

26 March 2018

By email: Cally.Brennan@environment.gov.au

Energy Data and Consumer Analysis
Energy Productivity Branch
Department of the Environment and Energy
GPO Box 787
CANBERRA ACT 2601

Dear Energy Productivity Branch,

Facilitating access to consumers' energy data: Houston Kemp Draft Report

Consumer Action welcomes the opportunity to provide a brief submission in response to the draft report prepared by Houston Kemp, *Facilitating access to consumer electricity data* (**Houston Kemp Report**).

We note that the Houston Kemp Report has been prepared at the request of the COAG EC (and overseen by the Department of the Environment and Energy (**DEE**)) to complement other policy consideration of access to consumer data. Federal Treasury are consulting in relation to the *Review into Open Banking* which concerns the Consumer Data Right (**CDR**) which will also apply to the energy sector. We note that in Victoria the State Government has allocated \$1.9 million to undertake a concept study to define and develop a proposed Energy Data Hub—which would create a centralized, digital platform to access consumer energy data.

Further, we note that on 20 March the Energy Security Board (**ESB**) released its *NEM Data Strategy Consultation Paper* (**ESB Data Paper**). The ESB Data Paper has been prepared to meet a recommendation of the *Independent Review into the Future Security of the National Electricity Market* (**Finkel Review**). The objective of the ESB Data Paper is to develop a strategy to facilitate access to data that supports delivery of the Finkel review's key outcomes—increased security, future reliability, affordability and lower emissions. This work will be undertaken with full awareness of and reference to the CDR work being undertaken by Treasury, and the DEE.

Consumer Action's twin key objectives in this vigorous policy space are to ensure that consumers are protected from unintended harm that may result in the rush to unlock the market potential of energy data, and that the benefits that emerge from data access are shared equally across the community. Our July 2016 report, *Power Transformed*, focused on the role and place of consumers in a transforming energy market—noting in particular the need to engender trust and confidence

in the market, in order to encourage active engagement from those who choose and have capacity to do so. The handling of consumer data speaks directly to the issues of trust and confidence.

In relation to the Houston Kemp Report, it is fair to say that Consumer Action's concerns lie less with the mode of implementation of access to data, than they do with the principles determining what data is accessed, by who, and on the basis of what authorisation. With that in mind, we have responded to the paper by picking out those questions which are of most importance to us, and responding briefly to those questions, rather than to all. We also make some final comments about the proposed CDR.

Our further comments are outlined 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.

Questions for stakeholders

1. Is the proposed objective for the consumer electricity data access scheme appropriate?

The objective states:

To facilitate on-demand access to retail customers or a customer's authorised representative to consumer electricity data.

Consumer Action supports the objective, noting that the need for immediate access to accurate, reliable data at the point at which a consumer is making a product choice (or an authorised representative is identifying a choice for them) is imperative. At the same time, this creates a tension with the need to ensure privacy obligations are respected, as discussed below. We further note (as the paper does) that access to historical data is essential for consumers to make truly informed decisions.

2. Should AEMO or an alternative agency be given responsibility for developing the consumer electricity data access scheme?

The Houston Kemp Report presents a compelling case for a centralised data repository, and AEMO do appear well-placed to fulfill that function. As presented by the Report, the repository could be



implemented as an incremental addition to AEMO's existing information exchange systems and would cost substantially less than a decentralised approach to data access through DNSPs. We do note, however, that costs estimate for a decentralised approach cover a very wide range (from \$6.8 to \$38 million over the next 20 years), so it is difficult to make a truly effective cost comparison—other than to say a centralised approach would be cheaper—either by a moderate amount, or potentially by a lot.

Beyond comparatively low establishment and ongoing costs, a centralised approach also has the benefit of making it easier to access to historical data and lowering costs for authorised third parties seeking consumer data—who would only have to integrate with one system, rather than many.

From a consumer point of view, we also consider that the existence of a centralised data access point administered by AEMO would have the benefit of a central point of accountability. Raising grievances in the event that the system does not operate well, (and forcing action to remedy those grievances), may well be easier—and easier to resolve—than in a decentralised system where some DNSPs may manage their responsibility for processing requests better than others.

Further, we note that many of the impediments that have prevented consumers obtaining value from their data to date can be ascribed to the lack of a standardized, centralised approach. Prima facie, it feels more likely that a functioning, uniform, timely, standardised and compliant data access hub may be administered by AEMO than relying on DNSPs to collaborate effectively to develop a functioning decentralised system.

We do, however, also note the risk that a poorly managed centralised system would hinder the entire market, and (as the Houston Kemp Report notes) may be slower to innovate than a decentralised approach would be. A centralised data repository is not without risks, and obviously needs to be carefully managed.

Taking all of these factors into account, we err on the side of a centralised data access point managed by AEMO, with costs recovered from DNSPs and retailers through market fees—as suggested by the Houston Kemp Report.

5. Are there alternative approaches to managing verification of consumer identity and third-party authorisation that should be considered and which are consistent with the scheme objective of providing on-demand access to data by authorised third parties?

Consumer Action accepts the need to develop a workable accreditation system to enable on-demand access to data by authorised third-parties—and note that on-demand access is necessary to fully enable consumer data in the market.

At the same time, we note the risks of such a system if the issues around obtaining and recording consent are not effectively managed. As the Houston Kemp Report notes, 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 that complies with the requirements and obligations of the *Privacy Act*.



In the context of this consultation as well as the broader CDR, we consider that the 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

6. Should AEMO or another agency be given responsibility for accrediting third parties?

Consumer Action would support AEMO being given responsibility for accrediting third parties—either through a method proposed by AEMO, or an alternative method proposed by a third party and then approved by AEMO. Any third party should not be driven by commercial considerations.

7. Should authorised and accredited third parties be given access to more than just a consumer’s metering data upon the commencement of the data access scheme?

Consumer Action sees no current need for accredited third parties to have access to additional data, although this may change as the market evolves.

As the Houston Kemp Report notes, there is merit in the consumer data access scheme having a process whereby consumers or third parties can propose the provision of additional consumer data as part of the scheme. AEMO could then make a determination on the relative costs and benefits of acceding to the request, following consultation with stakeholders.

8. What are the arguments for and against providing third party access to retail and/or network tariff data?

Consumer Action understands that additional costs may be incurred by industry participants should pricing or tariff data be included in the data scope. Retail tariff data is most useful for comparison services, and given retailers are already required to provide such data to government comparison services (such as Energy Compare Victoria), there would not seem to be an additional cost for retailers to make this information available to customers and third parties in a more usable format, beyond price fact sheets etc. We are not clear on the drivers for access to network tariff data and make no comment on that.

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/>.



Proposed CDR

Consumer Action considers that there are a range of outstanding issues relating to customer access to data which are not sufficiently considered in the Houston Kemp paper. These include the consent issues above (and, more broadly, the inadequate privacy laws in Australia) as well as liability issues.

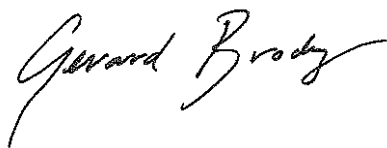
For example, Consumer Action considers that should an energy industry participant provide erroneous or inaccurate data to a third party on behalf of the consumer, and the consumer suffers loss because of a product subsequently sold by the third party on the basis of that data, the consumer should have 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 CDR to include banking and energy data, Consumer Action supports further policy work in this area to be pursuant to the economy-wide CDR, rather than through an energy-specific regime.

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



Zac Gillam
Senior Policy Officer

