and Energy in the specification of the National Interest Dataset for energy.

Open Banking and CDR

In his 2017-18 Budget Speech the Australian Treasurer, Scott Morrison, said (Morrison, 2017):

The introduction of an open banking regime in 2018 will give customers greater access to their own data, empowering them to seek out better and cheaper services.

In a media release to accompany the Budget he expanded on this, saying (Morrison, 2017a):

The Government will introduce an open banking regime that will increase access to banking product and consumer data by consumers and third parties, if the consumer consents. This will empower consumers to seek out banking products better suited to their needs and create further opportunities for innovative business models in banking that enhance competition.

The Government will commission an independent review to recommend the best approach to implement the open banking regime in Australia to report by the end of 2017.

The budget allocated \$1.2 million in 2017-18 to the Department of the Treasury to “undertake an independent review into the most appropriate implementation model for an open banking regime.” (Treasury, 2017)

The Open Banking Review issued an Issues Paper in August 2017 and the Final Report was released in February 2018. It appears that the only formal submissions from consumer advocacy organisations were two joint submissions from the Consumer Action Law Centre, Financial Rights Legal Centre and Financial Counselling Australia. Between the release of the Issues Paper and the Report the Government had announced its decision on a Consumer Data Right.

The release of the Open Banking report was accompanied with a Consumer Data Fact Sheet that explained (Treasury, 2018):

The CDR will eventually give customers a right to direct that their data be shared with others they trust, so that they can benefit from its value.

Open Banking is the name for the CDR as it applies to the banking sector, the first sector to which the general right will apply.

The Fact Sheet also encouraged responses from the other sectors to be covered by the initial implementation of the Consumer Data Right:

The Government is currently considering its response to the Open Banking Review and is seeking submissions on the practical implications of the recommendations. The Government encourages all those who are interested in Open Banking and the CDR, including from the energy and telecommunications sectors, to participate in this process.

For the energy sector, the Fact Sheet outlined the next steps as:

A data right currently exists in the energy sector, allowing customers to direct that a data recipient can obtain their electricity consumption data. However, concerns have been raised regarding its

effectiveness due to the absence of detailed rules relating to data provision, data transfer and customer consent.

As such, the Treasury is currently working with the Department of Energy and Environment (sic) to develop a model for implementation of the CDR in the energy sector.

If the CDR is implemented economy wide there should be no requirement for any specific amendments to the energy laws or rules. This latter engagement with the Australian Government Department of the Environment and Energy is the subject of the fourth process.

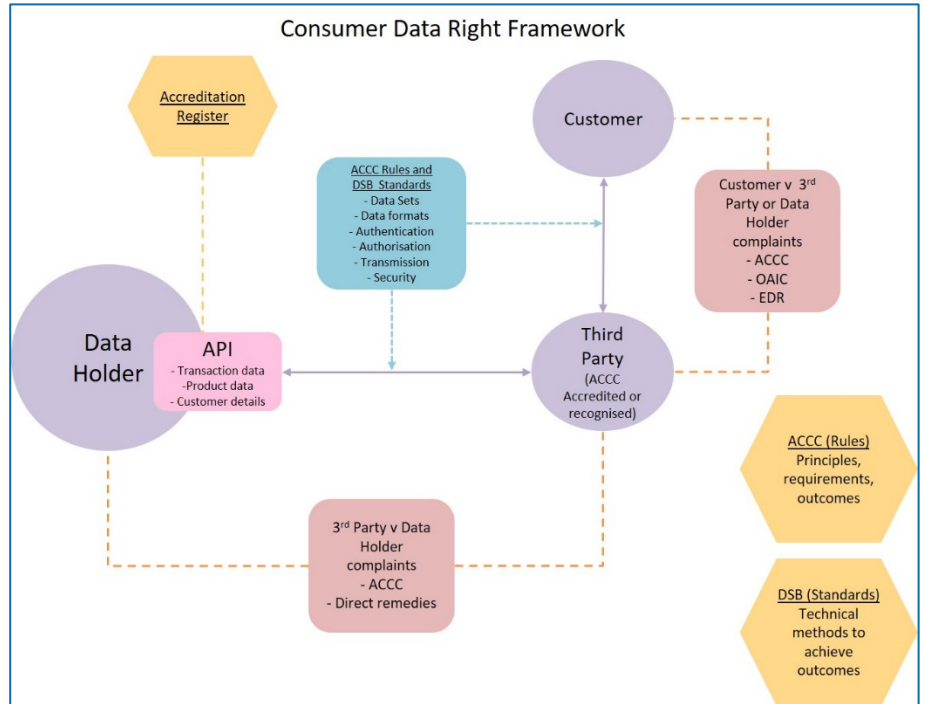
The decision to regard the consultation on the CDR for banking (Open Banking) as providing a framework for the introduction of a Consumer Data Right generally is potentially problematic.

