

Energy rules framework

Consultation paper

July 2020

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Glossary

ABN	Australian Business Number
ACCC	Australian Competition and Consumer Commission
ACN	Australian Company Number
Act	<i>Competition and Consumer Act 2010</i> (Cth)
ADR	Accredited data recipient
ADI	Authorised deposit-taking institution
AESCSF	Australian Energy Sector Cyber Security Framework
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
API	Application programming interface
APP	Australian Privacy Principles
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
CDR	Consumer Data Right
CDR PIA	A privacy impact assessment finalised by Maddocks on 29 November 2019 in relation to the initial implementation of CDR.
CX	Consumer experience
Dashboard	A consumer dashboard as defined in subrule 1.7(1) of the <i>Competition and Consumer (Consumer Data Right) Rules 2020</i> .
DELWP	Victorian Department of Environment, Land, Water and Planning
DER	Distributed energy resources
Designation instrument	<i>Consumer Data Right (Energy Sector) Designation 2020</i> , a legislative instrument designating the energy sector issued under section 56AC of the <i>Competition and Consumer Act 2010</i> (Cth).
DSB	Data Standards Body
EDSAC	Energy Data Standards Advisory Committee
Farrell Review	A review commissioned by the Treasurer in 2017 to recommend the best approach to implementing Open Banking.
Gateway	A gateway as designated by a designation instrument referred to in

subsection 56AC(2)(e) of the *Competition and Consumer Act 2010* (Cth).

IDR	Internal dispute resolution
NER	National Electricity Rules
Network tariff code	A code assigned by the relevant electricity distributor to identify a network tariff.
NEM	National Electricity Market
NMI	National Metering Identifier
NMI standing data	Data in respect of an electricity connection point that describes the characteristics of the connection point.
NSP	Network service provider
OAIC	Office of the Australian Information Commissioner
OTP	One-time password
PIA	Privacy impact assessment
Position paper	A position paper published by the ACCC in August 2019, setting out the gateway model as the ACCC's preferred data access model for CDR in energy.
Privacy Act	<i>Privacy Act 1988</i> (Cth)
Register	Register of Accredited Persons
Retail Law	National Energy Retail Law
RG 165	Regulatory Guide 165, as issued by the Australian Securities and Investments Commission.
RIS	Regulatory Impact Statement
Rules	<i>Competition and Consumer (Consumer Data Right) Rules 2020</i>
SPIA	Supplementary privacy impact assessment
Standard/s	The technical Consumer Data Standards made by the Data Standards Chair.

1 Introduction

1.1 Background

Consumer Data Right (CDR) is an important reform that will give Australians greater control over their data, empowering consumers to choose to share their data with trusted recipients for the purposes the consumer has authorised.

The *Competition and Consumer (Consumer Data Right) Rules 2020 (the Rules)* have been developed to facilitate CDR as an economy-wide right. The Australian Competition and Consumer Commission (ACCC) made the foundational rules for CDR in February 2020. These included rules to govern the application of CDR in the banking sector. Consumer data sharing obligations in the banking sector started in July 2020. The Rules were amended on 19 June 2020 to clarify their intended operation.¹ The Rules will be regularly updated to expand the scope of CDR, including to other sectors.

CDR will be rolled out to the energy sector next. The current Rules will apply to this sector. To the extent that additional rules are required for the energy sector, we expect these will be made in the first half of 2021, to support the subsequent technical build. While the implementation timeframes are to be confirmed, we expect the technical build to take place in the 2021-22 financial year.

The scope of CDR in energy has been set in a designation instrument, issued by the Treasurer, specifying the energy data holders, data sets and gateways to which CDR applies (**designation instrument**). The Treasurer made the designation instrument on 26 June 2020.² The designation instrument captures consumer data sets relating to the sale or supply of electricity, including where electricity is bundled with gas. Coverage of data sets about products is broader and includes electricity, gas and dual fuel plans.

Given the finalisation of the designation instrument, the ACCC is now considering the extent to which additional rules will be required to accommodate the energy sector. This work follows our August 2019 position paper setting out the gateway model as our preferred data access model for the energy sector (**position paper**).³

1.2 Overview of this consultation process

The ACCC seeks stakeholder views on the preliminary positions we have taken in this rules framework, to inform our development of additional rules for CDR in energy.

We have previously undertaken broad consultation on the development of the current Rules and their application to the banking sector.⁴ We do not intend to revisit these Rules where they are applicable in an economy-wide sense (with the exception of tiered accreditation, see section 4.7.1) or where they do not require modification to accommodate the energy sector.

Rather, this paper is focussed on key areas where we have identified a need for specific sectoral rules for CDR in energy or amendments to the Rules to accommodate the energy sector. We outline our proposed approaches to these areas, and seek feedback from

¹ The CDR Rules are at: [Competition and Consumer \(Consumer Data Right\) Rules 2020](#).

² See [Consumer Data Right \(Energy Sector\) Designation 2020](#).

³ ACCC, [Consumer Data Right in Energy, Position paper: data access model for energy data](#), August 2019.

⁴ ACCC, [Consumer Data Right Rules Framework](#), 12 September 2018; ACCC, [Consumer Data Right Rules Outline](#), 25 January 2019; ACCC, [Exposure draft CDR rules](#), 29 March 2019; ACCC, [Competition and Consumer \(Consumer Data Right\) Rules 2020](#), 4 February 2020.

stakeholders to assist us in forming a position to inform draft rules. Stakeholders should respond to this consultation using the current CDR Rules as a starting point.

Our intention is to provide transparency over our general approach to the development of rules that accommodate the energy sector and to give an opportunity for stakeholder feedback on our current thinking on key threshold issues prior to drafting these rules. We intend to consult on these draft rules in the second half of 2020.

1.2.1 How to respond

You are invited to examine the Energy Rules Framework and comment on it by written submission to the ACCC. Submissions are due by **5pm Friday 28 August 2020** and can be lodged on the [ACCC's Consultation Hub](#).

We particularly seek comment on the consultation questions posed in this paper. However, you do not need to respond to each individual question and may decide to raise additional issues.

Queries may be directed to ACCC-CDR@acc.gov.au with the subject line 'Energy rules framework'.

We encourage stakeholders to stay informed about this consultation process, including details of an energy rules framework webinar, and broader CDR developments by subscribing to updates via the [ACCC website](#).

