



Mr Jason Lange
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Dear Mr Lange

CERTIFICATION OF REVIEWS AND SUPPLEMENTARY ANALYSIS FOR MAKING OF THE CONSUMER DATA RIGHT ENERGY SECTOR RULES

I am writing to certify that processes undertaken for the independent *CDR Gateway Model Review* (Review), the report *Open consumer energy data: applying a Consumer Data Right to the energy sector* (HoustonKemp's report), and additional consultation and analysis undertaken by Treasury have resulted in processes and analysis equivalent to a Regulation Impact Statement (RIS). The processes and analysis relate to the making of rules to apply the consumer data right (CDR) to the energy sector using a peer-to-peer data access model.

I certify that the Review, together with the assessment and supplementary analysis undertaken by Treasury, adequately addresses all seven RIS questions and is submitted to the Office of Best Practice Regulation for the purposes of a final policy decision. I am satisfied that the scope of the problem and the recommendations identified in the Review, as supplemented by the additional analysis conducted by Treasury, are substantially the same as the identified problem and recommendations in the policy proposal. The scope of the problem is the most effective means of facilitating access to energy data under the CDR in circumstances where energy data is held by both the Australian Energy Market Operator (AEMO) and by energy retailers.

I further certify that fewer than three policy options are examined in relation to data access in the energy sector because there are only two viable implementation options. This is because AEMO, as a data holder that is not consumer-facing, is unable to authenticate the identity of CDR consumers. Irrespective of whether the rules require AEMO or retailers to receive data requests from accredited data recipients, energy retailers will need to authenticate CDR consumers on AEMO's behalf.

An earlier regulatory burden estimate was developed for the purpose of making the legislative instrument to designate the energy sector, as detailed in a separate independent review (OBPR ref 22394). We provide our revised regulatory burden estimate (as outlined in the table below). This revised estimate reflects that the CDR rules adopt a peer-to-peer data access model, with obligations on CDR participants only enlivening through the rule-making process. I note that the overall regulatory impact of the proposal to implement the CDR in the energy sector on the basis of a peer-to-peer data access model as noted in the Review is likely to

be similar, or may decrease slightly, compared to the use of a gateway model. The use of either a peer-to-peer model or a gateway model is permitted through the energy sector designation instrument.

The revised estimate is informed by feedback from several consultation processes that informed the development of specific policy settings for the amendments to the CDR rules to extend to energy data. This estimate has been quantified using the Australian Government's *Regulatory Burden Measurement Framework*.

A regulatory offset has not been identified, however Treasury will seek to pursue net reductions in compliance costs and will work with affected stakeholders and across Government to identify reductions where appropriate. In addition, the proposals described in our supplementary analysis are expected to decrease the regulatory burden on businesses across the energy sector by aligning wherever possible with existing energy sector arrangements and will provide ongoing benefits to Australian consumers and the broader energy market.

I note that some stakeholders have provided information on a commercial in-confidence basis as part of the Review. A copy of the Review will be published on the Office of Best Practice Regulation's website with this information redacted.

Regulatory burden estimate table				
Average annual regulatory costs (from business as usual)				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	\$30.1m	\$0	\$0	\$30.1m

The assessment at Attachment A provides additional background on how the Review has addressed the seven RIS questions outlined in the Government's *Regulation Impact Statement Requirements Guidance*.

This assessment includes supplementary analysis included in Attachment B regarding the calculation of regulatory impact and costs expected to be incurred by an energy sector retailer based on the peer-to-peer model, informed by consultation on the draft CDR energy rules. The supplementary analysis outlines some of the feedback from stakeholders on policy issues that has informed the final CDR rules in relation to implementation issues.

Should the Office of Best Practice Regulation have any further queries in relation to this matter, please contact Treasury's Consumer Data Right Division.

Yours sincerely

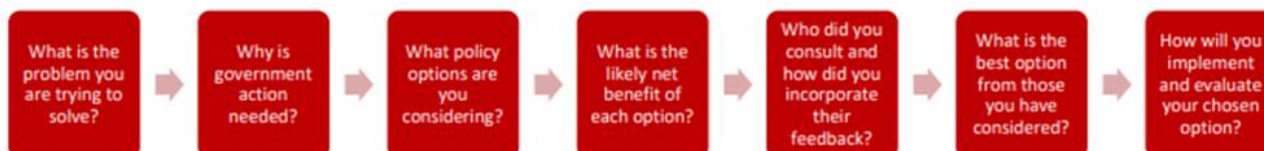


Meghan Quinn PSM
Deputy Secretary
Markets Group, Treasury

Attachment A – Regulatory Burden Assessment

Summary

Treasury has framed this Regulatory Burden Assessment against the seven RIS questions in the Government’s *Independent Reviews, RIS-like Processes and the Regulation Impact Statement Requirements Guidance Note* published on the Department of the Prime Minister and Cabinet’s [website](#).



