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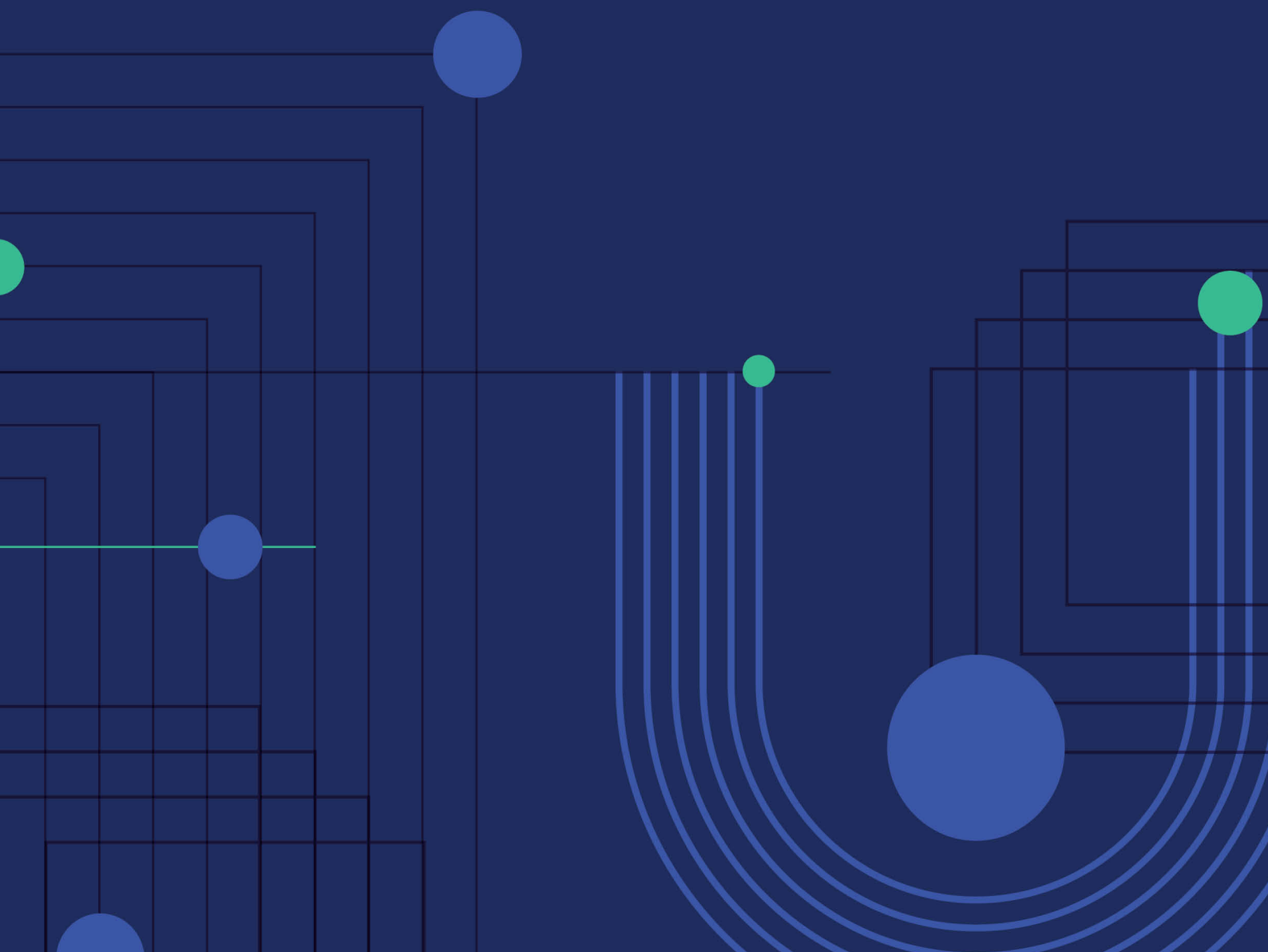


Consumer
Data Right

Privacy Impact Assessment

Agency Response

November 2021



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Manager
Media and Speeches Unit
The Treasury
Langton Crescent
Parkes ACT 2600
Email: media@treasury.gov.au

Treasury response to Privacy Impact Assessment – Version 4 of the CDR Rules

On 12 November 2021 the Minister made the Competition and Consumer (Consumer Data Right) Amendment Rules (No 2). The amendments to the Consumer Data Right Rules (**version 4 rules**) are an important step in increasing the ways businesses can participate in the Consumer Data Right (**CDR**) and enabling consumers to get the benefit of their data through an increased range of services.