1.2.2 Publishing of submissions

To foster an informed and consultative process, all submissions will be considered as public submissions and will be posted on the ACCC's website. If interested parties wish to submit commercial-in-confidence material, they should submit both a public version and a commercial-in-confidence version of their submission. Any commercial-in-confidence material should be clearly identified, and the public version of the submissions should identify where commercial-in-confidence material has been removed. Parties will be required to provide reasons in support of any claims of confidentiality.

Further information on the process parties should follow when submitting confidential information to the ACCC can be found in the ACCC/AER Information Policy, which sets out our general policy on the collection, use and disclosure of information. A copy of the policy is available on the [ACCC website](#).

1.3 Timeline

The following dates are indicative.

8 July 2020	Energy rules framework released for consultation
Date will be advised to stakeholders through the CDR newsletter	Energy rules framework webinar
28 August 2020	Submissions on energy rules framework due
Quarter 3 and 4 2020	ACCC to consider submissions and commence energy rules drafting
Quarter 4 2020	Publish draft energy rules for consultation
Quarter 2 2021	Finalise version 1 energy rules

1.4 Overarching approach to CDR rules development

The current Rules apply across all sectors, and in addition contain a schedule that sets out sector-specific rules for banking. The Rules will be iteratively updated as the CDR regime evolves.

Broadly, changes or additions to the Rules will serve two main functions: (i) to add functionality into the CDR regime; and (ii) to bring new sectors into CDR.

The ACCC is currently considering updates to the Rules to accommodate additional functionality such as the use of accredited intermediaries by accredited data recipients (**ADRs**).

As required under section 56BQ of the *Competition and Consumer Act 2010* (Cth) (**Act**), we will publicly consult on draft rules for at least 28 days. We will also consult the Information Commissioner, the Australian Energy Regulator and the Essential Services Commission Victoria, as required by the Act.

1.5 Interactions with other work on CDR in energy

Currently, work to bring the energy sector into the CDR regime is at the framework development stage. This developmental work is undertaken by a number of agencies that have responsibility for various aspects of CDR. These agencies are:

- the Treasury, which is responsible for developing the energy designation instrument and setting the approach to external dispute resolution for CDR in energy;
- the ACCC, which leads on developing the Rules governing CDR in energy and ensuring the Register of Accredited Persons (**Register**) is able to accommodate the energy sector;
- the Data Standards Body (**DSB**), which advises the Data Standards Chair in making energy data standards. The data standards prescribe the format and process by which CDR data is to be shared with consumers and ADRs within the CDR system; and
- the Office of the Australian Information Commissioner (**OAIC**), which regulates the privacy aspects of the CDR system, including enforcement of the privacy safeguards, and handles individual and small business consumer complaints.

As at July 2020, there are several processes in progress or recently completed relevant to the development of energy rules. These are discussed in sections 1.5.1 and 1.5.2 below.

1.5.1 Energy designation instrument

The Treasury recently finalised the designation instrument. The designation instrument sets out the scope of energy data sets that will be subject to CDR, and those data holders who hold such data, as well as identifying any gateways.

In developing this rules framework, we have had regard to all non-confidential submissions made in response to the Treasury's consultation on the draft designation instrument.

1.5.2 Standards development and consumer experience work

The DSB has commenced energy standards development and is continuing to focus on energy issues in its consumer experience (**CX**) research. The ACCC and DSB will work together in progressing the parallel development of rules and standards.

2 Approach to CDR Rules for the energy sector

In this consultation, we have identified rules development issues that will need to be resolved to accommodate CDR in energy. We have, as far as possible, sought to outline a preliminary view on how we propose to address these issues in the Rules. Some of these issues are multi-faceted and complex and will require further consideration and stakeholder input before we can arrive at a proposed position for implementation that will be reflected in draft rules for the energy sector.

Our approach to developing draft CDR Rules for the energy sector is guided by the following high-level principles. Firstly, interoperability within and across sectors, and extensibility across sectors, are key principles that underpin CDR.⁵ The Rules have been designed to support interoperability as new sectors are brought within CDR, and to minimise the need for rule changes as CDR expands to cover new sectors. Any changes to the Rules to accommodate new sectors, including the energy sector, must allow for interoperability across sectors, to the extent possible. Arrangements that are interoperable with other sectors, to which CDR has been or will be rolled out to, will reduce barriers to entry for accredited data recipients (ADRs), and facilitate the development of cross-sectoral data-driven innovation.⁶ As CDR is rolled out across the economy, any sector-specific variations may impact the consistent delivery of CDR.

Secondly, the positions we are consulting on are designed to bring the benefits of CDR in energy to consumers as soon as practicable, while also allowing flexibility to add functionality as CDR in energy matures, informed by what we learn in the early stages. For example, we do not intend to allow direct-to-consumer sharing in the early stages of CDR in energy, particularly in light of the existing direct access channels available to consumers under national energy legislation.⁷ However, this is a functionality that we may consider adding to CDR in energy at a later stage.

Thirdly, we recognise that many stakeholders have engaged with previous consultation work related to CDR carried out by the Treasury, the ACCC and the DSB.⁸ This work has considered a number of issues relevant to CDR, including aspects relating to the design of CDR as an economy-wide right, as well as aspects specific to banking and energy.

This consultation will therefore not revisit settled elements of the Rules that relate to the broader CDR ecosystem, or those that we consider are already suitable for application to energy. Further, this consultation will not revisit the privacy protections we have already built into CDR, such as a consumer's right to withdraw consent and to elect that their data be deleted. Similarly, we are not reopening the data access model for energy, namely the Australian Energy Market Operator (AEMO) gateway model, which the ACCC selected in the position paper we published in August 2019. As such, this consultation only identifies issues where we consider changes may be needed. Consistent with this, section 4 of this paper describes in detail those areas we have identified that will need adaption to the energy sector. These areas have been identified because:

⁵ See The Treasury, [Review into Open Banking in Australia](#), Final Report, December 2017, p. 116 for definitions of interoperability and extensibility. Interoperability is the ability of software systems to exchange information. Extensibility is the capacity of a system to be adapted for different purposes, such as sharing information with third parties in other sectors.

⁶ Sub-paragraph 56AD(1)(a)(v) and section 56BP of the Act require the ACCC to have regard to these matters before making rules.

