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FACILITATING ACCESS TO CONSUMER ENERGY DATA

Submission to the COAG Energy Council

ABOUT US

Set up by consumers for consumers, CHOICE is the consumer advocate that provides Australians with information and advice, free from commercial bias. By mobilising Australia's largest and loudest consumer movement, CHOICE fights to hold industry and government accountable and achieve real change on the issues that matter most.

To find out more about CHOICE's campaign work visit www.choice.com.au/campaigns and to support our campaigns, sign up at www.choice.com.au/campaignsupporter

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INTRODUCTION

CHOICE thanks the Council of Australian Governments (COAG) Energy Council for the opportunity to provide comment on facilitating access to consumer energy data.

It is far too difficult for consumers to understand and compare energy offers, leading to poor competitive pressure and bad consumer outcomes. A CHOICE survey found that although 63% of respondents feel they pay too much for electricity, only 48% of consumers considered switching their electricity to another plan or provider.¹ Of those who considered switching, only 36% followed through. This reflects a total switching rate of 17% of all consumers. This data is broadly consistent with the Australian Energy Regulator's (AER) data on electricity customer switching, which shows that switching rates are still low across the board.² Even engaged consumers are likely to experience barriers - whether behavioural or structural - to switching.

Consumers should not be penalised for a lack of engagement with the energy market. People experiencing vulnerability are disproportionately impacted by rising electricity prices. In the worst cases, households may get disconnected from their energy supply, restrict their energy usage to the detriment of their health or well-being, or trade off other parts of life for energy, such as paying for food or accommodation.³ The Consumer Data Right will be a helpful tool for consumers, but it is not an alternative to fair energy prices.

CHOICE believes that the Consumer Data Right has potential to drive improved consumer outcomes. CHOICE supports an implementation of a Consumer Data Right that is customer focussed, efficient, and fair. To achieve this, the process to implement the Consumer Data Right must be improved considerably. The HoustonKemp report *Facilitating access to consumer energy data* (the 'Draft Report') has considered *how* the Consumer Data Right can function for energy consumers, without first assessing *why* the Consumer Data Right is a necessity for the sector, and *what* needs to be done in order to ensure that there adequate consumer protections.

Overall implementation of the Consumer Data Right needs to be guided by unified consumer protections, privacy principles, and objectives that ensure consistency across sectors. Without this, the goals of the Consumer Data Right may be undermined.

¹ CHOICE (2015), *Energy Survey*, Sydney. Research was conducted in December 2015 with 1039 respondents aged between 18-75 years. The sample was nationally representative of the Australian population, based on 2011 ABS data.

² Australian Energy Regulator (2017), [Electricity Customer Switching](#), viewed 16 February 2018.

³ Ibid. pg25.

A new system that involves consumers providing more data to third-parties must prioritise protections so that data is used to deliver positive consumer outcomes rather than used to charge people more or target them with other poor-value products. A clear, disclosure regime that lets people know how their data will be used is important, but not enough. Telling individuals how data is used will not stop unscrupulous practices. The system should prevent poor practices before they emerge. Companies must be required to think about ethical implications when they use consumer data otherwise this new data-led world risks encouraging bigger bottom-lines for companies with the biggest database rather than better deals for consumers.

Failing to include pricing data will undermine the very purpose of the Consumer Data Right. As an organisation with a strong interest in helping consumers take control of their data we have firsthand knowledge of the core value pricing data provides in decision making. Not providing this data would only serve the interests of incumbents and see the energy sector left behind others in delivering data driven improvements in services and prices. At minimum, consumers should be able to expect that they can easily access information about the price they are paying for a service, and use it to make better, more informed choices.

Recommendation summary

- A set of guiding principles, as established in the *Report of the Review into Open Banking*, should be adopted to inform the implementation of the Consumer Data Right in the energy sector.
- The Consumer Data Right implementation process should be conducted in a way that ensures consistency across sectors.
- COAG should design and approve a framework for facilitating access to consumers' energy data that complements the Open Banking Review.
- Consumption data, standing/connection point data, and retail price data should be considered as priorities for consumer access. The Consumer Data Right in the energy sector should be designed with a view to expanding the availability of this data in future, even if retail pricing data is not available in the first iteration.
- Extensive consumer comprehension testing should be used to determine how third-parties should gain consumers' explicit informed consent.
- Third parties must be required to obtain explicit informed consent from their customers in order for customer data to be aggregated when using one companies' services to analyse multiple data streams from different sectors.

- Third-parties should not use consumer data in a manner that leads to consumer harm. Regulations should prevent harmful practices and require that companies consider the broad ethical implications of data use.
- A three year review of consumer protections relating to the Consumer Data Right be scheduled.
- A clear, unified accreditation process is implemented to ensure that there is oversight over third parties that are present across multiple sectors.
- Comparison sites need to be provided with easy access to information about products.
- The scope of existing dispute resolution frameworks needs to be reviewed to ensure that consumers who choose to engage with authorised third parties will have access to support.

