



Our reference: D2023/017648

Data Standards Body

## OAIC officer level comments – DP 314 Last Consumer Change Date (Phase 1)

### Comments on section ‘2. Consumer Experience (CX) considerations’

In our view, further consideration of the CX implications of historical metering data sharing (**HMDS**) is needed in addition to the matters contemplated by the DSB in this section.

HMDS raises novel data sharing issues that will likely impact on consumers’ understanding of what they are being notified of or asked to consent to. For example, and without being exhaustive, we recommend the DSB consider that:

- A consumer may be unaware, and find it counter-intuitive, that they can share historical metering data relating to a previous retailer, by giving an authorisation to their current retailer. This lack of awareness may have the capacity to impair a consumer’s consent. For example, where a consumer authorises an ADR to collect their usage data from their current retailer for a certain usage period, they may not appreciate this could involve the collection of usage data generated while they were with a previous retailer for that usage period.
- A consumer may be unaware / find it counter-intuitive that they can share historical metering data relating to a previous retailer, but not, for example, billing data relating to a previous retailer (as billing data is held by the previous retailer and the consumer is no longer eligible in relation to the previous retailer).

The unique nature of HMDS should be taken into account when deciding on when and how consumers should be informed about HMDS. We have provided comments on these issues below, however we suggest that the DSB carry out further CX research to determine the best way to support consumer understanding and meaningful consumer consent.

When should consumers be informed of HMDS?

We consider that consumers should be informed of HMDS during the consent flow with an accredited person, in addition to the authorisation flow with a data holder. This is because:

- As above, a CDR consumer may be unaware of HMDS / find it to be counter-intuitive. Where a consumer authorises an ADR to collect their usage data from their current retailer for a certain usage period, they may not appreciate that this could involve the collection of usage data generated while they were with a previous retailer for that usage period.
- A consumer's attention is likely to be higher at the start of the data sharing process when they are giving a consent to an accredited person, rather than later in the process when they are giving an authorisation to the data holder.

How should consumers be informed about HMDS?

The DSB does not support Options 2a and 2b in the paper due to concerns about friction and an increased risk of use case failure. The DSB also notes that Option 1a is recommended, as 'this would minimise unnecessary friction'. We assume that these references are to friction in relation to a consumer's experience, and note that in this context, friction is not necessarily negative. Positive friction can result in a consumer paying attention at the right time to what is being asked of them in relation to the data being shared. This can help to give consumers choice and control, and can also support, rather than undermine, use cases.

We consider that the DSB's starting point should be that consumer consent satisfies the objects in rule 4.9. Further CX research would assist to determine the best way to achieve this, and the optimum amount of friction in the consent process. For example, this research could determine whether consumer understanding of the unique process of HMDS is best facilitated through a '*notification*', or requiring '*consumers to actively select or deselect the sharing of historical data*', or seeking '*explicit permission to access historical data from previous retailers*'.

We do not support Option 1b, as this would compromise informed consent.

'Sharing by default'

In relation to option 1, it is unclear what is meant by '*Allow historical data from previous retailers to be shared by default*'. We generally caution against sharing historical data by default. There will be circumstances where historical metering data is not needed to support a use case. In those circumstances, default sharing of historical metering data will breach the data minimisation principle (rule 1.8). This

may give rise to other breaches under the rules, Competition and Consumer Act (CCA) and Privacy Act.

CX standards in relation to AEMO's role

In the OAIC's Submission to Treasury's CDR Energy Rules (Version 4 Rules) Consultation, we recommended:

*'That Treasury make Rules that require retailers to provide additional information regarding their interactions with AEMO in their CDR policy and through the relevant authentication, authorisation and notification processes.'*

The Privacy Impact Assessment in relation to CDR in the energy sector noted 'CDR Consumers may not be made aware of the role of AEMO in the CDR regime' and recommended:

*'that Treasury consider whether it would be appropriate to make CDR Consumers aware of the involvement of AEMO in respect of the fulfilment of Consumer Data Requests, or whether this would risk 'information overload' for CDR Consumers or be otherwise unnecessary. This may involve the Data Standards Body undertaking consumer research as required.'*

Treasury's agency response agreed with this recommendation in principle, noting:

*'Treasury will work closely with the Data Standards Body's (DSB) consumer experience team to consider this issue. Treasury notes that retailers are expected to provide an appropriate level of information regarding their role in providing AEMO held data in their CDR policy. Treasury considers that the DSB is best placed to conduct behavioural research into consumer consent processes and information security reviews. This will enable further consultation and consideration of this issue with CDR agencies and stakeholders, likely leading to a better outcome for consumers. Presently, Treasury does not recommend including additional rules to prescribe the level of information to consumers regarding AEMO's role. Treasury will work closely with the DSB to consider the issue as part of DSB's consumer data standards.'*

Our understanding is there are no CX standards in relation to AEMO's role. We consider the risks raised by the lack of consumer awareness of AEMO's role are magnified in a HMDS context. We recommend the DSB revisit this issue with Treasury to ensure that consumers are appropriately notified of AEMO's role in handling CDR data.

### Comments on section '3 – Risks'

The technical options canvassed in this paper do not appear to ensure that incorrect disclosures of historical metering data will not be made. We suggest Treasury and the DSB give further consideration to what technical (i.e. under the standards) and legal (i.e. under the rules and CCA) requirements must be in place to ensure this. In principle, we do not support implementation of HMDS until it can be done in a safe and secure way.

The paper states:

*The key known risk associated with the use of the LCCD value for sharing historical energy usage data arises if the value is incorrectly set. This would result in either: • Less data being shared if the LCCD value is greater than the actual customer move in/move out date • More data being shared if the LCCD value is less than the actual customer move in/move out date*

The OAIC supports the identification of risks posed by HMDS. We would like to add that:

- in the scenario that more data is being shared, data belonging to another person may be wrongfully disclosed, which will likely breach Australian Privacy Principle 6
- in both scenarios, incorrect disclosures will result in various breaches of the rules / CCA, including in relation to Privacy Safeguard 11 (data quality).

### Comments on section '5. Inclusion of the LCCD field via CDR standards'

The paper seeks feedback on whether an LCCD should be shared as part of standing data. The paper notes an LCCD is '*designed as an administrative field*', '*a sensitive customer field*' and '*Sharing it may introduce privacy risks by potentially exposing when a consumer has moved premises*'. Unless evidence is received during consultation that sharing the LCCD is required for potential use-cases with strong consumer benefit, our preference would be for the LCCD to be excluded from CDR data sharing.

Yours sincerely

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