

23 Marcus Clarke Street
Canberra ACT 2601
GPO Box 3131
Canberra ACT 2601
tel: (03) 9290 1800
www.aer.gov.au

Our Ref: 15864967
Contact Officer: Evie Redshaw
Contact Email: [REDACTED]

11 October 2023

Louise Staker
Market Conduct and Digital Division
Treasury
Langton Cres
Parkes ACT 2600

Dear Ms Staker,

Re: Consumer Data Right rules – expansion to the non-bank lending sector

The Australian Energy Regulator (AER) welcomes the opportunity to provide a submission to the Treasury's 'Consumer Data Right rules – expansion to the non-bank lending sector' exposure draft amendments, explanatory materials, and draft Privacy Impact Assessment.

The AER exists to ensure energy consumers are better off, now and into the future. As part of our functions, the AER protects the interests of household and small business customers by enforcing the National Energy Customer Framework (NECF), which governs the retail energy sector in New South Wales, South Australia, Tasmania, the Australian Capital Territory and Queensland. The AER has a number of roles under the NECF, which include administering the retailer authorisation and exemption regime, approving retail hardship policies, administering a retailer of last resort (RoLR) scheme, and providing the Energy Made Easy price comparator website (the Victorian Government provides a similar service through the Victorian Energy Compare website).

When the Consumer Data Right (CDR) Rules 2020 were expanded to the energy sector, the AER and the Department of Energy, Environment and Climate Action (DEECA) were designated as data holders for all relevant product data under the designation instrument. This designation stems from pre-existing data-sharing arrangements that facilitate the operation of the Energy Made Easy (EME) platform. In this capacity, the AER is obligated to share energy product reference data (PRD) through machine-readable, public application programming interfaces (APIs).

The proposed rule amendments suggest the introduction of additional obligations for energy retailers outside of their existing National Energy Retail Law (NERL)/National Energy Retail Rules (NERR) obligations to provide Product Data (for the purpose of Energy Made Easy). This obligation would require energy retailers to 'forward' or 'transfer' any requests they receive for product reference data to the appropriate energy sector agency, in adherence to specific data standards i.e., to either the AER or DEECA.

As the AER understands, the intention of these changes is to enhance transparency of the information concerning consumer energy plans as offered by the retailers. However, these changes also introduce complexities into the existing ecosystem and have the potential to increase friction in consumers' CDR experiences. The AER suggests Treasury consider the increased regulatory burden of this change and weigh the proposed benefits of the amendments against the costs and impacts listed below. In doing this, Treasury may wish to have regard to the requirements on energy retailers under the NECF to provide information to the AER on energy products to enable customers to consider and compare them. This is detailed under the National Energy Retail Law ¹and further in the AER's Retail Pricing Information Guidelines². Similar requirements apply in Victoria. The AER would be happy to assist in considering this further.

The AER does not make a recommendation but requests the following be considered:

1. Implications to the CDR consumer user experience
 - If a retailer 'transfers' a PRD request from a CDR consumer to the AER, both parties will contribute to the user experience including whether this is a seamless, reliable, and secure service. We seek clarification on the AER's responsibilities to respond to these 'transfer' scenario upon implementation of these rules.
 - With the increased complexity of receiving PRD requests, the AER expects a potential increase in complaints or enquiries related to the expanded CDR rules. Establishing effective mechanisms for handling these complaints and addressing consumer concerns is essential. Therefore, the AER will need to consider additional resource allocation to provide support in these instances.
2. The impact of these changes on the existing legislative requirements for the AER.
 - Reporting requirements for PRD currently sit with the AER. With the addition of individual retailer APIs 'transferring' or 'forwarding' PRD requests this would potentially require the AER to develop a capability to capture and report on the requests for those individual APIs. We seek further clarification on PRD reporting responsibilities for the AER upon implementation of these rules and proposed technical solutions.
3. The technical solutions provisioned to support retailers in 'forwarding' or 'transferring' of PRD requests.
 - CDR Rule, Schedule 4, 4.2 (2), states that if retailers opt to offer a service for consumers to request PRD directly, they must 'transfer' that request to the AER or Victorian Agency. The AER assumes they would be utilising the existing API endpoints available and no additional APIs would be required to support.
 - In CDR Rules, Schedule 4, 4.2 (3), there is no specific definition of a 'forwarding' mechanism. The AER assumes they would be utilising the existing API endpoints available and no additional APIs would be required to support.
 - Potential solution considerations to enable retailers to 'transfer' or 'forward' a PRD request would need to include analysis of how to maintain Transport Layer

¹ National Electricity (South Australia) Act 1996

² Retail Pricing Information Guidelines 2018

Security or TLS certificates (also known as digital or identity certificates, which are used to provide security) for retailers to enable AER CDR API use. If this functionality is not automated, there would be significant, regular manual load for the AER requiring additional resourcing considerations.

- Noting paper 248 - Energy PRD discusses the practicality of implementing the proposed rule changes. There are multiple suggested solution options to facilitate a 'forwarding' or 'transfer' service. If there were a variety of solutions implemented this would put the responsibility on the AER to support each retailer's individual technical solution. This would result in a complex ecosystem the AER to maintain and raise the risk of the AER's responsibility to support multiple technical solutions.
- To facilitate retailers directly 'transferring' or 'forwarding' requests to these APIs, the AER would suggest a collaborative approach with retailers and the DSB, ensuring alignment with Consumer Data Standards and meeting the needs of all stakeholders.
- As mentioned above as a result of these changes the AER may need to amend its solution for capturing PRD request data for the purpose of regulatory reporting obligations.

We thank the Treasury for the opportunity to provide our input to this consultation, and we welcome the opportunity to work closely with the Treasury on issues identified above.

If you have any questions in relation to this submission, please contact Evie Redshaw at

[REDACTED]

Yours sincerely,

[REDACTED]

Stephanie Jolly
A/Executive General Manager, Consumers, Policy, and Markets
Australian Energy Regulator

Submitted on: 11.10.2023