The first concern is that participants in other sectors have not had a reason to participate in the consultation. It may be being assumed that what is satisfactory for banking - where the subject is highly sensitive financial data – will also be appropriate in other sectors. However, the limited formal participation by consumer groups in the earlier consultation raises some concerns about this view. In particular, ECA would note that the concerns raised in the one consumer submission to the Open Banking review (referred to above) highlighted the potential for consumer data to heighten discrimination and disadvantage is a particular concern in energy.

The second concern is that energy data might actually be less sensitive and warrant a simpler regime. In particular, we note that consumers who lead busy lives may prefer to directly authorise an accredited third party to access their data and provide bespoke offers and advice. The Open Banking model as detailed for a customer transfer in Attachment D of the Report relies on the consumer providing authorisation directly to the data holder. The discussion in chapter 5 of the report of 'redirect' versus 'decoupled' authorisation models also assume the consumer needs to log into the data holder website/portal/service to initiate a data transfer authorisation. (Farrell, 2017, pp. 84-85)

Notwithstanding these concerns about the consultation process, the Open Banking report provides a very comprehensive overall framework. A diagrammatic version of this from a Treasury presentation is presented in Figure 1 below.

Figure 1: Consumer Data Right Framework



This format provides greater clarity than the Review Report about the overall approach and will be the version used later when we discuss our conclusions about the approach to implementing the Consumer Data Right in the energy sector.

There is, however, one important additional concern to raise at this point. Officials have indicated a preference that the third party accreditation process operated by the Australian Competition and Consumer Commission (ACCC) should be sector agnostic. That is, once accredited as a third party to access data in one sector then the person is automatically accredited in others.

ECA regards this as potentially problematic because of the quality of practices in the online 'lead generation' industry. The Consumer Action Law Centre's recent report *Dirty leads: consumer protection in online lead generation* identified that poor standards of marketing consent is a recurring theme in research. The call in that report to update our regulatory and policy settings to reflect evolving market practices and improve consent needs to be maintained as a goal in the greater use of the Consumer Data Right. (Consumer Action Law Centre, 2018)

We see benefit, even within just energy, to have gradations of accreditation based on risk. For example, the level of system security required for a comparison service that accesses data, uses it to calculate the alternative offers and then discards it at the end of a session should not be as stringent as those required if the data is to be regularly accessed and used to inform a continuous monitoring service, for example, one designed to assist a

consumer in optimising the settings of their distributed energy resources and appliances.

COAG Energy Council Project – market data to achieve energy productivity.

The National Energy Productivity Plan (COAG Energy Council, 2015) includes 34 measures designed to contribute to the achievement of the goal of a 40% improvement in energy productivity (as measured by GDP divided by petajoules of energy used in the economy) by 2030. Measure 24 titled 'Improve the exchange of energy data' reads:

Barriers currently exist in energy market data systems to the integration of new products and services and effective competition. Systems need to be flexible enough to adapt. Data exchange mechanisms need to facilitate the development of innovative services which support competition and inform consumer decision making at the point of purchase, based on real-time access to their energy use profiles. The Council will engage with market institutions during 2016 to understand whether barriers exist to this occurring.

Measure 3 of the NEPP has a similar theme, titled 'Make choice easier' it reads:

The current market transition with increasing choice in energy services, tariffs and technologies can provide strong consumer benefits. However, this greater choice also increases complexity and could increase risks of bill shock for some consumers. Choice needs to be supported by the right tools and customer information to avoid adverse impacts. A review will be undertaken of the total energy consumer journey, working with Energy Consumers Australia. This will include considering whether there are any barriers to market provision and innovation in tools and services, and review of tools and information provided by government. The first stage of this review will be completed by the end of 2016.

