

1 May 2023

Anna Collyer
Chair,
Energy Security Board

Submitted by email

Dear Ms. Collyer,

Data Strategy – Initial Reforms Draft Legislation Consultation Paper

PIAC welcomes the opportunity to respond to the Energy Security Board's (ESB) Data Strategy – Initial Reforms Draft Legislation Consultation Paper (the Paper).

PIAC is pleased to see amendments and safeguards included in the Paper, contributing to stronger protections in the access, use and storage of consumer's data. We strongly support the delineation of Class A bodies as those with prescribed statutory functions, and the provision of explicit protection conditions and enforcement for Class B bodies.

We remain concerned with the overarching framing of the Data Strategy - as providing access to data – which does not focus on providing outcomes for consumers.

Consumer outcomes as key objective

Consumer outcomes must be the key consideration when developing the initial reforms and corresponding legislation. We reiterate our concerns with framing the objective of the Data Strategy as removing barriers and enabling access to data. This focuses on process (the use of data) rather than outcomes (what any use of data should do for consumers). Without more explicit objectives and principles focused on consumer outcomes and protections, the Paper and the Strategy risk implementing reforms that facilitate greater data use but not in a way that supports and promotes consistent improved outcomes in the interest of all consumers.

We note that “a range of further possible expansions to access were proposed by stakeholders in the consultation process”, and that “a second stage of reforms is expected to consider mechanisms to cover wider data holders and accredit a wider range of data users.”

PIAC supports the decision of the ESB not to further expand the list of Class A or B bodies, nor to further widen the scope of data-use in these initial reforms. We recommend that the staged

approach to reforms be used to build strong principles of protection into the Strategy from the beginning. If there are protections that prove superfluous to requirements, or which are preventing the realisation of specific desired consumer outcomes, this can be captured in the second stage. PIAC strongly recommends building strong consumer protections (and taking a conservative approach to risks) from the beginning, rather than attempting to add them in later after evidence of detrimental consumer outcomes.

Further comments

We also note the following in response to the Paper:

- All sharing of consumer data should be done in accordance with the Privacy Act and preserve the confidentiality of consumers and their information.
- PIAC supports the decision to update prescribed bodies through regulation rather than Ministerial Order.
- PIAC has concerns with a 'self-reporting' form of compliance for Class B bodies and recommends this be strengthened through direct monitoring and enforcement activities by the AER.
- PIAC supports civil penalties for breaches of conditions.
- PIAC supports the addition of non-legislative controls to better protect consumers and improve transparency.

PIAC would welcome the opportunity to discuss these matters further with the ESB and other stakeholders.

Yours sincerely

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