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Consumer Data Right expansion to the non-bank lending sector – amendments to facilitate access to energy product reference data

AGL Energy Limited (**AGL**) welcomes the opportunity to provide feedback in relation to the proposed amendments to the Competition and Consumer (Consumer Data Right) Rules 2020 (**CDR Rules**) as set out in the Competition and Consumer (Consumer Data Right) Amendment Rules (No. 2) 2023 exposure draft (**Amending Rules**).

AGL is a leading integrated essential service provider, delivering over 4.3 million gas, electricity, and telecommunications services to our residential, small, and large business, and wholesale customers across Australia. We are a market leader in the development of innovative products and services that enable consumers to make informed decisions on how and when to use their consumer (or distributed) energy resources to optimise their energy load profile and better manage their energy costs.

AGL has been a consistent and vocal supporter of the Consumer Data Right (**CDR**) regime as an economy wide model that enables consumers to have access to, and control over, data that directly relates to them. As we have noted in our previous responses, the key to the success of CDR is consumer awareness and confidence in using the system. It is therefore critical that government and the industry together undertakes a fulsome analysis, with continued consultation and revision of the design and implementation of the system based on industry feedback. Failure in the CDR design and implementation will have negative consequences for consumer trust and ultimately, the success of the CDR regime.

Proposed new requirement for transfer of energy product reference data requests

The Amending Rules propose the introduction of a new obligation that requires energy retailer data holders to transfer any requests they receive for required product data to the Australian Energy Regulator (**AER**) or the Victorian agency (being the Department of State administered by the Minister of Victoria administering the National Electricity Victoria Act 2005 (Vic)) (**Victorian agency**), in accordance with the relevant data standards. The energy retailer data holder is required to transfer these requests once it becomes aware that a CDR consumer is attempting, or has attempted, to make a product data request for required product data.¹

Although this proposal has been the subject of informal discussion under Noting Paper 248, AGL welcomes the opportunity with the current proposal to provide a formal response to the proposed changes first

¹ Taking into account the various proposed mechanisms for technical implementation of this process, as set out in Noting Paper 248 (available at: <https://github.com/ConsumerDataStandardsAustralia/standards/issues/248>).



contemplated in that paper. AGL has provided separate feedback in response to Noting Paper 248,² which is not restated in this response except as relevant to the proposed change to the CDR Rules.

In principle, AGL is supportive of implementing steps that assist consumers to connect with, and have access to, the information that they require. However, it is not clear how this new requirement assists consumers to access this data, enhances the visibility of this data for consumers, or improves the existing state of the CDR ecosystem where the AER and the Victorian agency are solely responsible for facilitating product data requests without data holder intervention.

Instead of facilitating product data requests, this mechanism places energy retailer data holders in the role of "middleman" between the data holder and the consumer. Based on AGL's own experience of the expected complexity of implementation of this new change, this could impact a significant number of energy retailer data holders across the CDR regime. As a result of this change, these data holders will be required to implement a new mechanism that has limited overall benefit and will divert significant funding and limited resources from the CDR project team.

Further, the AER and Victorian agency are designated as the data holders of energy product data (under the Consumer Data Right (Energy Sector) Designation 2020 (Cth) (**Designation Instrument**)). In accordance with that Designation Instrument and the CDR Rules, the AER and Victorian agency are already required to provide a product data request service for energy data. It is AGL's position that the Amending Rules abandons a singular implementation by Registrar, in favour of directing dozens of energy data holders to implement individual solutions. This does not meet Treasury's stated objectives that CDR ought to be cost-effective and seeks to minimise the burden of complexity wherever achievable.

AGL considers that perverse consequences may arise if additional participants (i.e energy retailer data holders) are introduced into the data flow for product data requests. In addition to the costs consequences noted above, this proposal creates a potential risk that inadvertent errors may occur, or product data requests are mishandled, resulting from the AER or Victorian agency not receiving the request or not actioning it appropriately, or from energy retailer data holders incorrectly, or failing to direct the request. Furthermore, significant architectural concerns have been raised to date such that the chosen direction may not be fit for purpose and may have material consequences for the AER and Victorian agency. The Amending Rules seek to force the resolution of such concerns by mandating the obligation for energy data holders in lieu of proposed data standards. This is likely to have perverse consequences given such concerns do not have solutions at the time of writing.