In 2017 the COAG Energy Council provided funding for a consultant to progress measure 24. The contract was awarded to HoustonKemp, who identify (HoustonKemp, 2018) the scope of the work as:

It is within this context that HoustonKemp has been engaged on behalf of the Council of Australian Governments' (COAG) Energy Council to examine how, and make recommendations for, streamlining the process, and facilitating timely access to consumers' consumption data to authorised third party service providers, acting on behalf of consumers.

The description of the report as provided by the COAG Energy Council is²:

The COAG Energy Council has engaged HoustonKemp Economists to examine and make recommendations for streamlining the

² See <http://www.coagenergycouncil.gov.au/publications/call-submissions-facilitating-access-consumer-energy-data>

process, and for facilitating timely access to consumers consumption data by authorised third party service providers.

Despite these two precise descriptions of the limitation of the consultancy to the same scope of work as proposed by the ECA paper, the report rapidly moves to noting “[w]e refer to this as a consumers’ electricity data access framework for authorised third parties (electricity data access framework).” HoustonKemp then proceeds to propose ‘[i]n our opinion, the objective for a consumer electricity data access framework should be: *To facilitate on-demand access by retail customers or a customer’s authorised representative to consumer electricity data.*’

Having broadened the scope, however, the rest of the focus of the report is on the data necessary to facilitate the same services that were a priority for the ECA project. The report usefully identifies that as well as the consumption data, these services require details of the consumer’s current retail plan and metering configuration (to determine if there is more than one load register what conditions apply to the other loads and, equivalently, what retail price structures could be applied).

The report recognises the preference of industry for a centralised accreditation and authorisation process management function.

The report incorrectly describes the operation of the e-hub operated by AEMO that supports both B2B (business to business) and B2M (business to market/MSATS) transactions. The e-hub can be used as effectively to connect a third-party to any market participant as it can to AEMO.

Noting the need for AEMO to authorise data users on the e-hub it nominates AEMO as the authority to administer accreditation. However, nothing in AEMO’s current powers, or in powers that could be conferred by the Rules, would resolve the concerns of industry data holders about their privacy risk.

The report then observes that AEMO is proposing to increase the data it holds and would be an alternative source for the provision of the data for the priority services. AEMO is proposing this because of the implementation of five-minute settlement (a rule change that has already occurred) and for the move to global settlement (a rule change just starting).

Based on AEMO’s role as the e-hub accreditor and that it will hold the data, the report then proposes that AEMO operate the entire system through accrediting third parties to be the data provider. For AEMO to be able to release the data they hold may require additional rule changes. It is also unclear how AEMO would manage the privacy concerns raised by industry.

It is ECA’s understanding that HoustonKemp’s discussions with AEMO have been at officer level and as such represent a hypothetical role for AEMO rather than a role that AEMO has offered to take. Though AEMO desires to redesign its systems to hold the relevant data, at an industry workshop on 5 March 2018 AEMO was not prepared (or able) to specify a date from which the data will be available.

ECA is also aware that the Victorian Government in its 2017/18 budget allocated funds for a concept study “to deliver an energy data hub to

significantly increase consumer and third-party access to energy data.”
(DELWP, 2017)

As a project this is similar in scope to the proposal advanced by the HoustonKemp report. It is unclear how the legal rights to the use of that data is proposed to be managed. For the purpose of this submission, it is assumed that this data set is just another Data Holder within the overall Consumer Data Right framework.

Summary

The four projects reviewed all identify the legal framework for accreditation and authorisation as critical elements in the realisation of the Consumer Data Right. Neither the ECA proposal nor the COAG Energy Council report provide a solution to this challenge. The PC and Open Banking Review clearly identify a framework for legislative changes and institutional roles to manage these. While the industry process outlined in the ECA discussion paper for managing the privacy concerns could have been successful, that as approach now looks likely to be put on hold while the legislation foreshadowed by the Open Banking Review is developed and passed.

The HoustonKemp report for the COAG Energy Council ultimately proposes a solution that would not equate to an implementation of the Consumer Data Right but a centralised service provider model for a subset of consumer data.

Priorities for an energy CDR

A right to what?