⁷ Under Rules 28 and 56A of the National Energy Retail Rules, small customers are able to access historical billing data and electricity metering data for the previous two years from retailers on request. Rules 86A and 86B allow small customers to access their electricity metering data and gas consumption data from distributors on request.

⁸ See footnotes 1-5 for examples of this work.

- there are sector-specific issues, such as the characteristics of energy data, the lower uptake of online accounts in energy, and internal dispute resolution processes that already exist in energy
- amendments are needed that flow directly from our decision to implement the AEMO gateway model for CDR in energy
- changes are required because AEMO is the data holder for some consumer data but is not consumer-facing, and retailers are the data holders for other consumer data, which necessitates consideration of how authentication and data holder dashboards should work in energy, and
- the energy sector has its own cyber security framework, although this framework is not mandatory at the current time.

We are seeking stakeholder feedback on these detailed issues, as well as how they should be incorporated into the Rules. Generally, we consider that changes necessitated by the specific characteristics of energy data, or pre-existing standards and practices in energy (such as internal dispute resolution and the cyber security framework), should be included in a new energy-specific schedule to the Rules. Changes flowing from the AEMO gateway model may be incorporated partly in the schedule and partly by adaption of the generic Rules to the extent those rules need to accommodate the gateway.

This aligns with our objective of an economy-wide CDR. Our intention is that the Rules should maximise cross-sector interoperability for accredited data recipients, while also giving clarity to potential data holders as to what will be expected when future sectors are introduced into CDR.

3 Data sets

3.1 Designation instrument

The designation instrument sets out the information that will be subject to CDR, the persons who hold this information and the gateway for certain types of information. Table 1 provides a summary of the information and respective data holders and gateways that have been designated for the energy sector.

AEMO is the gateway for certain information, but is not a gateway for information for which AEMO itself is a data holder.⁹ An ADR that has requested energy information may therefore simultaneously receive some information *via* AEMO as a designated gateway and some information *directly from* AEMO as a data holder. While this legal distinction is important, in practice we expect that AEMO will be the ‘front door’ for all consumer data requests under CDR in energy. Sharing of such data will therefore always be facilitated by AEMO, as outlined elsewhere in this consultation paper, even though AEMO’s legal status as either a designated gateway or a data holder may vary for different data sets.

The classes of information for the energy sector are broadly defined by reference to ‘arrangements’ under which electricity is sold by a retailer, or supplied in respect of connection points, for the premises of a person, including arrangements where electricity is bundled with natural gas. References to a ‘customer’ refer to persons who purchase electricity under such arrangements, or to whom electricity is supplied in connection with

⁹ As set out in paragraph 56AJ(1)(c) of the Act, a data holder of CDR data cannot be a designated gateway for the same data.

the arrangement. References to an ‘associate’ refer to associates to whom electricity is supplied in connection with the arrangement.¹⁰

Retailers, defined as those authorised or licensed to operate in the National Electricity Market (NEM), are data holders of certain classes of information.

Table 1: Designation instrument - information, data holders and gateways

Reference	Information	Data holder	Gateway
Section 7	Information about a customer or associate of a customer provided by the customer or associate or obtained by the data holder in connection with the arrangement	Retailers	AEMO
Paragraph 8(2)(a)	NMI standing data that relates to the arrangement	AEMO	Not applicable
Paragraph 8(2)(b)	Metering data that relates to the arrangement, other than metering data for a type 7 metering installation ¹¹	AEMO	Not applicable
Paragraph 8(2)(c)	Distributed energy resources (DER) register information that relates to the arrangement	AEMO	Not applicable
Subsection 8(3)	Billing information that relates to the arrangement	Retailers	AEMO
Section 9 Paragraph 9(2)(b)	Information about an electricity or dual fuel retail arrangement as tailored to a particular person	Retailers	AEMO
Section 9 Paragraph 9(2)(a)	Information about an electricity or dual fuel retail arrangement as provided to particular classes of person	Australian Energy Regulator (AER) Victorian Department of Environment, Land, Water and Planning (DELWP)	Not applicable
Section 10	Information about a natural gas retail arrangement as available to new customers	AER DELWP	Not applicable

3.2 Privacy impact assessment

3.2.1 Background

A privacy impact assessment (PIA) is a systematic assessment of a project that identifies the impact that the project might have on the privacy of individuals, and sets out recommendations for managing, minimising or eliminating that impact.¹²

¹⁰ An ‘associate’ is defined in the designation instrument as having the meaning given by section 318 of the *Income Tax Assessment Act 1936* (Cth).

¹¹ A type 7 metering installation is an unmetered connection point, such as a streetlight or traffic light.

¹² Subsection 33D(3) of the *Privacy Act 1988* (Cth).

An initial PIA in respect of CDR was conducted internally by Treasury (with external assistance) and published on 1 March 2019.¹³ Maddocks subsequently conducted a PIA for the implementation of CDR in banking, which was the subject of a finalised report, dated 29 November 2019 (CDR PIA).¹⁴

3.2.2 Supplementary PIA

In March 2020, Treasury appointed KPMG to conduct a supplementary PIA (SPIA). This was designed to assess the additional privacy impacts and risks from the proposed designation of the energy sector and did not revisit findings raised in the CDR PIA.

Treasury published the SPIA on 30 June 2020. Among other things, it found consensus among stakeholders that energy data does not generally have the same sensitivities as banking data.¹⁵ However, the SPIA also identified a number of additional privacy risks raised by extension of CDR to the energy sector. It made eight recommendations to government agencies, including the ACCC, about how to address these risks.

Treasury published a consolidated response to the SPIA on 30 June 2020. This reflected the coordinated responses of government agencies including the ACCC.¹⁶ We therefore do not propose to restate our responses to the SPIA's recommendations in this section of our consultation. Instead, we note in the relevant parts of this document how we have taken the SPIA recommendations into account in reaching the positions on which we are consulting.

3.2.3 Future PIA work in energy

Consistent with the above approach we note the SPIA's recommendations 1 and 8 in relation, respectively, to future updates to this SPIA and conduct of separate PIAs for certain components of CDR if they are proposed to be introduced. As per the consolidated response to the SPIA, consideration of privacy risks through avenues such as PIAs and consultation processes with stakeholders will be ongoing. In particular, it is proposed that a SPIA will be conducted to cover all the identified issues that relate to rulemaking (for example, tiered accreditation).

