



EnergyAustralia

LIGHT THE WAY

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Dear Minister Hume,

Consumer Data Right in the telecommunications sector - Rules and Standards Design Paper (Design Paper) – Public version

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 respond to Treasury's Design Paper. We commend Treasury's continued use of the design papers to gather views on both the Rules and Data Standards in tandem, as there are linkages between the two, and achieving a consistent underlying intent is highly important to minimise late clarifications during the implementation period.

EnergyAustralia supports the extension of the CDR to the telecommunications sector. We encourage the development of the Rules and Standards:

- from first principles, assessing the telecommunications sector on its characteristics.
- for the vast majority of customers, minor edge cases will complicate, add cost, and delay the rollout of the CDR for the benefit of a small cohort of customers. (e.g the historical metering data issue in the energy sector).
- to ensure it functions well for Data Holders and Accredited Persons that operate across multiple CDR sectors.

We respond to the key issues in the Design Paper for EnergyAustralia below.

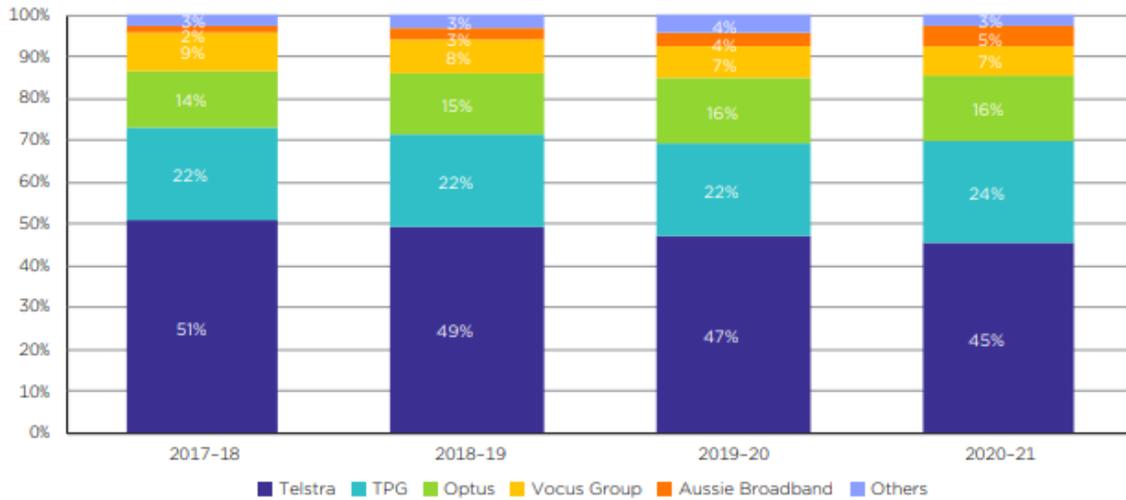
1. Threshold for Data Holders in scope

We agree with Treasury's proposed 'de minimis' threshold to exclude smaller Data Holders from mandatory data sharing obligations. This is consistent with our submissions to the Energy CDR Rules and reflects that small Retailers will not have the financial capacity or regulatory maturity to implement the CDR which is extremely complex. **[Confidential:]**