The Productivity Commission outlined its view of the comprehensive right to access and use digital data in its Recommendation 5.1 (PC, 2017):

Consumer data must be provided on request to consumers or directly to a designated third party in order to exercise a number of rights, summarised as the Comprehensive Right to access and use digital data. This Comprehensive Right would enable consumers to:

- *share in perpetuity joint access to and use of their consumer data with the data holder*
- *receive a copy of their consumer data*
- *request edits or corrections to it for reasons of accuracy*
- *be informed of the trade or other disclosure of consumer data to third parties*
- *direct data holders to transfer data in machine-readable form, either to the individual or to a nominated third party.*

Where a transfer is requested outside of an industry (such as from a medical service provider to an insurance provider) and the agreed scope of consumer data is different in the source industry and the destination industry, the scope that applies would be that of the data sender.

It is important to note that the right to direct data holders to make data available to third parties is only one of five parts to the right. The right should not be mis-interpreted as relating to 'ownership' of the data; both the data holder and consumer have rights to use the data, with the data holder's rights constrained by privacy principles

In Recommendations 5.2-5.4 the following further proposals are advanced by the PC:

- The Australian Government should introduce an outcome-based definition of consumer data that is, as an overarching objective, sufficient to enable the provision of a competing or complementary service or product for a consumer.
- Participants in an industry should determine the scope of consumer data relevant to their industry and should also articulate: transfer mechanisms, and security of data, to ensure that data use is practical and robust to technology updates; and the requirements necessary to authenticate a consumer request prior to any transfer should be registered with the ACCC.
- The Australian Government should provide for broad oversight and complaints handling functions relating to the use of the Comprehensive Right. The Australian Competition and Consumer Commission (ACCC) should be resourced accordingly.
- The Office of the Australian Information Commissioner and industry ombudsmen should, in order to ensure a 'no wrong door' approach to

handling consumer engagement, coordinate with the ACCC on the receipt and handling of consumer complaints on data access and use.

The central roles for the ACCC and OAIC are important in achieving the twin objectives of easy access to data to develop competitive markets and the need to maintain privacy controls on data. The latter is essential for establishing consumer confidence in the processes.

The role of industry is also important in the PC's recommendations. They see industry as being well placed to provide appropriate definitions and processes and that these might need to be industry specific.

What data?

The Open Banking Review noted a diversity of views on what should be covered in such a regime. The Review found it convenient to start by dividing the data potentially in scope into categories covering a spectrum of connectivity to the customer. (Farrell, 2017, pp. 33-34)

From most closely-connected to least closely-connected, these categories are:

- **Customer-provided data** — information provided directly by customers to their banking institution. Examples include: a customer's personal address and contact details; and information that has been provided for the purpose of making payments, such as payee lists.
- **Transaction data** — data that is generated as a result of transactions made on a customer's account or service. Examples include: records of deposits, withdrawals, transfers and direct transactions with merchants.
- **Value-added customer data** — data that results from effort by a data holder to gain insights about a customer. Examples include: income/assets checks; customer identity verification checks; credit reporting data and credit scores.
- **Aggregated data sets** — created when banks use multiple customers' data to produce de-identified, collective or averaged data across customer groups or subsets. Examples include: average account balances by postcode or income quintile, or average size of small business overdrafts by industry segment.

All data in the first two categories are in scope for the consumer Data Right. Some of the data in the third category is, especially data that the consumer has a right to correct. Nothing in the fourth category would be.

The Review also recommended that where banks are under existing obligations to publicly disclose information on their products and services — such as information on their price, fees and other charges — that information should be made publicly available under Open Banking.

This list provides a useful framing for the outcome-based definition of consumer data. ECA contends that in forming the definition a wider set of industries be considered including the general and health insurance industries as well as energy and telecommunications. These appear to be logical additions because they are sectors also served by comparison services, and will provide useful additional data on the economy wide application of the right.

Energy sector consumer data

The HoustonKemp report for the COAG Energy Council proposed that 'consumer related electricity data' can be grouped into four main categories, comprising of (HoustonKemp, 2018, p. 17):

- customer related data, such as name of account holder, contact details and time period of account;
- standing/connection point data, such as the NMI, supply address, meter type, and details on solar panel and battery installation;
- meter data, such as consumption by time interval, voltage and frequency; and
- pricing data, such as retail and network tariff, total bill, and other fees and charges.