3.3 Approach to data sets in energy Rules

Summary of proposals

- The ACCC's broad approach to making rules on data sets is to specify minimum inclusions of key data, and to allow flexibility for further refinement and specification of data sets in the standards. This is consistent with the approach taken to CDR in banking.
- Subject to stakeholder feedback, we may consider making rules to explicitly exclude certain data, for example sensitive data or certain identifying data.

¹³ The Treasury, [Privacy Impact Assessment, Consumer Data Right](#), March 2019.

¹⁴ Maddocks, [Privacy Impact Assessment, Consumer Data Right Regime](#), 29 November 2019.

¹⁵ KPMG, [Consumer Data Right in the Energy Sector](#), Supplementary Privacy Impact Assessment for the Commonwealth Department of Treasury, 25 May 2020, p. 31.

¹⁶ The Treasury, [Consumer Data Right Energy Privacy Impact Assessment](#), Agency Response, 22 June 2020.

3.3.1 Overview of proposed approach

The Rules will further define the data sets set out in the designation instrument. In addition to consultation on this rules framework and subsequent consultation on draft rules, ongoing standards development will further support and refine how these data sets are defined, including naming conventions and definition of data clusters in the CX standards.

Our broad approach to making rules on data sets will be to specify minimum inclusions of key data. We may also specify exclusions of data if warranted. We expect that the standards development process will have regard to existing standards already in place in the NEM for relevant data sets. We may also consider staged implementation under which some data sets may be subject to CDR at an earlier or later time (see section 4.6.4.5 for proposed sequencing of data sets).

In the banking sector, ‘voluntary consumer data’ is any data that relates to a particular consumer and is not ‘required consumer data’. We intend to develop rules for required consumer data in the energy sector; additionally we are considering developing voluntary consumer data rules for CDR data in the energy sector. Required consumer data rules will specify what CDR data a data holder must disclose and any limitations that may be appropriate.¹⁷ Voluntary consumer data rules would specify what CDR data may be disclosed by a data holder.

Our proposed approach will also be influenced by existing energy market arrangements and the extent to which multiple parties are responsible for generating data. We recognise that for AEMO-held data sets (NMI standing data, metering data and distributed energy resources register data), AEMO is not the ‘originator’ of the data and is generally reliant on other parties for the provision and accuracy of those data sets. Processes for correction and amendment of these data sets are set out in national energy legislation. The Rules may therefore need to allow for specific arrangements to recognise those processes.¹⁸

Considering the designation instrument, we propose to make rules specifying data sets as detailed in sections 3.3.2 to 3.3.7 below.

3.3.2 Customer data

We propose to make rules to the effect that customer data will include, at a minimum:

- customer identifying information, such as the customer’s name (for an individual), or business name, Australian Business Number (**ABN**), Australian Company Number (**ACN**) and business contact person’s name (for a business)
- customer contact details, such as telephone number, email address, billing address and supply address
- information used to authenticate the identity of a customer or an associate and the outcomes of an authentication process, and
- any information about the customer that relates to their eligibility to enter into or take advantage of a feature of the arrangement, subject to stakeholder views on sensitive data (discussed below).

¹⁷ In banking, additional limitations in relation to required consumer data include that CDR data is not ‘required consumer data’ at that particular time, where a transaction on an open account occurred more than seven years previously, or where the account is closed and was closed more than two years before that time.

¹⁸ In relation to the correction of data, Rule 7.15 sets out the steps a data holder must take when responding to a request from a CDR consumer to correct CDR data.

We note that the class of information specified in section 7 of the designation instrument and in the final bullet point above may encompass potentially sensitive information, such as customer eligibility for concessions, whether the customer is in a hardship program and whether a person residing at the premises requires life support equipment. The inclusion of this information may help contextualise billing information about amounts deducted, credited or received under a government energy charge rebate, concession or relief scheme or under a payment plan (see section 3.3.6 below).

The DSB's CX research found that the bundling of sensitive data, such as details about hardship and concessions, with other data sets caused concern among some research participants. There were mixed views regarding the benefits of sharing this data. The CX research recommended that data such as hardship details and concession details be separately categorised to allow ADRs to clearly explain the purpose and benefit of a consumer consenting to the sharing of these data sets.¹⁹

Similarly, recommendation 3(iv) of the SPIA was that 'certain data sets that would be considered to be more sensitive, such as hardship or concession data, should only be transferred with the express and specific election of CDR consumer and/or once the offer of the specific product or service has been accepted.'²⁰ We note that while the potential for such data to be shared via CDR presents a potential privacy risk and may cause concern for some consumers, there are also arguments in favour of the benefit of consumers being able to seek third party assistance in relation to the data. We are committed to exploring this issue through a consultative rules development process.²¹

We therefore seek stakeholder views on whether any particular sensitive information should be explicitly excluded from customer data, or if not excluded, presented separately in the consent process from other data sets (and as a discrete data cluster). This would enable consumers to make a fully informed decision about whether to consent to this data being shared, having regard to the purpose for which it will be used by an ADR and the benefits this would provide the consumer. This would be similar to the current requirements in the Rules requiring express consent for direct marketing.

Finally, recommendation 3(iii) of the SPIA was that we should review Rule 4.12(3)(b), or develop an equivalent rule tailored to the energy sector, to address privacy concerns relating to circumstances where CDR consumer may not be the individual or the only individual occupying a property.

Accordingly, we also seek stakeholder views on whether customer identifying information should be limited to the primary or joint account holder's identifying information, to address concerns raised in the SPIA regarding the profiling or compiling of insights into the behaviours of other persons that occupy the premises.

3.3.3 NMI standing data

The designation instrument designates NMI standing data information that relates to the arrangement. In further delineating this data set in the Rules, we propose to make rules to the effect that NMI standing data will include the following fields, at a minimum:

- local network service provider
- metering installation type code

¹⁹ DSB, [Consumer Experience Research Phase 3: Round 1 and 2](#), March 2020, p. 22.

²⁰ KPMG, [Consumer Data Right in the Energy Sector](#), Supplementary Privacy Impact Assessment for the Commonwealth Department of Treasury, 25 May 2020, p. 9.

²¹ The Treasury, [Consumer Data Right Energy Privacy Impact Assessment](#), Agency Response, 22 June 2020, p. 5.

