



public interest
ADVOCACY CENTRE

Submission to Treasury Consumer Data Right in the energy sector

**Proposals for further consultation August
2021**

13 September 2021

About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is leading social justice law and policy centre. Established in 1982, we are an independent, non-profit organisation that works with people and communities who are marginalised and facing disadvantage.

PIAC builds a fairer, stronger society by helping to change laws, policies and practices that cause injustice and inequality. Our work combines:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change and public interest outcomes.

Energy and Water Consumers' Advocacy Program

The Energy and Water Consumers' Advocacy Program (EWCAP) represents the interests of low-income and other residential consumers of electricity, gas and water in New South Wales. The program develops policy and advocates in the interests of low-income and other residential consumers in the NSW energy and water markets. PIAC receives input from a community-based reference group whose members include:

- NSW Council of Social Service;
- Combined Pensioners and Superannuants Association of NSW;
- Ethnic Communities Council NSW;
- Salvation Army;
- Physical Disability Council NSW;
- Anglicare;
- Good Shepherd Microfinance;
- Financial Rights Legal Centre;
- Affiliated Residential Park Residents Association NSW;
- Tenants Union;
- The Sydney Alliance; and
- Mission Australia.

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Public Interest Advocacy Centre



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Introduction

PIAC welcomes the opportunity to respond to the Australian Treasury's Consumer Data Right (CDR) in the energy sector, Proposals for further consultation August 2021 Consultation Paper. PIAC supports the intent of the CDR to allow consumers the right to access their data and authorise its wider use for their benefit. However, as expressed previously to Treasury,¹ PIAC has concerns the proposed CDR model is not in the best interests of consumers. The CDR should not be used just to create a market for the use of consumer data.

The introduction of CDR is expected to complement key Energy Security Board reforms, specifically the integration of distributed energy resources and demand side participation. As consumers seek to participate in new markets and access new services and products, CDR data will be increasingly valuable in informing consumer choice. However, the proposed peer-to-peer (P2P) model currently has no mechanism for consumers to access their data for the same NMI from a previous retailer. Currently, consumers are encouraged to regularly switch retailers to help them save on their energy bills and yet the P2P model as it is currently designed discourages switching. Consumers who regularly switch retailers will only be able to access data from short periods of time, which will mean it is of little value in determining suitable energy products or services, reducing consumer and system benefits.

PIAC would support the CDR Rules providing for consumers who have changed retailer at the same premise to maintain access to historical metering data. Household energy usage can vary markedly from one year to the next, such that the most recent year may not always be representative of typical usage. This is evidenced by the impact of Covid-19 lockdowns on the energy consumption patterns of millions of households. At least two years of metering data is preferable for consumers assessing investment, participation or a choice of energy provider. PIAC understands the Australian Energy Market Operator (AEMO) will need to make supporting changes under the National Electricity Rules procedures to realise this outcome and PIAC supports these changes being made as soon as practicable.

In addition, the proposed P2P model:

- Makes accessing data for multiple services more complicated. The future energy market may involve multiple providers relating to a single connection through retail relationships, demand response relationships with aggregators and other new service providers related to distributed energy resources.
- Creates a conflict of interest because retailers have a direct financial relationship with their customers and an interest in retaining them to maximise revenue. This conflict of interest remains despite the proposed protections.
- Requires retailers to be responsible for many roles. Having these roles concentrated in a commercial entity with a financial incentive potentially counter to the interests of the consumer, is unacceptable. It is also inappropriate for retailers, as a single entity in the energy supply chain, to have a role of responsibility over aspects of the entire supply chain.

¹ See https://piac.asn.au/wp-content/uploads/2021/05/21_05.26-Submission-to-Commonwealth-Treasury-draft-paper-on-consumer-data-right-in-energy-peer-to-peer-data-access-model-and-opt-out-joint-data-sharing-final.pdf

- Has costs that are not transparent, predictable or likely to be efficient. The P2P model will require all retailers to create consumer dashboards and systems capable of individually undertaking the authorisation and sharing process, and will involve increased costs to facilitate AEMO engagement with this system. These systems are unlikely to be consistent, introducing further complications for consumers and intermediaries and will likely undermine their ability to understand and engage with their data.
- Will likely lower compliance costs for large retailers at the expense of increased costs for smaller retailers on a cost per customer basis. Alternatively, if a smaller retailer chooses not to participate in the scheme, then they are likely to lose market share and/or disadvantage their consumers.
- Contradicts fundamental principles of consent central to the CDR reforms. Consent must be voluntary, express and informed, yet the proposed model would undermine a joint account holder's requirement to exercise consent with a clear, freely given affirmative act. This is counter to established principles of privacy protection and would effectively establish a default for consent or an assumption of silence or inaction as active agreement. This is unacceptable and a violation of fundamental consumer rights and protections, substantially increasing risks for people who are subject to domestic and family abuse.

Response to Consultation Paper questions

1. **Do you consider the proposed inclusion of all NEM retail customers, for all data sets, is appropriate? Are there alternative eligibility requirements that you consider would be more appropriate? If yes, please provide detailed reasoning as to why, including supporting information in relation to compliance costs if relevant.**

PIAC supports the proposed inclusion of all NEM retail customers, for all data sets. This will ensure all consumers have fair access to their data and the potential to realise the benefits from accessing this data. Since technologies available for consumers to manage their energy generation and consumption are likely to change and the data required to best utilise these technologies is not yet well understood, PIAC supports that the available data sets are not specified in the rules.

2. **Do you consider the proposed mechanisms for correction of AEMO-held data provide an effective way to ensure data accuracy? Are there opportunities to improve the proposed mechanism, in a manner that is compatible with current National Electricity Market processes?**

PIAC considers it is more appropriate that energy specific requirements for the correction of AEMO held data, be handled via National Energy Market (NEM) processes rather than the non-sector specific requirements under the Competition and Consumer Act. This approach is more likely to achieve appropriate handling of data and protection of privacy as it relates to energy data.

3. **Does the staged implementation approach provide sufficient time to implement the CDR while meeting the intent to facilitate consumer access to their data?**

Since the proposed P2P model will require each retailer to create consumer dashboards and systems capable of individually undertaking the authorisation and sharing process, it will take time and resources for retailers to implement. However, PIAC is concerned that enabling CDR to apply to the largest three retailers first (Origin Energy, AGL Energy and EnergyAustralia) could see advantages for these retailers above smaller retailers as consumers enthusiastic to access

their data switch to these retailers to enable them to do so. Considering it is currently proposed that access to data held by a previous retailer is not possible or easily enabled in the P2P model, it is likely these consumers will then stay with their new retailer rather than switch back to a smaller retailer once they start participating in the scheme. If a way is found so that historic data can be provided, there will likely still be a number of consumers who do not switch back to their previous retailer. Either way, this proposal will give further market benefits to the largest retailers.

Continued engagement

PIAC would welcome the opportunity to meet with Treasury and other stakeholders to discuss these issues in more depth.