Most of this is standard historical data. Voltage and frequency in the third data point is not; it is data at a point of time obtained by a real time enquiry of the meter not a database of records. There is also a question of whether 'network tariff' is consumer data as in one usage it refers to the charges levied by the network on the retailer. At the workshop on 5 March 2018 it was suggested that 'network tariff' was necessary to identify how the meter was wired to support different loads. This is probably better described as an attribute of standing or connection point data than pricing data.

This list is only a subset of data over which the Consumer Data Right should extend and refers only to 'market data.' There is other data generated by appliances and distributed energy resources that are equally relevant. Some of this data, like voltage and current, is point in time data. In the unfolding environment known as the 'Internet of Things', the scope of data that will be subject to the Consumer Data Right will increase, and more of it will be data available in near real time.

There is a degree of confusion about the function of 'smart' meters. Firstly, the meter's principal function is to measure power flow (and hence energy consumption) between the network and the premises (house, business, embedded network). Secondly, the move away from 'dumb' meters (that only measure accumulated consumption) can include three degrees of additional functions; measuring consumption in intervals (typically thirty minutes), using communications to provide that data to another location, and using communications to provide other services like remote disconnection or point-in-time voltage and frequency. The national standard for new meters has less functionality than the Victorian standard.

Smart meters don't provide real time energy management functions. But other devices services in the market do (and could also provide the meter data.) The data used in these other services is data to which the Consumer Data Right should apply. There is also value in considering whether these other devices could be the designated meter, that is, to open-up metering contestability to the consumer not just the retailer.

To put the matter simply there is a pressing need to implement the Consumer Data Right to cover consumption data, metering configuration and current retail price structure. But the implementation of the Consumer

Data Right needs to occur in such a way that these future uses are supported.

The value of a common right and process

The approach being developed by Treasury institutes a common right and processes. There are a number of reasons why this is appropriate:

1. Just as the reliance on generic consumer protection rules enhance consumers' ability to understand their rights, a common framework for data rights will promote understanding.
2. Common approaches to features of communications and data security should enable higher standards to be achieved at a lower cost (through scale).
3. Common approaches to accreditation and standard will facilitate the ability of service providers (for example, comparison services) to operate in multiple markets.
4. Common approaches will facilitate the implementation of the Consumer Data Right in other industries.

That said, it is important to understand that the benefit we seek is a benefit to consumers. It is easy to get excited about the prospect of new industries created on the back of access to consumer data; the so-called FinTech sector often sounds like the development of their industry rather than the development of services consumers value is the goal.

At the same time, we need to be cautious that commonality of approach does not feed into inappropriate algorithmic marketing. As noted in the Consumer Action Law Centre submissions to the Open Banking Review algorithmic marketing creates the risk of further entrenching disadvantage.

Similarly, while there are cost advantages in standardisation, we need to ensure that processes are suitable to use cases. For example, the level of security and reliability required to access banking records – especially if that extended to 'write access' – is very different to the security required by a solar panel salesman who uses consumption data exactly once to model the self-consumption opportunity and then destroys the data. We equally want to avoid the creation of a new intermediary industry that notionally manages that security risk but still provides the data to the same third party as if they obtained it themselves.

Summary

There is an immediate consumer benefit in providing third party real time access to consumption, metering configuration and pricing data. This value comes from the provision of better tools for price comparison, the facilitation of more sophisticated price structures to reflect varying network and energy costs and the design of Distributed Energy Resources that consumers plan to invest in.

However, there is now little benefit of advancing this outside the overall framework for the economy-wide Consumer Data Right. The economy wide right will, in particular, provide an effective framework for developing the accreditation and authorisation frameworks.

Progressing a Consumer Data Right for energy

Timetable for implementing the CDR

As noted above the Australian Government has taken three years to get from the original recommendation of the Murray Review to the report of the Open Banking Review.

To implement the Open Banking Review alone the Australian Government will need to:

1. Introduce legislation in the Budget sitting of the Parliament and have it passed by the end of 2018.
2. Resource the OAIC and ACCC in the May budget for the new functions envisioned for them.
3. In parallel with the passage of the legislation have the ACCC and OAIC develop with industry the appropriate standards and accreditation and authorisation processes.
4. Have the work in 3 completed by the end of 2018 so they can be immediately made as the appropriate subordinate instruments.
5. Commence the Open Banking framework from mid 2019.

ECA is aware that working groups have already been established to work on these standards. Staff of ECA who have been involved in similar significant market transformative projects believe these timetables are achievable.