- meter serial ID²²
- NMI suffix for each datastream
- network tariff code
- the controlled load
- the unit of measure
- the datastream type or interval type
- average daily load
- NMI
- NMI classification code, and
- street address.

We understand the above fields have been identified by the Treasury and stakeholder submissions to the Treasury's consultation on priority data sets as being useful in allowing usage data to be contextualised and to provide detail on the static features of a connection point.²³

We intend that the rules maintain flexibility for the standards to include additional fields to be included within NMI standing data, provided that the fields are mandatory fields as determined under relevant NEM procedures.

We consider that only NMI standing data that is current during the period for which the consumer has consented to share data will be relevant to use cases, and that sharing historic NMI standing data for a connection point will not facilitate any use cases. We may make a rule to ensure that only current data is shared.

3.3.4 Metering data

The designation instrument designates metering data that relates to the arrangement that is held by AEMO, for all metering types other than a type 7 metering installation (unmetered supply). We note that the definition of metering data in the draft designation instrument is taken from the National Electricity Rules (NER), under which AEMO determines metering data file formats and receives metering data in the required format for market settlement purposes. Any non-standard data collected by the meter under commercial arrangements with the metering data provider would not be held by AEMO.

We propose to make a rule that adopts the drafting of the designation instrument.

We seek stakeholder views on whether there are any aspects of metering data that are not appropriate for sharing. We also seek stakeholder views on whether the requirement to share metering data should be limited to the previous two years' of metering data, on the basis that customer consumption patterns may change over time, and more recent metering data facilitates key use cases. The time period of two years is consistent with current retailer and distributor obligations under the National Energy Retail Rules to provide metering data for the previous two years upon request from a small customer.²⁴

²² Please note that some items in this list may be either singular or multiple.

²³ The Treasury's consultation on priority energy data sets and stakeholder submissions are at: <https://treasury.gov.au/sites/default/files/2019-08/c2019-t397812.pdf>.

²⁴ See Rules 56A and 86A of the National Energy Retail Rules.

3.3.5 Distributed energy resources register data

The DER register is an AEMO-managed database of information about consumer-owned DER devices that can generate or store electricity or actively manage energy demand. Examples of DER devices include rooftop solar photovoltaic units, battery storage and wind generating units.

The designation instrument designates DER register data that relates to the arrangement between the customer and their retailer. We note that the definition of DER register information is taken from the NER, and therefore ensures that DER register data for CDR purposes will have regard to the DER Register Information Guidelines, which specify the details of DER register information to be provided by Network Service Providers (NSPs) to AEMO for inclusion in the DER register.²⁵

We therefore propose to make a rule that adopts the definition used in the designation instrument, and provide flexibility for the standards setting process to determine which aspects of DER register data will be in scope for sharing.

We propose to explicitly exclude identifying information such as the installer identification field. This proposal is consistent with recommendation 3(xi) of the SPIA to exclude personal information of third parties (such as installers) from CDR when DER register data is shared.²⁶ We seek stakeholder feedback on whether any additional information within the DER register should be explicitly excluded for CDR purposes and the grounds on which stakeholders believe this information should be excluded. We consider that only DER register data that is current during the period for which the consumer has consented to share data will be relevant to use cases, and that sharing historic DER register data for a connection point will not facilitate any use cases. We may make a rule to ensure that only current data is shared.

3.3.6 Billing data

The designation instrument sets out a range of information that is billing information.²⁷ We propose to make rules to the effect that billing data will include, at a minimum:

- information about a bill issued under the arrangement, such as billing period, bill issue date, pay-by date and amounts payable
- a breakdown of the amounts payable, including the tariffs and charges relating to a bill, basis on which tariffs and charges are calculated, discounts and benefits applied and fees charged (which may include charges unrelated to energy usage)
- information about amounts deducted, credited or received under a government energy charge rebate, concession or relief scheme or under a payment plan
- account information, such as account and customer ID, information about persons authorised to act on the account and the extent of those authorisations
- information about payments made in connection with the account and associated payment methods, and
- information about retailer-generated estimated meter reads and customer self-meter reads used by the retailer for billing purposes.

²⁵ See AEMO, [DER Register Information Guidelines](#), version 1.0, 2 September 2019.

²⁶ KPMG, [Consumer Data Right in the Energy Sector](#), Supplementary Privacy Impact Assessment for the Commonwealth Department of Treasury, 25 May 2020, p. 9.

²⁷ See subsections 8(1) and 8(3) of the designation instrument.

We welcome stakeholder views on whether the above information should be within scope, or whether any particular billing information should be excluded and the grounds on which stakeholders consider the information should be excluded. We also seek stakeholder feedback on whether the availability of historical billing data should be limited to a particular duration of time.

3.3.7 Energy plan information

The designation instrument designates information about retail arrangements. This information, to the extent that it does not relate to an identifiable or reasonably identifiable person, will be ‘product data’ that can be accessed by any person under the Rules. As set out in the designation instrument, this captures information about electricity, gas or dual fuel plans that are available to new customers. Data holders will be obliged to make this data publicly available.²⁸

The AER and DELWP are the designated data holders of product data in their respective capacities as the responsible authorities for the Energy Made Easy and Victorian Energy Compare price comparison websites. Given the plan information provided by retailers to the AER and DELWP is limited to plan information for small customers, we propose to make a rule excluding large customer plan information from this data set. We also propose to make a rule limiting this data set to energy plans that are available to new customers, given the relevance of these energy plans to price comparison and switching use cases. We do not propose that this data set includes plans that are currently in use by customers but are not available to new customers.

Where information about a retail arrangement does relate to an identifiable or reasonably identifiable person, such as information about the electricity or dual fuel plan the customer has entered into with their energy retailer, this is consumer data and will be subject to the privacy safeguards.²⁹

We propose to make a rule to make this information accessible to CDR consumers, to the extent that it is specifically referred to in the designation instrument. Including this data will ensure that details about a customer’s retail arrangement, such as tariffs and charges, tariff type, contract term, discounts, benefits, fees, and eligibility criteria, can be shared with accredited persons.

As discussed in section 4.2.3.5, we welcome stakeholder views on any limitations that should be placed on data about the customer’s current retail arrangement in the Rules. For example, it may be appropriate to exclude large customer plan information from retailer arrangement information relating to an identifiable or reasonably identifiable person (information for which retailers are proposed to be data holders), given these customers often have highly negotiated and/or bespoke arrangements with their retailer.