This followed consultation on the exposure draft CDR energy rules, *Competition and Consumer Amendment (Consumer Data Right) Regulations 2021 (CDR regulations)* and explanatory materials between 17 August and 13 September 2021. The consultation included a general information session on the version 4 draft rules package, a forum targeted at smaller retailers and bilateral meetings with a range of Government, industry and consumer stakeholders. The development of the rules was informed by 30 submissions from respondents.

The Privacy (Australian Government Agencies – Governance) APP Code 2017 requires a Privacy Impact Assessment (**PIA**) to be conducted for all high privacy risk projects which must identify impacts on the privacy of individuals and set out recommendations for managing, minimising or eliminating that impact.

Under the *Competition and Consumer Act 2010*, the likely effect of making the rules on privacy or confidentiality of consumers' information must be considered by the Minister before making the rules. This must be considered alongside a range of other matters, including the likely effect of making the instrument on the interests of consumers, the efficiency of relevant markets, promoting competition, promoting data driven innovation, any intellectual property in the information to be covered by the instrument, the public interest as well as the likely regulatory impact of the making of the rules.

Treasury engaged Maddocks to conduct a PIA for the proposed changes to assist the development of the version 4 rules and to inform the Minister's decision to amend the CDR rules. The scope of the PIA is limited to the proposed amendments to the CDR rules and proposed amendments to the Competition and Consumer Regulations 2010, insofar as they relate to the energy sector. The PIA was informed by submissions to the exposure draft rules and was prepared on the basis that it was an update to the original PIA prepared by Maddocks in November 2019, which was a point-in-time analysis of the proposed initial implementation of the CDR regime.

The final PIA and public submissions are now available on the Treasury website. The final PIA included seven recommendations. This document provides an agency response to each of these recommendations.

Recommendation 1 – Guidance on application of CDR regime

As raised in previous PIA Update reports, it will be very important that all entities participating in the CDR regime (such as Retail Data Holders and AEMO) understand, and take steps to action, their obligations under the legislative framework. In addition, it will be important that CDR Consumers understand their rights under the CDR regime.

Accordingly, we recommend that Treasury arrange for detailed, comprehensive and clear guidance about the intended application of the CDR Rules, as amended by the proposed changes, to be issued. We suggest that specific guidance could be developed to assist CDR Consumers, AEMO and Retail Data Holders.

Agency response – Note

Treasury notes the benefits of providing guidance to industry. The operation of the Rules and their policy intent is set out in the Explanatory Statement that accompanies the Rules, being that the version 4 rules give effect to the Government’s intention to implement the CDR in the energy sector by establishing a peer-to-peer data access model for the energy sector and making energy sector specific rules. Additionally, the Office of the Australian Information Commissioner (OAIC) and Australian Competition and Consumer Commission (ACCC) may also prepare guidance related to their functions.

Recommendation 2 – disclosure of information about CDR consumers

We recommend that, before commencement of the amendments to the CDR Rules, Treasury confirm that the Data Standards do (or will) prohibit Retail Data Holders from disclosing information to AEMO about CDR Consumers if that information would allow AEMO to identify one or more CDR Consumers for the data held by AEMO.

Agency response – Note

Treasury notes that this risk is unlikely to eventuate and that existing mitigation strategies are sufficient. The data standards prohibit the retailer communicating the identity of the CDR consumer to AEMO when retrieving data from AEMO. All requests to AEMO must be made using the unique identifier for the customer’s connection point, the National Metering Identifier. In any further follow up dealings, for example where responding to a CDR Consumer’s complaint or dispute, a transaction identifier will be used so that the identity of the consumer associated with the connection point is not disclosed to AEMO.

In the unlikely situation that AEMO received personal information from a retailer, AEMO would need to comply with the *Privacy Act 1988* and relevant obligations under national energy legislation (being the *National Electricity Law (NEL)* and *National Electricity Rules (NER)*) in respect of that information.

Recommendation 3 – CDR consumer awareness of AEMO’s role

We recommend 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.

Agency response – Agree in principle

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.

Recommendation 4 – disclosure of AEMO data to Retail Data Holders

The proposed amendments to the CDR Rules will authorise AEMO to disclose CDR Data to a Retail Data Holder, but will not require AEMO to do so. While the risks of a CDR Consumer not being able to access all of their CDR Data may be low for the energy sector in circumstances where there is only one Secondary Data Holder (AEMO), we recommend that Treasury consider whether further amendments to the CC Act should be proposed in future to mitigate this risk, if the P2P model is to be applied to other designated sectors.