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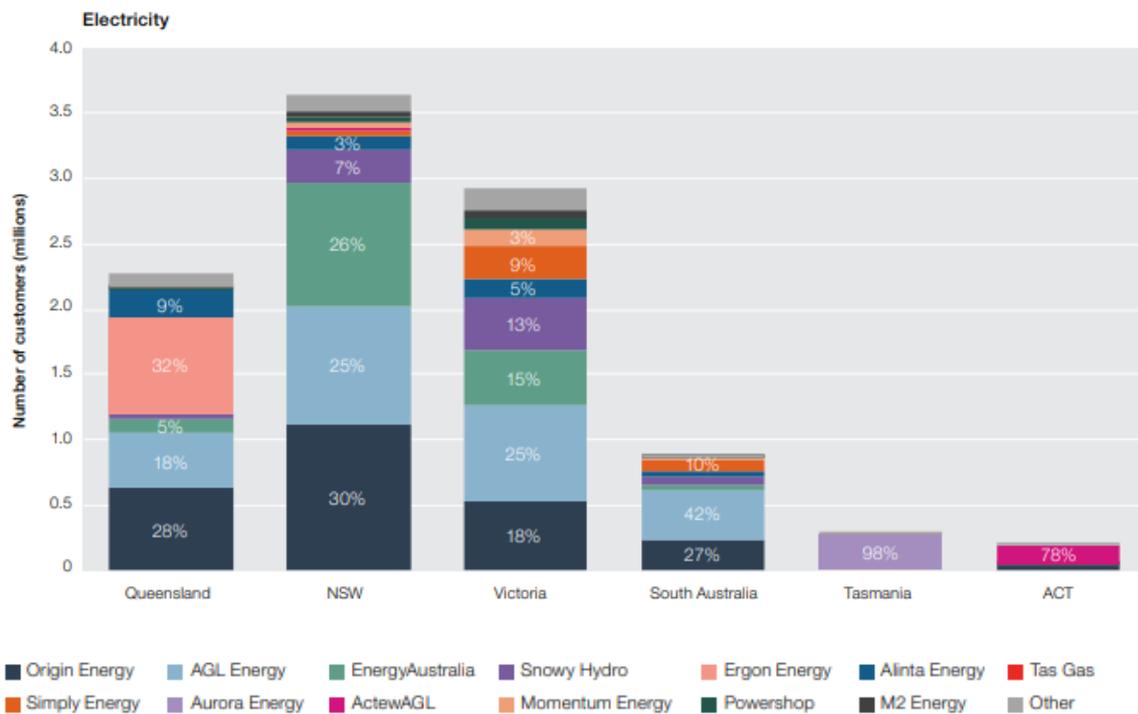
With regard to setting the threshold, Treasury should consider differences in market concentration and market share from sector to sector, and especially the make up of the smallest retailers. In December 2021, the ACCC reported the following wholesale NBN market shares as an indicative proxy for retail market share.¹

Figure 3.1: Fixed wholesale NBN market share from 2017-18 to 2020-21



In contrast with the above, below is the Australian Energy Regulator’s (AER) reports on retail market shares for electricity across different states.

Figure 6.2 Energy retail market share (small customers)



¹ ACCC Communications market report 2020-21 p 17. Also see p 42 for percentages for wholesale residential broadband market shares.

Where the two sectors are different is in the telecommunications sector which has a “longer tail”. The telecommunications sector has significantly more Carriage Service Providers (CSPs), compared to Energy Retailers. This means that the “Other” segment with a combined market share of 3% is spread over about 325 CSPs.² This can be contrasted with the Electricity Retailers in NSW where the “Other” category is only spread over 31 Retailers.³

We expect the longer tail in the telecommunications sector means less scale and customer base to spread the initial and ongoing costs of the CDR, and less benefit for customers (smaller customer base of those Retailers). This would justify setting a higher Data Holder participation threshold for the CDR in the telecommunications sector, compared to the energy sector (which was set at 10,000 customers).

We also support adopting existing sector specific regulatory thresholds (i.e. the 30,000 SIOs) as the threshold for mandatory CDR participation. This would be a simple way to leverage existing definitions to define the size of Retailers that are capable of meeting the complexity and cost of the CDR.

EnergyAustralia submits that the threshold should apply to consumer data requests and product data request, so that neither are mandatory for Retailers falling below the threshold. We note however that should CSPs be able to voluntarily respond to product data requests, they will have very strong incentive to – so that Accredited Persons have their plan data as potential plans to recommend to the customer in the switching use case.

2. Data Holders operating across multiple sectors

As a Data Holder operating across multiple CDR sectors, we want to ensure that the CDR functions well across CDR sectors. This means supporting a seamless customer experience where it makes sense, subject to the below e.g. one CDR policy for multiple CDR sectors.

However, the CDR operating well across sectors also means maintaining a level playing field and ensuring that Data Holders operating across multiple sectors are not required to implement higher requirements, compared to those Data Holders only operating in one sector. This is unlikely to be Treasury’s intent, but at times pursuing a seamless customer experience may lead to these outcomes. For example, where Data Holders operating across sectors have different logins for two different sectors and are required to map those logins together to support a single customer login (i.e. accept the energy or telecommunications login). This is currently only an option and not mandated in the data standards, but we note it here for illustration purposes.

3. White labelling arrangements

EnergyAustralia supports Treasury’s views on the white labelling arrangements described in the Design Paper, which will apply where two Data Holders are involved in providing white labelled services to the customer.