Consultation questions: approach to data sets in energy rules

The ACCC has developed guiding questions for responses. You do not need to respond to each individual question and may decide to raise additional issues. Where possible, please explain your reasoning.

1. Do you agree with our proposed approach to data sets in the energy rules? Why or why not?

²⁸ See Part 2 of the CDR Rules.

²⁹ The designation instrument provides that information about gas retail arrangements does not include information about a particular person: see clause 10(3).

2. Considering the above discussion about potentially sensitive information, what data, if any, should be subject to specific arrangements (for example, during the consent process)? Should any particular sensitive data be explicitly excluded from the proposed data sets?

4 Issues requiring energy-specific rules

4.1 Approach to the rules, standards and privacy safeguards to accommodate the gateway data access model

Summary of proposals

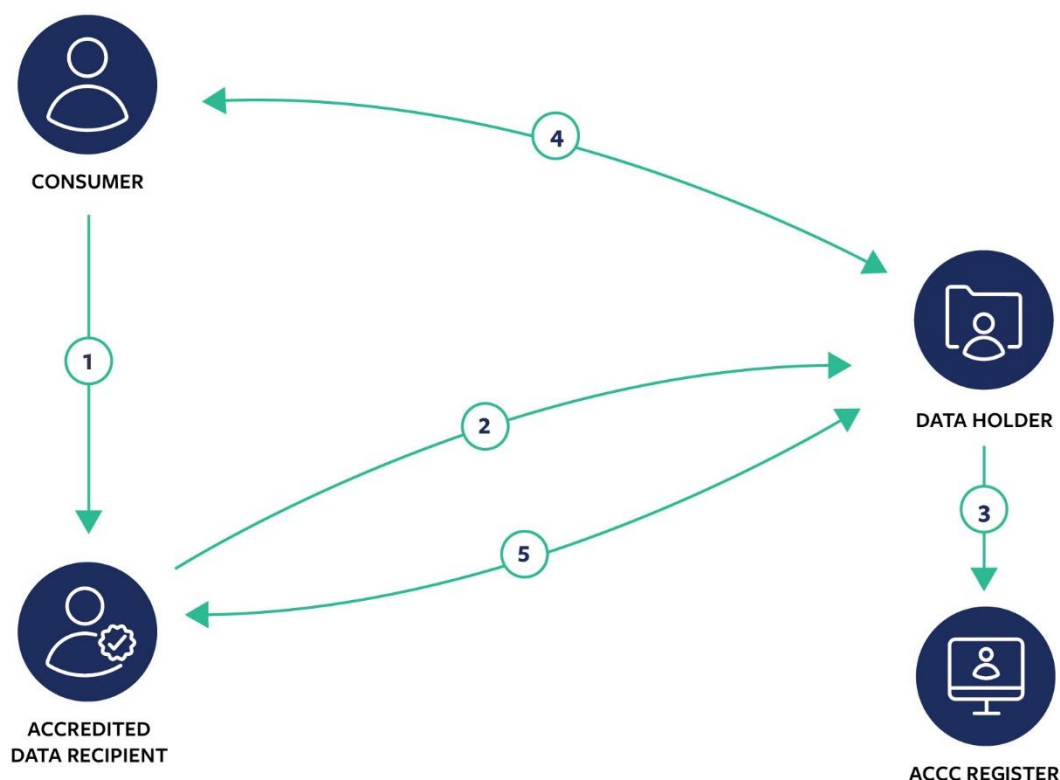
- We propose to make rules that relate to the disclosure, collection, use, accuracy, storage, security and deletion of CDR data by the gateway. Our view is that the gateway will function as a conduit for CDR data that is held by other data holders, and will not hold or store this data except where this is essential to facilitate its gateway role.³⁰
- We expect that energy retailer data holder requirements will be broadly consistent with existing data holder requirements, but amendments to the Rules may be necessary where the gateway is expected to fulfil requirements that currently fall exclusively on data holders.
- For example, we propose to make rules requiring the gateway to comply with obligations such as:
 - providing appropriate information to the Accreditation Registrar
 - complying with requests made by the Accreditation Registrar
 - record keeping and reporting requirements, and
 - internal dispute resolution requirements.
- We propose that requirements placed on the gateway regarding the applicable privacy safeguards be broadly consistent with the current Rules under Part 7.
- We expect that the rules will require data holders, the gateway and accredited persons to act in accordance with the current Rules and standards when requesting and disclosing CDR data.

4.1.1 Context

Part IVD of the Act permits the designation of a gateway, to facilitate the transfer of information between a data holder and an ADR. In the banking sector, where there is no designated gateway, the high-level information flows are as shown in figure 1.

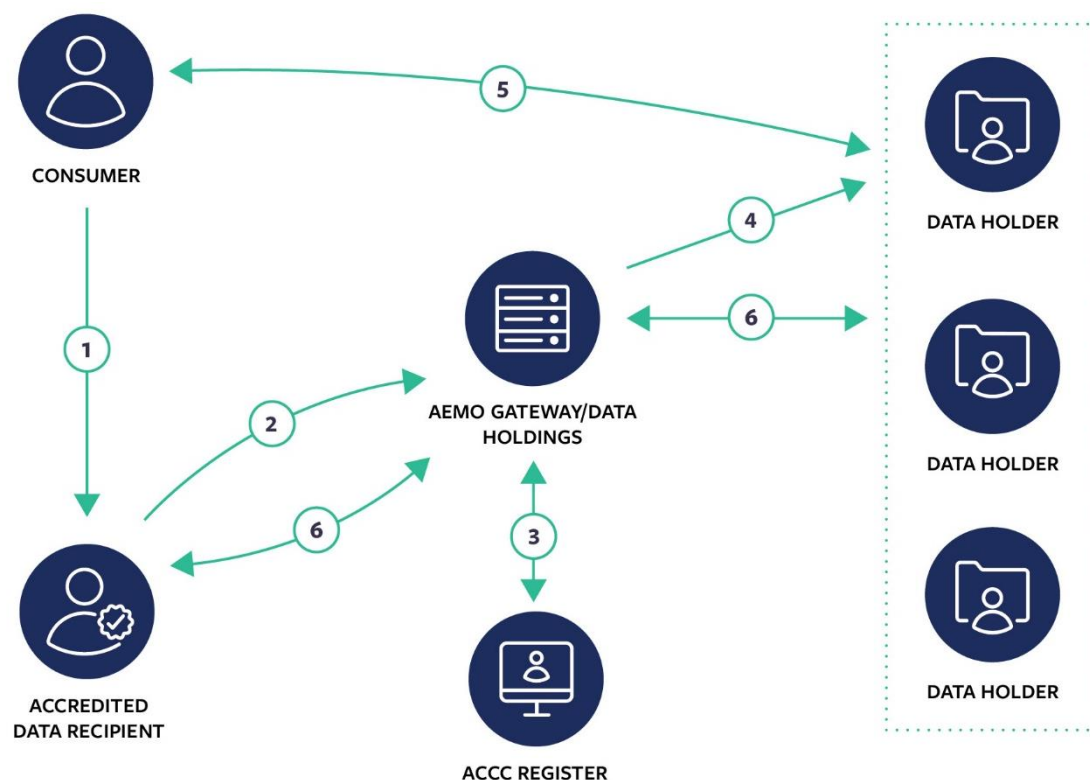
³⁰ We consider that the changes relating to the gateway outlined in this section are in principle extendable to any future CDR sector where a gateway is designated. However, as discussed at section 3.1 above, it is important to note that AEMO will act as both a gateway and a data holder in CDR in energy. See section 4.1.3.2, below, for further discussion of AEMO's obligations as a data holder, and 4.1.3.4 for further discussion of its obligations as a gateway.

