



19 November 2019

OAIC  
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By email: [consultation@oaic.gov.au](mailto:consultation@oaic.gov.au)

Dear OAIC,

**Re: Consumer Data Right – Draft Privacy Safeguard Guidelines**

Thank you for the opportunity to comment on the *Draft Privacy Safeguard Guidelines (Consultation Draft)*.

The comments contained in this letter reflect the feedback of Energy & Water Ombudsman New South Wales (EWON), Energy & Water Ombudsman South Australia (EWOSA), Energy and Water Ombudsman Queensland (EWOQ) and the Energy and Water Ombudsman (Victoria) (EWOV). We are the industry-based external dispute resolution schemes for the energy and water industries in New South Wales, Queensland, South Australia and Victoria.

The Consumer Data Right (CDR) is poised to have a major impact on retail energy markets in Australia, presenting as it does the opportunity for consumers to authorise data holders to share their data with accredited service providers. Accredited service providers will then be able to use that data to access more tailored, competitive services on behalf of consumers. Traditionally, a propensity for consumers not to engage sufficiently has curtailed the potential benefits of competitive retail energy markets – energy has been a notoriously “sticky” sector. If implemented well, the CDR has the capacity to circumvent this problem by effectively enabling consumers to “out-source” their market engagement to accredited service providers, thereby driving competition in retail energy markets more effectively than ever before.

Despite the clear positive potential of the CDR in energy, reservations do remain concerning the risks of enabling consumer data to be held and accessed by third parties. Throughout the development of the CDR model these concerns have been front of mind, and continue to be so as the CDR approaches implementation. If not handled professionally data could be inappropriately disclosed, resulting in privacy breaches. Further, it would be folly to imagine that the CDR will operate smoothly in every case. In the event that errors are made and consumers experience less than ideal outcomes, there will be a

need for their CDR related complaints to be heard and resolved. ANZEWON is actively engaged in discussions with Treasury around this issue, and the appropriate allocation of jurisdiction for those complaints.

In terms of privacy, the Consultation Draft does an excellent job of comprehensively and clearly outlining the expectations of the OAIC in relation to the privacy safeguards set out in Division 5 of Part IVD of the *Competition and Consumer Act*. In doing so, the Consultation Draft provides a clear roadmap for relevant parties navigating their use of data under the CDR – helping them to fully comply with their privacy obligations. The document is usefully presented, broken as it is into digestible chapters which relate directly to the thirteen privacy safeguards. This aids navigation – it allows the reader to quickly find the guideline they are seeking. Furthermore, full information is provided in relation to each of the privacy safeguards. Nuance and detail have not been sacrificed for the sake of simplicity and accessibility.

If anything, the Consultation Draft is perhaps intimidating in length for those not working directly in privacy law. Efforts could be made to render the document more approachable to a broader range of readers. Where we believe those efforts could be made, we have indicated so in our response to the consultation questions below.

- **Are the draft guidelines clear, relevant and practical?**

Yes, the Consultation Draft is well drafted in plain English. It is an easy to follow document which is relevant to the privacy implications of the CDR and is practical in its construction and layout, directly linked as it is to the thirteen privacy safeguards on a chapter by chapter basis.

- **Do the draft guidelines meet the needs of entities in understanding their privacy safeguard obligations?**

Yes – the Consultation Draft provides a valuable resource which will serve the needs of relevant entities connected to the CDR.

The Consultation Draft *Chapter A – Introductory Matters* make very clear on page 5 which privacy safeguards relate to which entities – covering accredited persons (privacy safeguards 1, 3, 4 and 5), accredited data recipients (privacy safeguards 1 to 13 inclusive), data holders (privacy safeguards 1,10,11 and 13) and designated gateways (privacy safeguards 1,6,7 and 12).

- **Are there any topics that you believe the draft guidelines should cover that have not been covered, or should be covered in greater detail?**

No, the Consultation Draft is very thorough and provides comprehensive guidelines for all privacy safeguards. We are not aware of any relevant issue or topic that the Consultation Draft fails to cover.

- **Are there any practical examples that you could share to help illustrate parts of the guide?**

No, we do not have any practical examples to offer – but the practical examples provided to this point, (presented in yellow boxes throughout the chapters<sup>1</sup>), certainly do enhance the approachability of the document.

It would be useful to generate more of these hypothetical case studies to illustrate how the privacy safeguards should operate if the guidelines are followed correctly. These provide a very useful reference point for CDR entities, as practical examples often allow the reader to grasp the concept being presented more easily than if it is presented as an abstract set of principles. More could be made of that technique throughout the document.

Similarly, the useful points highlighted in grey boxes throughout the document labelled ‘Risk point’ and ‘Privacy tip’ and other information presented in yellow boxes – sometimes couched in terms of a question (eg. Chapter 1 page 6 – ‘*What is a CDR data management plan?*’), and at other times simply under a heading (eg. Chapter 2 page 6 ‘*Anonymity and pseudonymity in the banking sector*’) could be made more of.

These techniques all serve to visually break up the document, emphasising key points and enhancing readability. To that end, it may also be useful to utilise a wider colour palette. At the very least, hypothetical case studies, or examples, could have their own specific colour – to draw the eye and separate them from the other information provided in other yellow boxes. Generally speaking, more thought could be given to the visual design of the document.

- **Are there any topics that you believe would benefit from visual aids such as flow charts or diagrams?**

The infographic in Chapter 3 page 9, outlining the process by which an accredited person becomes an accredited data recipient, is useful and represents an approach that could be taken throughout the document.

Certainly, it would be useful to make more of the ‘icon’ approach to identify various CDR entities (as that info-graphic does), and use those icons consistently throughout the document. These icons could be introduced in the ‘Key Concepts’ Chapter, and then used to give the document a stronger visual style.

Chapter headings, for example, could have icons placed above them indicating which CDR entities the particular privacy safeguard being discussed applies to. Using this approach, *Chapter 4 – Privacy Safeguard 4 – Dealing with unsolicited CDR data from CDR recipients*, for instance, would have an icon to

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<sup>1</sup> For example, Chapter 4 page 6, Chapter 8 page 7 and Chapter 9 pages 6 and 7.

represent accredited persons and one to represent accredited data recipients. Icons could further be used to enhance hypothetical case studies and other information boxes, as a kind of visual short-hand.

In terms of other areas where flow charts or info-graphics may be useful, one thought is any area where information flow can become particularly complex or convoluted, or involve multiple parties or jurisdictions - or any area involving a multi-step process. *Chapter 8 – Privacy Safeguard 8 - Overseas disclosure of CDR by accredited data recipients* may be one possibility, as may *Chapter 6 – Privacy Safeguard 6 – Use or disclosure of CDR data by accredited data recipients or designated gateways*.

- **Are there any other ways in which the draft guide could be enhanced?**

A comprehensive frequently asked question (FAQ) guide could be a useful addition to the Consultation Draft. This would serve as another navigation 'short-cut' for those consulting the guidelines. Much of the information already presented in yellow boxes could be collated to form the early basis of an FAQ guide, along with the addition of further questions which are anticipated - or reasonably foreseeable.

We trust these comments are useful. Please do not hesitate to contact us if you would like further information regarding this work.

Yours sincerely



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