Consultation process

In 2017, the Commonwealth Government announced a decision to implement a Consumer Data Right in response to the Productivity Commission review on Data Availability and Use.⁴ The Consumer Data Right will grant Australians open access to their banking, energy, phone and internet data.⁵

Due to the broad range of sectors that the Consumer Data Right will apply to, there are consultations running concurrently to this one that are relevant. Of particular note, the Australian Treasury is conducting a review of Open Banking with the findings intended to inform a nationwide implementation of the Consumer Data Right. Additionally, HoustonKemp, on request from the Council of Australian Governments (COAG) Energy Council, has produced *Facilitating access to consumer energy data*, a draft report (the 'Draft Report') for the Department of Environment and Energy.⁶ The Draft Report is limited in scope in that it does not detail a way of addressing core privacy concerns, nor does it address consumer protections that are necessary for the Consumer Data Right to be implemented effectively.

In order for the Consumer Data Right to be implemented effectively in energy, it needs a set of guiding principles to be established. These principles should mirror those established in the *Report of the Review into Open Banking*:

⁴ Productivity Commission (2017), [Data Availability and Use, Productivity Commission Inquiry Report](#), Canberra.

⁵ The Hon Angus Taylor MP (2017), [Australians to own their own banking, energy, phone and internet data](#) [press release], Canberra.

- ‘Open Banking should be customer focussed. It should be for the customer, be about the customer, and be seen from the customer’s perspective.
- Open Banking should encourage competition. It should be done to increase competition for the banking products and services available to customers so that customers can make better choices.
- Open Banking should create opportunities. It should provide a framework on which new ideas and business can emerge and grow, establishing a vibrant and creative data industry.
- Open Banking should be efficient and fair. It should be effected with security and privacy in mind, so that it is sustainable and fair, without being more complex or costly than needed.’⁷

CHOICE believes that to realise an effective, economy-wide Consumer Data Right, a framework for energy must be clearly aligned not only with the principles but also with the processes that are being developed through the Open Banking review. CHOICE is concerned that the consultation process is becoming fragmented, with sector-based implementation being considered in isolation. If this continues, there is a risk that the full breadth of necessary consumer protections will not be captured by individual, sector-specific consultations. Different approaches to access to data in different sectors will limit future innovations that involve service providers offering converged services, for example, providing banking, energy and telecommunications retail services through a single provider or single third-party platform. In order to reduce barriers to innovation and create a consistent consumer experience, the overall implementation of the Consumer Data Right must be guided by unified consumer protections, privacy principles, and objectives.

The Open Banking Review may need to be concluded prior to the design and approval of a framework for facilitating access to consumers’ energy data. This will provide a point of departure for the implementation of the Consumer Data Right across other sectors and will enable the Consumer Data Right to be considered holistically. CHOICE is not in a position to propose a preferred process, however, we encourage a process that facilitates a unified approach to key areas of the Consumer Data Right, including privacy, consumer protections, and authorisation.

⁷ The Treasury (2018), [Review into Open Banking in Australia - Final Report](#), Canberra, pg(v).

A unified process is likely to improve the efficiency of implementing the Consumer Data Right, and ensure that the end result achieves clear, accessible, and consistent user experiences for consumers.

Recommendations 1, 2 & 3

- A set of guiding principles, as established in the *Report of the Review into Open Banking*, should be adopted to inform the implementation of the Consumer Data Right in the energy sector.
- The Consumer Data Right implementation process should be conducted in a way that ensures consistency across sectors.
- COAG should design and approve a framework for facilitating access to consumers' energy data that complements the Open Banking Review.

Data availability

The Draft Report outlines the types of data that is currently collected, which spans customer related data, standing/connection point data, meter data, and pricing data. CHOICE believes that consumption data, standing/connection point data, and retail price data should be considered as priorities for consumers. This data, when considered together, will help to paint a clearer picture of consumers' energy usage, and assist them to find better, more affordable energy offers.

The Draft Report argues that tariff product and pricing information would be costly to provide. First, we question this finding – any short-term cost to business in reworking systems to provide this information must be balanced against the long-term gains that would be delivered to consumers. At minimum, consumers should be able to expect that they can receive information about the price they are paying for a service. This information must be provided to consumers in order for them to be able to make better and more informed choices about energy products and services, as well as to save on electricity costs. This information will be especially important once especially once consumers take up cost reflective tariffs. This means that customers will have a better understanding of their energy usage in real time, which will enable them to better engage with how and when they use energy. The introduction of a five-minute settlement will be introduced in 2021, which will constitute a significant improvement from 30-minute interval data.⁸

⁸ Australian Energy Market Commission (2017), [National Electricity Amendment \(Five Minute Settlement\) Rule 2017 No. 15](#).