This assessment considers the most effective means of facilitating access to energy data under the consumer data right (CDR) and is based on the outcomes of Grant Thornton’s independent *CDR Gateway Model Review* (Review), the recommendations from HoustonKemp’s report *Open consumer energy data: applying a Consumer Data Right to the energy sector*, previous regulation impact work undertaken and supplementary analysis conducted by Treasury.

The Review considered the regulatory impacts and compliance costs associated with the use of a peer-to-peer model in the energy sector, under which retailers would be responsible for providing CDR data held by themselves and AEMO to accredited data recipients (i.e. the model used in the banking sector, but with adjustments to accommodate that AEMO as a data holder cannot authenticate CDR consumers or perform consumer-facing functions such as providing a consumer dashboard).

The Review, based on consultations with selected stakeholders and information provided, concluded that the peer-to-peer model offers the best solution for the CDR program in energy to enable data sets held by both AEMO and energy retailers to be shared. Consistent with the recommendations of the Review, the CDR rules adopt a peer-to-peer model as the preferred data access model, which is expected to provide a range of regulatory benefits and provides for a less costly data access model for participants in the CDR ecosystem.

Based on consultation, the proposed approach to implement the CDR in the energy sector includes additional settings to minimise regulatory burden and account for sectoral differences in the energy sector, including the scope of application of the rules and their staged implementation.

What is the problem you are trying to solve?

The Government’s decision to apply the benefits of CDR data sharing to energy consumers was made in June 2020 with the making of a designation instrument. The scope of the problem is the most effective means of facilitating access to energy data under the CDR in circumstances where energy data is held by both AEMO and by energy retailers.

An important element of this problem is what data access model would be applied as this determines responsibility for obligations such as conducting authentication and authorisation processes, and providing a consumer dashboard. Analysis on the problem of the appropriate data access model (and a preferred option) was conducted as part of the Review.

With data sharing for the energy sector to be implemented by a peer-to-peer data access model, an ancillary problem arises as to how we ensure the CDR's data sharing obligations (which were developed in application to the banking sector) are suitable for the specific circumstances of the energy market. The amendments to the CDR rules are required to adjust the data access arrangements to bring on the energy sector in a way that is appropriate for that sector.

Why is government action needed?

Government action is needed to develop the CDR rules that will apply for implementation in the energy sector, and to give effect to the decision to designate the sector that was made in June 2020. Specifically, there is a need for the CDR rules to define the data sets to be mandated for sharing for the sector, and to determine which consumers in the energy sector will be eligible to use the CDR, as sectoral differences may need to be accommodated. For example, the CDR rules need to deal with a range of issues including the phasing arrangements for the sector, internal and external dispute resolution mechanisms, and the provision of consumer dashboards to ensure they are workable for the energy sector. The CDR rules need to recognise that there are special arrangements for product reference data in energy, which is held by government agencies.

While the CDR rules set out a peer-to-peer model for the banking sector, further Government action was required to identify what specific changes to the existing CDR rules need to be made so that a peer-to-peer model would be workable in the energy sector.

What policy options are you considering?

The Review undertook analysis on two policy options for a data access model (a gateway model and a peer-to-peer model) and recommended a peer-to-peer model, which will be implemented by amendments to the CDR rules.

The related policy issues under consideration go to the policy design in implementing the peer-to-peer model in the energy sector where retailers hold certain data sets such as billing data, and AEMO holds other data sets, such as metering data and information on the characteristics of connection points.

Under the peer-to-peer model for energy, retailers would be responsible for providing the CDR data they hold and data held by AEMO directly to accredited data recipients. This raises the issue of the role that AEMO should play, in circumstances where it holds significant data but is not a consumer-facing entity. Particular policy issues in relation to these options that have been considered are:

- whether or not AEMO should have any consumer-facing role under the peer-to-peer model; and
- whether or not AEMO should be subject to privacy safeguard obligations that have been designed for consumer-facing data holders.

