



AGL Energy Limited

T 02 9921 2999

F 02 9921 2552

agl.com.au

ABN: 74 115 061 375

Level 24, 200 George St

Sydney NSW 2000

Locked Bag 1837

St Leonards NSW 2065

Treasury

Langton Cres

Parkes ACT 2600

data@treasury.gov.au

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Consumer Data Right – Treasury legislative amendments

AGL welcomes the opportunity to comment on the Treasury Laws Amendment (Measures for a later sitting) Bill 2020: amendments of the Consumer Data Right (CDR) (*the proposed amendments*) released on 1 October 2020.

We support the development of the CDR and implementation across different sectors of the economy to enhance consumer data portability and control. We recognise that the proposed changes are intended to simplify the engagement process for stakeholders. For this reason, we encourage clarity on the practical effects of the proposed changes for the energy sector and future sectors that will undergo sectoral assessments in our comments below.

Simplifying stakeholder engagement

While Treasury has intended to simplify the CDR process by acting as a coordinator of the consultative process, the proposed amendments mean that far more bodies could be involved by delegation of the Minister. For both sectoral assessments and implementing CDR Rules (56AD and 56AE), the Secretary would be able to delegate functions including analysis, consultation, and writing the report to other Commonwealth entities. This is essentially increasing the scope of bodies that stakeholders would need to work with – rather than limiting them and may impact consistency to matters considered, weighting of matters, quality of assessment and so forth.

While the explanatory memorandum implies that the analysis, consultation and reporting for a particular sectoral assessment or implementation of rules would be undertaken by one entity, the drafting allows for these functions to be undertaken by different entities. Our own experience with the energy sector has found that ancillary reports (such as HoustonKemp¹) are not a substitute for a thorough sectoral assessment relating to the operation of CDR.²

¹ HoustonKemp Economists, Open Consumer energy data - Applying a Consumer Data Right to the energy sector, June 2018.

² We have previously noted these concerns in submissions including our response to the CDR Bill in 2018 and our submission to the ACCC on energy data models in March 2019.



We recommend Treasury amend the drafting under the relevant clauses to ensure that the one Commonwealth entity is used across each of the functions and/or that the entities must work together under the same terms and references. We recommend this be limited to the Productivity Commission as they are the Australian Government's independent research and advisory body.

Certainty to the energy sector

The proposed amendments do not give certainty to the energy market on how the CDR Rules will be developed and finalised. As Treasury is aware, the ACCC has been engaging with the energy sector on a range of implementation and rules matters for more than 12 months. Consultation recently closed on the Rules Framework for the energy sector, and we understand that the ACCC is currently preparing elements for drafting of the Draft energy CDR Rules.

Given the amount of time and commitment both the ACCC and stakeholders have made in engaging in CDR energy to-date, we believe it is appropriate for Treasury to ensure that the transitional arrangements in the proposed amendments also cover Rules that have commenced a formal consultation (e.g. the energy rules).

Other matters

- 56BT - we support the inclusion of 56BT to expire emergency rules after a six-month period as a matter of better legislative practice. This period will allow sufficient time for the Minister to arrange for a fulsome consultative process for permanent rules amendments should they be deemed necessary.
- 157AA – we recommend the drafting clarify that such access and sharing of information only commences when the legislative amendments take effect.
- 56ER(1A) – we support the amendment as it provides greater scrutiny and involvement by the Information Commissioner which is important given their role and expertise in relation to privacy.
- References to 'a failure to perform these tasks will not invalidate the rules' should be removed (e.g. 56BS, 56BTA) in line with recommendations by the Scrutiny Committee.³

If you have any questions, please contact Kat Burela on 0498 001 328 or at kburela@agl.com.au.

Regards

[Signed]

Elizabeth Molyneux

General Manager Energy Markets Regulation

³ [Standing Committee for the Scrutiny of Bills Scrutiny Digest 2 of 2019](#)

1.214 ...Providing that the instrument remains valid and enforceable even if there is a failure to comply with these requirements undermines including such obligations in the legislation.