Figure 1: High-level information flows in CDR in banking



Following our position paper on our preferred data access model in energy, we expect the introduction of a designated gateway model to reflect the high-level data flows as shown in figure 2.

Figure 2: High-level information flows in CDR in energy



1. The consumer consents to an accredited data recipient obtaining their data
2. The accredited data recipient contacts the gateway, seeking to access the consumer's data
3. The gateway authenticates the accredited data recipient using the ACCC Register
4. The gateway identifies which data holder(s) hold the consumer's data and provides transaction details to them
5. The process of authentication and authorisation occurs in accordance with any requirements in the Consumer Data Right energy rules. The gateway's role in this process is to be determined
6. The accredited data recipient requests a specific set of data that is covered by the authorised consent. The consumer's data is shared with the accredited data recipient via the gateway

The introduction of a designated gateway for CDR in energy therefore requires us to make rules about a designated gateway for the first time. We outline our preliminary positions on a number of key issues below, noting that additional requirements may be necessary pending the gateway's technical design and function.

4.1.1.1 Data standards

Consequential changes and additions to the Consumer Data Standards (**standards**) will be required. The current standards developed by the DSB for the CDR regime provide a baseline for implementation including by setting standards specific to the banking sector.³¹ The DSB has developed and is continuing to evolve the standards for the banking sector. The DSB designed the high-level standards to be able to accommodate the existence of a gateway in CDR.

³¹ The DSB recently released version 1.3.1 of the standards. Consumer Data Standards are at: consumerdatastandardsaustralia.github.io/standards/#introduction.

Technical and consumer experience standards will have to be developed for CDR in energy. The Data Standards Chair established the Energy Data Standards Advisory Committee (**EDSAC**) on 13 November 2019 to provide strategic counsel and expert advice on key issues in the development and implementation of technical standards in the energy sector. We continue to work closely with the DSB as they assist the Data Standards Chair make energy data standards.

4.1.1.2 Privacy safeguards

Finally, the privacy safeguards contained in the Act maintain the security and integrity of the CDR regime by setting out the obligations of data holders, accredited persons and gateways in relation to CDR data.³² Under the Act, privacy safeguards 1, 6, 7 and 12 are applicable to the gateway.³³ In addition, the Australian Privacy Principles (**APPs**) contained in the *Privacy Act 1988* (Cth) (**Privacy Act**), except for APPs 6, 7 and 11, apply to the gateway to the extent that CDR data is classified as personal information.³⁴ The Rules currently contain provisions that relate to the privacy safeguards but may need to specifically address privacy safeguard requirements for a gateway (for example, Rules 7.2, 7.7, 7.11, 7.12 and 7.13).³⁵

On 24 February 2020, the OAIC, in its role as the lead privacy body, released the CDR Privacy Safeguard Guidelines, which outline how the Information Commissioner will interpret and apply the privacy safeguards.³⁶

Recommendation 2 of the SPIA is that the CDR Privacy Safeguard Guidelines be reviewed and updated once the Rules for and elements of the gateway are finalised and a PIA has been undertaken in relation to it, in consultation with the OAIC.³⁷ We note the OAIC's response that it will review and update the CDR Privacy Safeguard Guidelines at regular intervals, and particularly following any changes to the CDR legislative Rules/framework.

4.1.2 Issues in energy

As set out in figure 1 and figure 2, a gateway for energy consumer data introduces a new element in the process flows of CDR data. Multiple data holders will often need to provide CDR data to ADRs in response to a valid consumer data request, both directly (in the case of data held by AEMO) and via the gateway (in the case of data held by electricity retailers).

We intend to make rules that relate to the disclosure, collection, use, accuracy, storage, security and deletion of CDR data by the gateway. Our preliminary view on the role of the gateway is that it will function as a conduit for data provided by retailer data holders to ADRs. The gateway will not hold and store the data it receives from data holders as the gateway, except where necessary to facilitate its gateway function.³⁸ Subject to the obligations the rules impose on the gateway, holding and storing data may be necessary to comply with activities such as record keeping, consent management or the provision of consumer dashboards (if applicable).

³² See Division 5 of the Act.

³³ See Division 5 of the Act.

³⁴ See Privacy Act, Schedule 1.

³⁵ This is a non-exhaustive list; please see Part 7 of the CDR Rules for all Rules relevant to Privacy Safeguards.

³⁶ OAIC, [CDR Privacy Safeguard Guidelines](#), version 1.0, February 2020.

³⁷ KPMG, [Consumer Data Right in the Energy Sector](#), Supplementary Privacy Impact Assessment for the Commonwealth Department of Treasury, 25 May 2020, p. 8.

³⁸ We note that due to the way data is distributed in the energy sector, it is possible that AEMO may already hold and store similar or equivalent data to that which it receives in its role as the gateway. For the purposes of CDR, however, we propose that AEMO will not be permitted to hold and store any data it receives from data in its gateway role.