4. Data sets

We do not have detailed comments on the proposed data sets; however we note the following:

- As many telecommunication Retailers are “bundling” telecommunication and energy/other products, the data payloads will need to make it clear when the telecommunications product

² There are 336 Carriage Service Providers that have lodged compliance statements with the CommComm, 9 of these appear to be affiliated with Telstra, TPG, Optus, Vocus Group (M2 and Dodo) and Aussie Broadband. [Compliance - Communications Compliance \(commcom.com.au\)](https://www.commcom.com.au)

³ In the electricity sector, there are only around 29-40 retailers, varying by state. There are 40 NSW electricity retailers, so the other category is 40 minus the 9 retailers specifically named which supply into NSW. See [State of the energy market 2021 \(aer.gov.au\)](https://www.aer.gov.au) p 244.

has been bundled. This is especially important as it is possible that pricing may be combined across the two products and would appear higher to Accredited Persons, compared to standalone telecommunication products.

- With regard to historical data sets, some historical data sets will be irrelevant considering the product switching use case and should not be Required Data. For instance, the customer's past plans are irrelevant, and only the current plan is relevant to compare the customer's current pricing to new products.

5. Additional users in telecommunications sector

We ask Treasury to consider the issue of additional users for the CDR in the telecommunications sector from first principles:

- While the CDR Rules provide for Joint Account Holders and Secondary Users to allow extra people linked to an account to authorise data sharing on that account (in addition to the Customer/Account Holder), Treasury should not assume that those arrangements should apply.
- Rather, Treasury should investigate whether additional users on an account is a prevalent concept in the telecommunications sector, similar to the data requested from energy retailers on the same in 2021. i.e. what is the percentage of accounts with additional users other than the Account Holder? If this percentage is low across the industry, then the benefit of extending CDR data sharing via the Secondary User or Joint Account mechanism is low.
- Joint Account Holders and Secondary Users create privacy and family violence concerns, because of the risk that the Retailer's records don't fully reflect what the customer wants. Family violence is a complicated issue where victims can be coerced into providing access to accounts.

If Treasury were to explore this issue further, we firmly submit that the Joint Account Holder concept is unlikely to apply in the telecommunications sector in the same way that it applies to banking. The telecommunications sector does not have equal Account Holders or equal customers assigned to one account. We therefore focus on the Secondary User mechanism below.

In the telecommunications sector, there are additional persons that can be linked to an account. There are two regulatory concepts under the *Telecommunications Consumer Protections Code* (TCP Code) which may be leveraged to define Secondary Users (who would be able to authorise sharing of data for an account). These regulatory concepts have the advantage of providing some consistency across the sector. These two concepts are the:

- "Authorised Representative" which means the person who has authority from a Consumer to deal with a Supplier. This can mean the power to act on the Consumer's behalf as if they are the Consumer or, more limited rights or access.⁴
- "Advocate" who has no power to act on the Consumer's behalf and has no access to their information without the Consumer being present and agreeing to such action. A Supplier may presume that an Advocate is not authorised to establish or make changes to a customer's account.⁵

The first concept of Authorised Representative is stronger and would potentially help to define a Secondary User under the CDR Rules, although it can vary i.e. it can mean full power to act on the consumer's behalf *or more limited rights*. **[Confidential]**

⁴ [TCP-C628 2019.pdf \(commsalliance.com.au\)](#) Section 3.5.1 and definition of Authorised Representative under section 2.1.

⁵ [TCP-C628 2019.pdf \(commsalliance.com.au\)](#) Section 3.6 and definition of Advocate under section 2.1.

] The TCP code requires robust processes around appointing an Authorised Representative to ensure the Account Holder understands the effect of the appointment⁶, which further supports its use as a basis for the Secondary User mechanism.

However, it will also be important to consider whether a Retailer is capturing the details needed to identify and authenticate the Authorised Representative in a straightforward and secure way e.g. email and/or mobile number for the one-time password to be sent to, for authentication.

If these details are not captured digitally at all, it might mean that the Data Holder would need to change its processes and systems to capture them digitally which would add further cost to the implementation of the CDR. This cost should be weighed against the benefit (as above, the percentage of accounts with an Authorised Representative linked to it).

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Our account/customer/additional user set up for telecommunication accounts is discussed more with a diagram in section X below.

6. Family violence protections

As noted above, consistent with energy and banking, family violence risks exist in the telecommunications industry and will need to be carefully managed if Secondary Users are introduced for the CDR in the telecommunications context. We support the way the current CDR rules allow for Data Holders to have wide discretion to manage the risks of family violence. For example, Rule 4.7, which allows Data Holders to refuse to disclose CDR data or refuse to ask for authentication, if it is necessary to prevent physical or financial harm or abuse.