Related issues that have been considered are:

- whether or not implementation in the energy sector should be phased;
- whether or not the participation of smaller retailers should be mandated;
- whether all electricity customers should be able to use the CDR, or whether there is a subset of larger commercial and industrial customers that are unlikely to benefit from using the CDR; and
- whether external and internal dispute resolution arrangements in the energy sector should adopt existing energy arrangements where possible, or be aligned with the arrangements for the banking sector.

The Review considered the implications of the data access model for delivery timeframes, build and ongoing costs. The Review also assessed the regulatory impacts and compliance costs associated with the available data sharing models taking into account:

- estimated implementation costs, including operational costs, for data holders and accredited data recipients under each model;
- distribution of costs between data holders (large or mid-tier vs small electricity retailers) given the shift in costs; and
- estimated timeframes for implementation under either model, including consideration of whether large, mid-tier and small electricity retailers may require separate implementation timelines.

What is the likely net benefit of each option?

The Review concluded that a peer-to-peer model, under which retailers and not AEMO receive data requests and undertake consumer-facing CDR processes, offers a better solution for the CDR program in energy, noting that the balance of cost distribution amongst retailers may differ.

Amendments to the CDR rules implement the peer-to-peer model to align as closely as possible with the current model used to access data in banking and allow for interoperability across sectors as they are designated under the CDR, which encourages development of market-based solutions. Consistent with the approach taken in banking, energy retailers will be responsible for authentication and authorisation. A difference from banking is that they will undertake these processes in relation to requests for their own data, and for AEMO's data.

The overall net benefit of using the peer-to-peer model and associated arrangements is that it will enable participants and third-parties to innovate within a flexible framework, and empower retailers operating in the energy sector to enter and participate in the overall CDR ecosystem in a cost-effective way. The compliance costs will support the ability to share CDR data across sectors and businesses using the same data access model. As retailers increasingly provide a suite of services in addition to energy, and the CDR is extended to further sectors, the model will reduce overall implementation and compliance costs through a consistent approach to data access. These net benefits are unlikely to be achieved through the alternative option considered.

The Review noted that some of the constraints of using a peer-to-peer model in energy could be addressed through mechanisms such as the exemption of smaller retailers and a phased roll-out based on retailer size. These policy proposals have been adopted in the amendments to the CDR rules.

The rules to implement the peer-to-peer model leverage existing energy sector arrangements where possible, one example being that retailer data holders can meet their obligation to participate in an external dispute resolution scheme through their existing membership of relevant energy ombudsman schemes. Similarly, the data correction processes for AEMO-held metering and National Metering Identifier (NMI) standing data sets also leverage existing National Electricity Market correction processes.

Who did you consult and how did you incorporate their feedback?

Grant Thornton undertook a targeted consultation with affected stakeholder groups on the data access model as part of the Review. Nineteen organisations including retailers, consumer groups and a third party provider were consulted to understand the relative costs and benefits of the data access models. Feedback from Grant Thornton's consultation was noted and included in the analysis and report.

On 30 April 2021, Treasury published a design paper on the peer-to-peer data access model in the energy sector, to obtain stakeholder feedback in order to develop draft CDR rules and standards. Consultation closed on 26 May 2021.

Treasury received 21 submissions from a wide variety of stakeholders including retailers, consumer groups, industry bodies, and potential data recipients that provided comments on the energy design paper including the peer-to-peer model in energy. Submissions provided feedback on the respective roles of retailers and AEMO as outlined by the paper, and raised issues such as how complaints would be managed under the peer-to-peer model. The draft rules were prepared reflecting the input of stakeholders, and to ensure that stakeholders' need for more information on how the interactions would work in practice was met.

Treasury undertook consultation on the exposure draft CDR energy rules and regulations between 17 August and 13 September 2021. The consultation included the release of exposure draft amendments to the Consumer Data Right rules (version 4 of the rules), exposure draft regulations, explanatory materials and a paper with proposals for further consultation. Treasury sought views through information sessions and one-on-one discussions and encouraged stakeholders to provide written submissions for the Government's consideration. The consultation sought feedback on various matters including the regulatory impacts and costs of implementing the CDR in the energy sector. Specifically, stakeholders were asked if they were able to:

- identify your potential costs and timing to be ready to implement the CDR, and the implication these have for your business; and
- identify any requirements of the draft rules that will make compliance with the CDR more challenging.

