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Submitted via email to: CDRRules@treasury.gov.au

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Consumer Data Right – Consultation on CDR Consent Review Design Paper

AGL Energy Limited (**AGL**) welcomes the opportunity to provide a response to the *CDR Consent Review - CDR rules and data standards design paper* dated August 2023 (**Consultation Paper**).

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 energy resources to optimise their energy load profile and better manage their energy costs.

AGL has been a consistent supporter of the Consumer Data Right (**CDR**) and its goal to enable consumers to have access to, and control over, their data. The key to the CDR's success is consumer awareness and confidence. As such, AGL welcomes a review of CDR consent mechanisms to better support consumer experiences and support intuitive, informed, and trustworthy experiences that enable positive outcomes.

AGL supports measures which will allow CDR consumers to better protect and make informed decisions about their data. In general, we support the proposed changes to the required consumer notifications, the "deletion by default" approach to redundant data handling and contemplated prohibition on dark patterns.

However, AGL has a number of concerns in respect of how the fundamental consent construct would be changed by the proposed amendments. In particular, we are concerned that the bundling and/or pre-selection of consents may lead to unintended outcomes where consumers are misled or pressured into agreeing to share more data than is strictly necessary (notwithstanding any general prohibition on 'dark patterns'). Consent is the lynchpin of the CDR, and whilst streamlining and simplifying consent processes benefits ADRs, this may arise at the expense of consumers, who in some cases could have a practically diminished ability to control the flow of their own information.

As an overarching comment, these fundamental changes to consent ought to be driven by consumer demand and we encourage Treasury to consider addressing optimisation of consent in the strategic assessment scheduled for late 2024.



Consultation Questions

This section sets out AGL's responses to specific questions asked in the consultation, excluding items for which AGL has no response.

Bundling of consents and pre-selected options (sections 1 and 2)

AGL does not support the bundling or pre-selection of "reasonably required" consents. Our primary concerns are that these proposals erode a consumer's fundamental right to choose how their information is shared.

A bundled or pre-selected consent limits a consumer's ability to control the way in which they engage with ADRs. This may result in consumers inadvertently sharing data or otherwise being pressured to share more data than is preferred or strictly necessary. Ultimately, by ensuring consumers have the opportunity to meaningfully distinguish between optional and mandatory consents and asking consumers to explicitly opt in for each dataset, the CDR framework assures that data is shared with confidence and transparency.

In particular, AGL wishes to emphasise its experience of current ADR behaviour, which does not always align with the data minimisation principle. Giving ADRs the freedom to determine what data is "reasonably required" for their services and then pushing that default to consumers will further detract from this fundamental principle, and have a flow-on outcome of increased traffic across supporting infrastructure.

In AGL's view, retaining the requirement to actively select consent terms better supports users' engagement and comprehension, and facilitates the provision of a properly informed consent.

Notifications (section 5)

AGL is supportive of Treasury's proposals to clarify the rules, information requirements and consolidation rights in relation to CDR receipts and 90-day notifications. These amendments will help reduce ambiguity, increase consistency and facilitate compliance with the requirements of the CDR.

De-identification and deletion by default (section 6)

AGL is supportive of a "deletion by default" approach to the handling of redundant CDR data. Additional clarity in respect of an ADR's handling of redundant data will only improve consumers' control and understanding of how their data is handled. This privacy-friendly default position will help improve trust in the overall system and reduce the risk of an unfavourable default position being accepted by a consumer.

Dark patterns (section 7)

AGL supports an explicit prohibition on "dark patterns". For consistency, any restrictions should be aligned with the outcome of the Privacy Act Review, as well as any consultation on possible reforms to the Australian Consumer Law to address currently unregulated unfair trading practices (as supported by the ACCC), noting that both of these consultations have targeted dark patterns as an area of interest.

Treasury should provide clear guidance to facilitate participants' understanding of what conduct constitutes compliant and non-compliant practice. The inclusion of practical examples (eg, wireframes) will give CDR participants the valuable context needed to navigate the more subjective elements of compliance.



Future work on consent (section 8)

As mentioned above, while AGL supports many of the proposals set out in the Consultation Paper, it is concerned that pursuing a large variety of changes may result in extensive (re)build effort for a function that has only been in operation for a short period of time or is still in development at the time of writing.

While acknowledging that the 'Large Retailer' tranche of energy sector will come online in November 2024, uptake and utilisation of CDR, particularly in the energy sector, remains modest. It is AGL's position that optimisation of consent and CX uplift ought to be driven by consumer demand rather than re-interrogating existing functions in the hope that uptake increases. Addressing real-world issues with targeted solutions will be far more effective than building to hypothetical deficiencies in the CDR framework. As previously noted, in AGL's view these paths of further enquiry would be best addressed by the strategic assessment scheduled for late 2024.

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.

Yours sincerely,

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

Gino Fragapane
Head of Connections and Billing