AGL therefore does not support the introduction of this new requirement and advocates a pause on implementing the requirement under the Amending Rules, until such time that thorough consultation is undertaken, taking into account industry feedback, the potential costs of implementation and the complexity of the proposed mechanisms. This consultation should take into account both the potential changes to the CDR Rules and the practical implementation of the proposed mechanisms.

In AGL's view, any proposed consultation should consider:

- the proposed mechanism (to be set out in the data standards) that will enable the transfer of a request for required product data to the AER or the Victorian agency;
- the feasibility of such standards and whether the proposed mechanism is reasonable and required to achieve the objectives of the CDR; and

² Available at: <https://github.com/ConsumerDataStandardsAustralia/standards/issues/248#issuecomment-1184054918> and <https://github.com/ConsumerDataStandardsAustralia/standards/files/9109162/PRD.Changes.Impacts.pptx>.



- concerns already raised by AGL and other organisations in response to Noting Paper 248, including the technical implications of implementing this new requirement. These concerns are not resolved nor addressed by the new obligation on energy retailer data holders described in the Amending Rules.

Finally, AGL reiterates its concern, raised in its response to Noting Paper 248, that the proposed change under the Amending Rules does not appear to align with the current CDR Rules and the Designation Instrument, and will arguably extend the obligations of energy retailer data holders beyond what is provided for in the Designation Instrument, as follows:

- under the Designation Instrument, the AER and Victorian agency are designated as data holders of energy product data. Retailers are not data holders of this CDR data (other than for tailored products), nor is there a primary data holder / secondary data holder relationship between retailers and the AER and Victorian agency, similar to the model in place with AEMO. Under the current CDR Rules, only the AER and the Victorian agency are required to provide a product data request service (except in relation to tailored product data);³
- the proposed new requirement under the Amending Rules will require energy retailer data holders to provide a service that enables CDR consumers to *make a product data request*, which it will then transfer to the AER or Victorian agency to action by *disclosing requested data* in accordance with the proposed mechanism in *the data standards* – arguably constituting the provision of a product data request service by the retailer; and
- requiring a retailer to provide a product data request service does not align with the Designation Instrument or existing CDR Rules, which only require the AER and Victorian Agency to provide a product data request service.⁴

Timeframe for commencement of proposed new requirement for transfer of energy product reference data requests

We understand that Treasury seeks feedback from interested parties as to the appropriate commencement date for this obligation.

As noted above, compliance with the new obligations would require significant build effort, in lieu of solution assessments based on specified requirements in the data standards. Should the new obligations proceed as proposed, AGL would not expect to be able to implement this new obligation until, at a minimum, six months after the finalisation and publishing of supporting data standards.

Forging ahead with the new requirement proposed under the Amending Rules without addressing industry feedback, including feedback provided to date, will have demonstrably adverse outcomes for the CDR regime. We encourage Treasury to focus on holistically addressing existing concerns, in consultation with data holder and data recipient industry participants, the Data Standards Body and the ACCC (where

³ The CDR Rules define a *product data request service* as an online service that: (a) can be used to make product data requests; (b) enables requested data to be disclosed in machine-readable form; and (c) conforms with the data standards.

⁴ Noting, in addition, that relevant rule-making powers in section 56BE(a) of the *Competition and Consumer Act 2010* (Cth) refer to the CDR Rules including requirements for product data being placed on "a CDR participant for the CDR data" (such as AER and the Victorian agency), but do not expressly refer to another data holder who is not a data holder *for the CDR data*.



applicable), prior to finalising the Amending Rules, to ensure that the CDR objectives can be met in an efficient and reasonable manner.

We are happy to discuss further if you have any queries in relation to AGL's response, please contact Andrew Ferris, CDR Manager at aferris@agl.com.au.

A handwritten signature in black ink, appearing to read 'Gino Fragapane'.

Yours sincerely,

Gino Fragapane
Head of Connections and Billing