Timetable for implementing the CDR for energy

The economy wide Consumer Data Right is being legislated nationally. ECA assumes the Australian Government will be relying on the corporations' power in the constitution to do so.

As such it can be applied to energy without addressing any energy market rules. That is there are less steps involved in the

Jurisdictional engagement will, however, be necessary to ensure that external dispute resolution bodies (the Ombudsman schemes) can operate under the 'no wrong door' policy for complaint handling.

To the extent that AEMO already holds data and may acquire additional data in this framework it is just another data holder. Under a uniform right if each of the network service provider, the retailer, AEMO and the meter data provider will all face an obligation to provide consumption data. And ultimately it will fall to the consumer and/or the third party service provider where they choose to go to get it.

The privacy issue can be addressed by the ACCC and OAIC.

The question of whether the AEMO operated e-hub has a role or whether industry participants will need to implement additional data interfaces to

support the Consumer Data Right is best handled as part of the development of the standards.

Proposal

Energy Consumers Australia supports the introduction of a Consumer Data Right on an economy-wide basis as already decided by the Australian Government.

We believe that the implementation needs to be informed by practical application in more than just the banking sector. To that end the standards work already under-way needs to be expanded to include energy in either existing committees or in additional committees.

Assuming the Australian Government achieves the implementation timetable for Open Banking, the priority energy data of consumption, metering configuration and pricing can actually be delivered faster through the economy-wide approach than any other. It is unlikely that industry will pursue their own accreditation and authorisation scheme when there is the prospect of an ACCC and OAIC endorsed process under new legislation.

The implementation of the model proposed by the COAG Energy Council project requires Rule changes, an AEMO implementation process and an uncertain date for data availability. The obligations on industry through the economy-wide Consumer Data Right will not be dependent on energy sector regulation or processes.

To date, the energy sector has not embraced the opportunity to use data to empower consumers. A mandated approach through the ACCC with the protection of ACCC and OAIC endorsed processes is therefore the most appropriate course.

ECA therefore recommends:

1. The COAG Energy Council Project not pursue the AEMO based solution and instead endorse the Treasury proposals for the development of an economy-wide Consumer Data Right with common processes and standards, as this will provide confidence in the processes for accreditation and authorisation of third parties.
2. The COAG Energy Council note the recommendation of the Project and record its support for the economy-wide Consumer Data Right, the prioritisation of energy and the need for the priority services to be available from mid-2019 to further develop the retail and distributed energy resource markets.
3. The Treasury implementation of the Consumer Data Right immediately expand the working groups on standards and processes to include energy with Open Banking for initial implementation rather than a sequential implementation.
4. The Australian Government ensure in the 2018-19 Budget that additional resources are provided to the ACCC and the OAIC to implement the Consumer Data Right for banking and energy by mid-2019.

In making the recommendation that the approach to implementing the Consumer Data Right for energy be achieved through the economy-wide approach, ECA makes this recommendation on the expectation that the amendments to the Privacy Act included in the Open Banking Review Report are made.

ECA also notes that the authorisation of third party access to near real-time electronic data transfer is only one part of the comprehensive data right proposed by the Productivity Commission. The other four elements are equally important, being; the right to share use in perpetuity, the right to receive a copy of data, the right to request edits and have corrections made, and the right to be informed of the trade or disclosure of data. These rights include the right to withdraw an authorisation of a third party and the consequent requirements on the third party to delete data already obtained, unless required to retain it under some other law.

ECA expects that the standards and rules processes will allow for the further expansion of other critical elements. This includes the necessary protections in cases of domestic violence including the right of a consumer to instruct the data holder not to act on requests from third parties.

Noting that the objective of the Consumer Data Right is to allow innovation not exploitation, ECA is also concerned that the authorisation and consent framework is clear and transparent and always limited to the specific use covered by the authorisation.

Because the rules and standards will cover these requirements it is important that their operation for energy be included at the same time as the development for banking.

Finally, in some jurisdictions there is a very limited penetration of interval meters and no retail competition (e.g. Tasmania) and there would be little immediate benefit in incurring the cost of data provision. This suggests a general rule that the ACCC should have the power to grant time-limited individual exemptions to data holders from part or all of their obligations where the cost outweighs the benefits of enabling third party access.

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