



EnergyAustralia

LIGHT THE WAY

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Consumer Data Right – Inquiry into the Treasury Laws Amendment (Consumer Data Right) Bill 2022

EnergyAustralia is one of Australia's largest energy companies with around 2.4 million electricity and gas accounts in NSW, Victoria, Queensland, South Australia, and the Australian Capital Territory. EnergyAustralia owns, contracts, and operates a diversified energy generation portfolio that includes coal, gas, battery storage, demand response, solar, and wind assets. Combined, these assets comprise 4,500MW of generation capacity.

EnergyAustralia welcomes the opportunity to make this submission to the Inquiry into the Senate Committee's Treasury Laws Amendment (Consumer Data Right) Bill 2022 (the Bill).

EnergyAustralia has been a consistent supporter of the Consumer Data Right data sharing regime. We have recognised the potential benefits for consumers and the digital economy that could be delivered through an economy-wide data sharing ecosystem. That being said, our experience shows that rolling out a new data sharing regime across established businesses is complex, challenging and costly, with costs being ultimately passed onto customers.

It is therefore important that the CDR focus on priority areas which will provide direct benefits to the majority of customers, in circumstances where benefits clearly outweigh their cost of implementation. At times, previous decisions about the scope and design for energy CDR data sharing have extended into more peripheral benefits despite their cost and complexity. Robust consultation and assessment are key to ensuring that past experience informs the evolution of the CDR.

Similarly, EnergyAustralia again recognises that some types of Action Initiation could have customer benefits. Where those benefits are substantiated to outweigh their costs for the majority of customers, then we support the progression of Action Initiation. Our comments on the Bill relate to ensuring that the Bill sets up a framework which meaningfully consults on and assesses individual actions for each sector, and when making CDR Rules. This is critical given the switching use case for the Energy Sector is exceedingly complex. Even the basic concepts of an instruction layer and action layer risk being too theoretical and difficult to apply in practice. We also make one comment on improving the core consumer protection for Action Initiation in the Bill.

Matters to be considered when declaring an Action

The Bill establishes powers to declare Actions for each sector and make Rules for Action Initiation, and the matters the Minister must consider in doing so. These are some of the same matters that

apply for designating CDR data sharing: the interests of consumers, efficiency of markets, privacy, competition, innovation, intellectual property and the public interest. There is also a “catch all” provision which states the Minister may also consider any other matters the Minister considers relevant (sub-section 56AD(1)(e) *Competition and Consumer Act 2010*).

One additional matter which is fundamental to assessing the declaration of actions and could be explicitly called out in the Bill, is consideration of, the sector’s existing regulatory framework. This is highly relevant in two ways:

- Action Initiation is a major expansion of CDR functionality with very real new risks to customers at an increased scale, such as increased fraud and risks like Accredited Action Initiators (AAIs) not acting in the customer’s interest. Whether a sector’s existing regulatory framework adequately addresses these risks will be pivotal to considering whether an action should be declared for a sector.
- The existing regulatory framework may itself create barriers to the Action. Under the Automated Switching use case which has been discussed for the energy sector, the AAI would enter the energy contract on the customer’s behalf, which assumes that they would be providing the required Explicit Informed Consent for the customer. The Australian Competition Consumer Commission and the Australian Energy Market Commission have flagged that the current regulations might need to be changed to allow third parties to provide this consent on the customer’s behalf.

Duty to act honestly, fairly, and efficiently

Consumer protections will be necessary given the increased risks that Action Initiation will introduce due to the AAI acting on behalf of the customer, where they might have commercial drivers to not act in the customer’s interests. This is especially the case in the Automated Switching use case.

The Bill provides that AAIs must act efficiently, honestly, and fairly when initiating CDR actions. We appreciate this mitigates the risks but ideally it should go further.

The explanatory memorandum to the Bill states the obligation is intended to capture actions contrary to a consumer’s interest such as the AAI:

- repeatedly switching the consumer’s providers to gain commissions; or
- pushing to switch the consumer’s provider by falsely representing that the switch would benefit the consumer; or
- only recommending sponsored products (such that the consumer is offered an incomplete product range) and not communicating that fact to the consumer.

The last two dot points above would be mitigated by an obligation to act honestly and fairly. To some extent the first dot point above might also be mitigated if interpreted to be unfair. However, a stronger consumer protection and higher standard would be an obligation to act in the consumer’s best interests. This would squarely and more effectively address the risks around an AAI acting as the customer’s agent which is the core concept behind Action Initiation.

Yours sincerely,

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