7. Offline customers

Treasury seeks “feedback on whether ‘offline customers’ should be considered eligible CDR consumers, as they are in the CDR in the energy sector”. An ‘offline customer’ is defined as a customer who does not have access to or has not created an online account.

EnergyAustralia has always been open to greater accessibility of the CDR for all customers. However, we question whether making offline customers eligible to access the CDR is necessary or appropriate for the telecommunications and energy sector, in view of how the CDR functions today.

Further, the pandemic accelerated digital adoption by the Australian public generally. Treasury itself notes in its recent strategic review issues paper that “Estimates also suggest that Australia vaulted five years forward in consumer and business digital adoption in around two months, and almost 9 in 10 Australian businesses adopted new technologies due to the COVID-19 pandemic.”⁷ Consumers are accustomed to setting up apps and online accounts (e.g. MyGov and Service Victoria) which would lean away from the need to cater for offline customers.

Making offline customers eligible is difficult in principle and practice, as the CDR is predominantly a digital customer experience and so making one step offline, when all other steps are currently online might not make sense. To illustrate, for the energy sector:

⁶ [TCP-C628_2019.pdf \(commsalliance.com.au\)](#) Section 3.5.1

⁷ [Consumer Data Right - Implementation of an economy-wide Consumer Data Right \(treasury.gov.au\)](#) p 8

- Before engaging with a Data Holder, a CDR consumer will have engaged with an Accredited Person first via an online app. This suggests that the CDR consumer is capable of online engagement.
- The ADR's application will send the customer to the Data Holder for authentication.
- Treasury's guidance on offline eligibility seems to suggest some form of offline authentication. i.e. they would be concerned if online capability is required for authentication. The DSB clarified that it means that customers should not be required to sign up online if that presents a hurdle to the customer (e.g. requiring online sign up to a Data Holder's online app, to set up a unique ID for authentication under the CDR). In either case, the below steps follow.
- After authentication, the obligation to provide the CDR consumer with a consumer dashboard applies to consumers which have *online access* to the relevant account.⁸ This means that the consumer will need to sign up online anyway to access their dashboard and provide authorisation to their Data Holder.
- After authentication and authorisation, the Accredited Person will receive data digitally and provide services to customers based on that data. We are not aware of any Accredited Persons providing a non-app-based service to the customer, which is in line with the intent of the CDR driving growth of the digital economy.

Even if Treasury were to take the position that offline customer eligibility is necessary, we submit that in our experience engagement by our telecommunication customers is high **[Confidential:**

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We also recommend that Treasury consult extensively on whether offline customers should be eligible CDR consumers in the telecommunication sector. This consultation could have been more complete for the energy sector.

For the energy sector, there was sufficient consultation in the early stage (July 2020) about offline customer participation (EnergyAustralia was open but expressed practical concerns). However, in the consultation on the Draft Rules (August 2021) – the issue of whether offline customers should be eligible was not referenced at all in Treasury's draft explanatory materials.⁹ It was therefore unclear that the omission of "an online account" from the eligibility criteria for the energy sector, meant that offline customers would be eligible. This means Treasury would not have received input from industry to inform its position of making offline customers eligible and what that meant, in the final rule amendments for the energy sector.

8. Enterprise customers

EnergyAustralia does not support including Enterprise customers in scope for the telecommunications CDR. These customers have entirely different telecommunication products such as dedicated networks etc. Including them in scope will only slow the delivery of the CDR to residential and small business customers.

⁸ Rule 1.15:

(1) For subrule 1.15(1), if a retailer receives a consumer data request from an accredited person on behalf of a CDR consumer who has online access to the relevant account, the retailer must provide the CDR consumer with the consumer dashboard.

(2) For subrule 1.15(1), if a retailer receives a consumer data request from an accredited person on behalf of a CDR consumer who does not have a consumer dashboard, the retailer must:

(a) offer the CDR consumer a consumer dashboard; and

(b) provide it if the CDR consumer accepts.

⁹ [Consumer Data Right rules amendments \(version 4\) | Treasury.gov.au](https://www.treasury.gov.au/consumer-data-right-rules-amendments-version-4)

9. Data Standards considerations

Below we describe EnergyAustralia's customer/account/product structure for its telecommunication products and how additional users (Authorised Representatives) are recorded.

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If you have any questions in relation to this submission, please contact me (Selena.liu@energyaustralia.com.au or 03 9060 0761).

Yours sincerely,

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