Treasury received 30 submissions (comprising 27 formal and 3 informal submissions) in response to the consultation. The feedback confirmed broad support for the rollout of the CDR in the energy sector and the draft energy rules and regulations and confirmed widespread support in the sector for the peer-to-peer model, with comments focussing on technical elements of the model (rather than selection of the model itself). The feedback suggested the model is fit for purpose and confirmed findings of the Review relating to costs and the likely utility and overall suitability of the model for the sector.

Feedback from the consultation revealed that some retailers were not yet well informed about the magnitude of the costs they are likely to bear and that, participants are likely to express concerns once these costs are better understood. Consultations revealed that a bottom-up costing of the costs for implementation and maintenance of the peer-to-peer model in energy is not feasible. This is due to the complexity and bespoke nature of implementation between entities.

Further, some participants consider their regulatory cost elements highly commercially sensitive as they may reveal to their competitors information regarding the state of their internal systems. Several retailers provided cost information on a commercial-in-confidence basis.

Feedback from consultation was supportive of a staged approach to implementation to assist retailers in managing the implementation requirements, while ensuring that consumers can access the benefits of data sharing as soon as practicable. The rules will include a threshold below which retailers are not required to comply with data holder obligations, and a customer consumption threshold above which the obligations will not apply as these consumers are larger commercial and industrial customers. These measures are expected to reduce the regulatory burden on businesses across the energy sector and will help ensure that the CDR provides ongoing benefits to Australian consumers and the broader energy market.

What is the best option from those you have considered?

Based on stakeholder feedback received in the relevant consultation processes, Treasury considers that the most effective implementation arrangements for the CDR in energy will comprise a peer-to-peer data access model, with the follow measures to manage the regulatory impact, particularly for smaller retailers :

- A staged approach for implementation of the CDR in energy. A staged approach will prioritise implementation for consumers that can benefit the most from CDR data sharing and allow smaller retailers time for the requisite system design, build and testing.
- Retailers with less than 10,000 small customers can voluntarily participate as data holders in the CDR, but their participation will not be mandated. This is due to the likely CDR compliance costs significantly impacting the smallest retailers' ability to operate in the market.
- The largest commercial and industrial customers consuming 5 or more gigawatt hours of electricity per annum are excluded from being able to share CDR data on the basis that these customers are unlikely to benefit from the CDR. This reflects that the largest customers have bespoke plans, sophisticated data access arrangements and an existing competitive market for products and services .
- Retailers will use their existing membership with relevant state and territory water and energy ombudsmen schemes to address external dispute resolution (EDR) requirements. This avoids creating additional EDR requirements for retailers where appropriate arrangements already exist. Where retailers become accredited data recipients for the purposes of sharing energy data, they can continue to rely on their existing membership with relevant statute and territory energy ombudsmen schemes .
- Retailers will use the internal dispute resolution processes that have been adopted under existing energy legislation, rather than the internal dispute resolution processes used for the banking sector .
- Where metering and connection point data held by AEMO needs to be corrected, retailers will only be required to initiate the relevant correction process that is already in place in the National Electricity Market.

Treasury notes that the options above are expected to reduce the compliance burden for participants.

How will you implement and evaluate your chosen option?

These policy positions will be implemented by the Minister through amendments to the CDR rules, and through regulations for the energy sector, to be made under Part IVD of the *Competition and Consumer Act 2010*.

The making of the energy rules will extend the CDR from the banking sector to the energy sector. A number of stakeholder engagement forums have been established which can be used to evaluate the peer-to-peer model as the CDR is extended to other sectors to eventually provide whole-of-economy coverage. Treasury will continue to monitor the operation and implementation of the energy rules.

Treasury will continue working with industry and other stakeholders to monitor the costs and minimise regulatory burden on businesses as implementation work progresses. Stakeholders should note that the Government will continue to explore ways to provide assistance for CDR participants, such as creating an open source library of artefacts to assist all retailers meet implementation costs. Specifically, the Data Standards Body is currently providing a range of technical solutions to help interested parties engage in the CDR ecosystem and are well-positioned look at ways to support energy retailers reduce their costs.

Attachment B: Supplementary analysis to inform the regulatory burden estimate

The estimates provided in the regulatory burden estimate table in the certification letter include the average annual regulatory costs (from business as usual) expected to be incurred by retailers in the energy sector. The data is based on the adopt of a peer-to-peer data access model. The sector-wide estimate of costs excludes small retailers that have under 10,000 customers as the rules will not impose mandatory data sharing obligations on these retailers.