Agency response – Note

If in future the peer-to-peer model is applied to other sectors in the CDR, Treasury will consider whether amendments to the Act to enable the CDR Rules to require disclosure from a secondary data holder to a primary data holder may be preferable. However, the risk is currently low for the energy sector in circumstances where there is only one secondary data holder, and that data holder is the market operator rather than a market participant.

In its role as the energy market operator, AEMO is continually required to make decisions, including in relation to the management of energy data, that give effect to the objectives of the legislation it operates under. It is unlikely that AEMO will refuse to disclose CDR data in circumstances where there are no grounds under the CDR rules for AEMO to refuse to share the data with a Retail Data Holder.

Recommendation 5 – AEMO's information on Retail Data Holders

We recommend that Treasury satisfy itself that AEMO's existing mechanisms will enable it to determine whether a retailer is a Retail Data Holder for the purposes of the CDR regime. In particular, we are considering recommending that Treasury satisfy itself that AEMO will have access to real-time information about whether, at any given point in time, a retailer is a Retail Data Holder for the purposes of the CDR regime.

Agency response – Note

AEMO will rely on established systems and the information security mechanisms already in place between AEMO and retailers to determine whether a retailer is a Retail Data Holder for the purposes of the CDR regime. AEMO will not be able to provide CDR data to a Retail Data Holder without first receiving a technical request. These existing systems through which AEMO may determine whether a retailer is a Retail Data Holder mean there is a very low risk that AEMO would provide CDR data in response to a request made by an entity that is not a Retail Data Holder.

Given the costs and resources involved in building the necessary infrastructure to make a request to AEMO in accordance with the Data Standards, it is highly likely that only retailers that are Retail Data Holders will be making requests to AEMO. As the market operator, AEMO is advised by the relevant energy regulator if a retailer ceases to hold a retailer authorisation or licence (and therefore ceases to be a Retail Data Holder), as this information is relevant to various AEMO functions under national energy legislation.

Recommendation 6 – AEMO’s privacy obligations

We recommend that:

- Treasury consider whether it is appropriate to build flexibility into the CDR Rules so that all of the obligations on Data Holders, including the obligation to comply with all of the Privacy Safeguards, will automatically apply to AEMO if it holds CDR Data from which it could identify a CDR Consumer; and/or
- AEMO be required to:
 - implement processes and systems to be able to identify if it does become the holder of CDR Data from which a CDR Consumer could be identified by AEMO; and
 - notify the CDR regulators if this occurs, so that appropriate steps can be taken as a result, if required.

Agency response – Note

AEMO’s existing market systems, from which CDR data will be shared, do not hold information that identifies any consumer. As noted above, the data standards prohibit a retailer communicating the identity of the CDR consumer to AEMO when retrieving data. All requests to AEMO must be made using the unique identifier for the customer’s connection point, the National Metering Identifier (NMI). In these circumstances, the risk that AEMO would receive or hold information from which it could identify a CDR consumer is not material. We do not consider it necessary to implement CDR rules to accommodate situations that are unlikely to occur. Further, the automatic application of some of the Privacy Safeguards to AEMO is problematic because AEMO is not a consumer-facing entity.

As this scenario is highly unlikely to occur, we consider it is unnecessary to mandate processes or systems that require AEMO to identify if it becomes the holder of CDR data from which a CDR consumer could be identified. In these circumstances, AEMO’s existing processes and obligations under national energy legislation are sufficient.

If AEMO is subject to a regulatory change that affects their data holdings such that AEMO could identify individual consumers from its metering data, NMI standing data or DER Register data, Treasury considers that would be the appropriate time to consider if amendments to AEMO's CDR obligations are required.

Recommendation 7 - Consideration of Direct to Consumer requests

We recommend that, as part of further consideration of Direct to Consumer requests in the energy sector, a detailed analysis be undertaken to determine the differences (if any) in the data that CDR Consumers can currently access under existing mechanisms, and the CDR Data that CDR Consumers would be able to access if they could make Direct to Consumer Requests. This analysis would assist all parties to understand the potential benefits for CDR Consumers in being able to make Direct to Consumer requests.

Agency response – Disagree

Treasury notes that Direct to Consumer requests are not available to CDR consumers in the energy sector, pursuant to rule 8.5 of Schedule 4 which provides that Part 3 of the CDR Rules does not apply in relation to energy sector data. Treasury notes that there is an existing, detailed regime for Direct to Consumer requests for metering and billing data under national energy legislation, with the legislation recently undergoing a consultation to extend that regime to enable consumer access to NMI standing data.

Accordingly, given the existing rules and policy environment, Treasury does not consider it appropriate to undertake detailed analysis at this point in time to accommodate the possibility of future changes to the rules on Direct to Consumer requests.