This change means that the process of reconciling the cost of energy sold to customers by retailers will be more accurate. Given these changes, failing to provide consumers with easy access to tariff and pricing data under a new system would not only be a missed opportunity, but a disservice to consumers.

Retail price data will also be key to facilitating consumer understanding of the price breakdown of energy use, and the comparative value of energy offers. Standing/connection point data must be included as this data informs which retail offers are available to customers. With this in mind, the implementation of the Consumer Data Right in the energy sector should be designed with a view to expanding the availability of this data in future, even if it is not accessible in the first iteration.

Recommendation 4

- Consumption data, standing/connection point data, and retail price data should be considered as priorities for consumer access. The Consumer Data Right in the energy sector should be designed with a view to expanding the availability of this data in future, even if retail pricing data is not available in the first iteration.

Informed consent

The energy market needs to be simpler. The Consumer Data Right, must be set up so it is as easy as possible for people to exercise their right to access data, identify an authorised third party, and understand their energy usage. Consumers must be able to provide explicit informed consent about types of data they are providing and the limitations of how this data can be used. At minimum, third parties must be required to provide, in plain English, a clear indication of how the customers' data will be used, how long it will be retained, and limitations concerning the sharing or on-selling of data.

Extensive consumer comprehension testing should be used to determine how third-parties should gain consumers' explicit informed consent.

Recommendation 5

- Extensive consumer comprehension testing should be used to determine how third-parties should gain consumers' explicit informed consent.

Consumer protections

The Consumer Data Right will provide consumers with the opportunity to compare usage and pricing data across multiple sectors. While it may provide a simplified user experience for consumers, the aggregation of multiple data sources will provide third-parties with greater consumer insights. These insights have the potential to be used in ways that deliver great benefits to consumers. But insights can also be used to cause short or long-term detriment to individual consumers or cohorts. For example, data could be used by third-parties to identify and market to consumers more likely to buy high-cost short-term credit like pay-day loans. Looking long-term, data could be used to discriminate against cohorts of consumers, for example, with people from particular suburbs, backgrounds or income levels being presented with more costly deals. At minimum, it should be made clear to consumers how their data will be used by a company. There is also a need for restrictions – there has to be clear limits about how data can be used against consumers.

Clear, effective consumer protections need to be put in place to ensure that customer data is not exploited. Third parties must have clear disclosure requirements that require customers to provide explicit informed consent to allow their data to be aggregated when using one companies' services to analyse multiple data streams from different sectors. In addition, there must be sensible restrictions on how third-parties can use data to target or discriminate against consumers. This could be achieved through direct regulation that prevents harmful practices but needs to be bolstered through industry-led initiatives that require companies to consider the broad ethical implications of data use.

When considering an economy-wide implementation of the Consumer Data Right, it will be vital to consider the implications of a third party that collects customer data across multiple sectors. Necessary consumer protections must be put in place to ensure that aggregated data is not misused. We cannot predict with certainty the nature of the problems that will exist after the implementation of the Consumer Data Right but anticipate that consumer protections will need to evolve following its implementation. To facilitate this, CHOICE proposes that a three-year review of consumer protections relating to the Consumer Data Right be scheduled.

Recommendations 6, 7 & 8

- Third parties must be required to obtain explicit informed consent from their customers in order for customer data to be aggregated when using one companies' services to analyse multiple data streams from different sectors.

- Third-parties should not use consumer data in a manner that leads to consumer harm. Regulations should prevent harmful practices and require that companies consider the broad ethical implications of data use.
- A three year review of consumer protections relating to the Consumer Data Right be scheduled.

Third party authorisation

Third-party data-seekers must be accredited. This will ensure that consumers can have confidence that third-parties have appropriate, timely, relevant services and meet privacy and information management obligations. There should be a clear, unified accreditation process across sectors to ensure that there is uniform oversight over third-parties that are present across multiple sectors.

Comparison sites need to be provided with easy access to information about products. The costs involved in researching and compiling comprehensive product information act as a barrier to entry, leading to very limited offerings provided by comparison sites. This means that comparison sites often include a small set of comparison offers, many of which are from providers that are willing to pay to be listed. In order to better realise the potential competitive benefits of third-party sites, thought should be given to the way in which information about products is provided to third-parties so that it is readily adaptable to use in a comparison site and to consumers directly.

As third parties are authorised to provide new services that are facilitated through the implementation of the Consumer Data Right, new consumer problems are bound to emerge. CHOICE believes that there will be a need to review the scope of existing dispute resolution frameworks, to ensure that consumers who choose to engage with authorised third parties will have access to relevant support.

Recommendations 9, 10 & 11

- A clear, unified accreditation process is implemented to ensure that there is oversight over third parties that are present across multiple sectors.
- Comparison sites need to be provided with easy access to information about products.
- The scope of existing dispute resolution frameworks needs to be reviewed to ensure that consumers who choose to engage with authorised third parties will have access to support.