Treasury has calculated the estimated regulatory impact for the energy sector through information gathered as part of various consultation processes including:

- consultation as part of the HoustonKemp’s report into how best to facilitate greater access to consumer energy data;
- consultation as part of Grant Thornton’s independent review;
- consultation on a design paper on the peer-to-peer data access model in the energy sector; and
- public consultation on the draft energy rules package with energy sector stakeholders and other relevant CDR stakeholders.

The estimates provided have been modelled from commercial-in-confidence information provided by retailers and an established third party service provider that currently offers solutions to data holders and data recipients in the banking sector. These estimates are indicative and include assumptions that a proportion of energy sector retailers will choose to meet compliance obligations using third party vendors providing CDR compliance solutions. In addition to the costs information that was provided through consultation, Treasury has also modelled costs based on information in HoustonKemp’s report *Open consumer energy data: applying a Consumer Data Right to the energy sector*.

In estimating the regulatory costs to retailers, two scenarios have been modelled. The first scenario assumes retailers will build their own peer-to-peer solution. The second, that retailers will take advantage of the specialised services offered by third party data service providers.

Treasury notes that ongoing regulatory costs have been factored into the overall costs estimates, with an additional 10% per annum included as part of the overall estimate of compliance costs.

Scenario 1: Retailer builds their own solution	Scenario 2: Retailer uses a third party provider
<p>Based on costs modelling provided through consultations, Treasury estimates that if a retailer were to build their own solution (the ‘DIY’ approach), total costs would amount to approximately \$2.42 m per retailer over three years (\$806,500 annualised) including 10% ongoing maintenance costs.</p> <p>This total can be disaggregated as follows:</p> <ul style="list-style-type: none"> • build time costs (of approximately eleven months); • infrastructure hosting costs; • compliance staff costs; and • ongoing maintenance costs of 10%. 	<p>In comparison, if a retailer were to use the services of a third party provider, Treasury estimates total costs would amount to approximately \$825,000 per retailer over three years (\$275,000 annualised) including 10% ongoing maintenance costs.</p> <p>This total cost can be disaggregated as follows:</p> <ul style="list-style-type: none"> • build time costs (of approximately two months); • third party implementation charges; • third party monthly subscription charge; • compliance staff costs; and • ongoing maintenance costs of 10%.

These scenarios illustrate that if energy sector retailers were to use the services of a third party data service provider (as is the case in Open Banking), each retailer can expect to reduce implementation costs by approximately \$1.6 million over three years.

Adopting an implementation approach that involves outsourcing to a third party could assist participation across the broader CDR ecosystem and provide downstream benefits to consumers (e.g. through better value energy deals). Initial upfront costs for retailers in the first year would be significantly lower compared to in-house implementation.

Treasury anticipates that outsourcing of CDR compliance solutions is likely to be particularly appealing to Tier 2 and Tier 3 retailers who may be less inclined to build in-house CDR solutions compared to larger Tier 1 retailers. Treasury does not propose to mandate the use of third party providers (this will be a business decision for each retailer to make), but has instead worked with stakeholders to establish a flexible environment whereby data holders may choose to use such services to reduce their costs.

Costs will likely vary due to the nature and maturity of information systems required by each participant in the ecosystem. Generally, participants with more modern billing systems that do not operate any legacy systems, would face lower implementation costs than participants that have legacy billing and customer management arrangements. Further, some participants consider their regulatory cost elements highly commercially sensitive as they may reveal to their competitors information regarding the state of their internal systems. Several retailers provided cost information on a commercial-in-confidence basis.

In the case of the energy sector, this flexible environment is reflected in the rules which implement a threshold of 10,000 small customer connections below which the smallest retailers can voluntarily implement CDR data sharing capability but where CDR data sharing will not be mandated.

Other small retailers that are required to enter the regime (retailers that have more than 10,000 small customer connections) can enter through proposed phasing arrangements. The phased approach to the roll out of the CDR to the energy sector prioritises extension of the CDR to the biggest three energy retailers and AEMO (phase 1) with remaining retailers coming in 12 months later (phase 2). This gives the smaller retailers more time to adjust to the increase in regulatory costs and potentially benefit from any lessons learnt from adoption by the phase 1 retailers.