

20 April 2018

By email: info@esb.org.au

Energy Security Board
c/- COAG Energy Council Secretariat
Department of the Environment and Energy
GPO Box 787
Canberra ACT 2601

Dear Energy Security Board,

Energy Security Board – NEM Data Strategy Consultation Paper

Consumer Action welcomes the opportunity to provide a brief submission in response to the Energy Security Board (**ESB**) Consultation Paper regarding the development of the NEM Data Strategy.

Consumer Action's interest in this area lies in privacy concerns around access and use of consumer data by third parties, and in ensuring that the benefits of consumer data use are shared equitably across the community. Our 2016 report, *Power Transformed*, set out our priority principles in relation to the transforming energy market – including the use of data – in the following terms:

1. It should be easy for people to engage to make effective decisions.
2. Appropriate consumer protections are applied to all energy products and services.
3. The benefits of the transforming energy market should be shared across the whole community.

Accordingly, we have framed our comments with those key principle in mind. We have not responded to all questions in the Consultation Paper, only this which speak directly to our concerns.

Our further comments are set out below.

About our organisation

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit law, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice and representation, and policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just market place for all Australians.

1. Do you agree with the proposed objectives of the data strategy?

Yes. In broad terms we agree with the strategy's proposed objectives.

That being said, we urge the ESB to consider the privacy implications of improved market transparency – and manage that process carefully.

12. Are existing consumer protections (under the National Energy Customer Framework and State and Commonwealth privacy laws – including the protections envisaged under the Consumer Data Right) sufficient to protect against adverse outcomes for consumers in the event that data is shared more easily and extensively between market bodies and participants?

No. Privacy breaches around personal information related to energy can have serious consequences, and there is therefore a need to develop a robust, standardised accreditation process for third parties accessing consumer data that complies with the requirements and obligations of the *Privacy Act*. This process has not yet been established.

Privacy legislation will need to be enhanced, particularly privacy principles relating to notification of consent as well as direct marketing (see our joint submission with Financial Rights Legal Centre on the Final Report of the *Review of Open Banking*). Our recent report, *Dirty Leads: consumer protection in online lead generation*, which examines the growth of lead generation marketing (a type of marketing used heavily in the solar energy industry) similarly calls for consent practices to be reformed to enshrine specific, voluntary and time-limited consent.¹

Beyond the inadequacy of current privacy legislation, liability issues also need to be considered.

For example, Consumer Action considers that should an energy industry participant provide erroneous or inaccurate data to a third party on behalf of the consumer, and the consumer suffers loss because of a product subsequently sold by the third party on the basis of that data, the consumer should have recourse against the entity that initially provided the data.

This would build trust in the regime for access to consumer data and minimise disputes (particularly because the energy industry participant is likely to be a member of an ombudsman scheme and is likely to be a better capitalized entity than the third party).

For these reasons, and because the Government has already endorsed the development of a Consumer Data Right (**CDR**) to include banking and energy data, Consumer Action supports further policy work in this area being undertaken pursuant to the economy-wide CDR - rather than through an energy-specific regime.

¹ Elissa Freeman and Consumer Action Law Centre, *Dirty Leads: consumer protection in online lead generation*, March 2018, available at: <https://consumeraction.org.au/new-report-uncovers-murky-world-online-marketing/>.



Please contact Zac Gillam, Senior Policy Officer at Consumer Action on 03 8554 6907 or at zac@consumeraction.org.au if you have any questions about this submission.

Yours sincerely

CONSUMER ACTION LAW CENTRE



Gerard Brody
Chief Executive Officer