Recommendation 2 of the SPIA is that the rules framework for the gateway should make it clear that AEMO's handling of data sets for which it is not a data holder will be transient.³⁹ Consistent with the Act, we consider the Rules should otherwise restrict AEMO from collecting, holding, accessing and using these data sets, save in limited circumstances to support the transfer of data to data holders and in other circumstances when exceptions are identified during consultations. Consistent with our response to the SPIA, we are now commencing consultation on these issues and will continue to consider them as we progress the rules for CDR in energy.

Recommendation 3(vii) of the SPIA recommends the Rules address the matter of enabling the gateway to refuse to authenticate an accredited person because of a belief of harm or misuse to a CDR participant or CDR infrastructure.⁴⁰ We note that similar enabling provisions have been provided for data holders in the current Rules, although this is framed in terms of a data holder's discretion not to ask the consumer for authorisation to share CDR data.⁴¹ We welcome stakeholders views on the circumstances in which AEMO should have a similar ability in its capacity as the gateway, including in respect of its proposed function of authenticating accredited persons against the ACCC Register.

4.1.3 Our proposed position

4.1.3.1 Retailer data holders

We propose the requirements on retailer data holders should be broadly consistent with the existing data holder requirements in the current Rules. We intend to make any necessary amendments to the Rules to take into account the role of the gateway in CDR data flows in the energy sector.

We expect retailer data holder requirements to diverge from the current Rules where the gateway, in its design, has the functionality to fulfil some or all of certain requirements, including:

- to provide an online service that can be used by accredited persons to make consumer data requests, and
- to disclose consumer data to accredited persons, which has been provided to the gateway by a retailer data holder, in response to a consumer data request.

Additionally, we note recommendation 3(ii) of the SPIA that the Rules may need to impose additional requirements on data holders if the ACCC decides to extend the definition of eligible consumers to persons with closed or inactive accounts. We discuss this consequential amendment at section 4.2.2.3 below.

4.1.3.2 AEMO as a data holder

We propose the requirements on AEMO as a data holder of the data sets outlined at table 1 should be broadly consistent with the existing data holder requirements in the current Rules. Under the Act, AEMO is unable to act as a gateway and a data holder for the same data sets.⁴² AEMO will therefore not have any data holder requirements fulfilled by the gateway in its stead for these data sets, although depending on its technical design it may deliver the data via the same mechanism as the data it delivers in its gateway role.

³⁹ KPMG, [Consumer Data Right in the Energy Sector](#), Supplementary Privacy Impact Assessment for the Commonwealth Department of Treasury, 25 May 2020, p. 8.

⁴⁰ *ibid.*, p. 9.

⁴¹ CDR Rules, paragraph 4.7(1)(b)

⁴² See subsection 56AJ(1) of the Act.

4.1.3.3 Energy plan information data holders

As outlined above in section 3.3.7, the designation instrument designates the AER and DELWP as data holders of energy plan information. We expect that requirements that relate to product data and product data requests, including Part 2 of the Rules, will be expanded to include these data holders for the product data.⁴³

4.1.3.4 The gateway

We propose to make rules requiring the gateway to comply with obligations including complying with requests made by the Accreditation Registrar, such as requests for information, and associated requirements to notify the Accreditation Registrar if the gateway becomes aware that information it has provided is out of date or otherwise needs to be amended.

We also propose to make rules requiring the gateway to comply with record keeping and reporting requirements that align with its role and function in CDR in energy.⁴⁴ For our proposed position on internal dispute resolution requirements relating to the gateway see section 4.5.

In view of the existing cybersecurity framework that applies to AEMO, our preliminary view is that the minimum information security controls contained in Schedule 2 of the Rules are not necessary for the gateway. The primary function of Schedule 2 is to specify minimum requirements for the security of CDR data held by ADRs.

In the banking sector, authorised deposit-taking institutions (ADIs) are subject to prudential regulation by the Australian Prudential Regulation Authority (APRA) and are obliged to establish and actively maintain effective information security controls that are commensurate with the size and extent of threats that they face. ADIs have discretion in how they meet those obligations.⁴⁵ We consider that AEMO, in its role as the energy market operator, is in a position similar to ADIs, with existing arrangements that are appropriate for maintaining effective information security controls.⁴⁶

An option that we are considering is to impose a rule on the gateway to meet information security controls as set out in the Australian Energy Sector Cyber Security Framework (AESCSF). We note that the AESCSF is currently voluntary. We therefore welcome stakeholder views about whether information security standards contained in Part 2 of Schedule 2 of the Rules should apply to the gateway, or whether the CDR Rules should adopt other standards, such as those set by the AESCSF, as mandatory for the gateway.

⁴³ See section 3.3.7 (energy plan information) for more discussion of designated product data. It is important to note that the designation instrument does not include a designated gateway for product data.

⁴⁴ We expect that some obligations contained in Rules 4.4, 4.6, 5.25, 5.31, 6.1 and Division 9.3, are suitable for application to the gateway, to the extent of its design and function.

⁴⁵ See APRA, *Prudential Standards CPS 234 Information Security*, July 2019, available at: www.apra.gov.au/sites/default/files/cps_234_july_2019_for_public_release.pdf

⁴⁶ See the Australian Energy Sector Cyber Security Framework at: aemo.com.au/initiatives/major-programs/cyber-security/aescsf-framework-and-resources

4.1.3.5 Data standards

We propose to make rules that will require compliance with the standards that will apply to interactions between data holders, the gateway and accredited persons, for the purposes of requesting and disclosing CDR data.

While each entity is responsible for the secure configuration of systems by which they communicate with each other, the Rules will require that certain standards applicable to energy will be binding data standards.

The Act provides that those binding standards will apply as if a contract is taken to be in force between a data holder and an accredited person, and a data holder, gateway and accredited person.⁴⁷ Non-compliance with these standards may also result in enforcement action by the ACCC and can lead to action taken by an entity aggrieved by a failure to comply.

4.1.3.6 Privacy safeguards

We expect that requirements placed on the gateway regarding the applicable privacy safeguards will be broadly consistent with the current Rules under Part 7.⁴⁸ To the extent that a privacy safeguard requires a data holder to provide a notification to a consumer and that requirement is translated in the Rules as a requirement to update a consumer's dashboard, our proposed options on who may provide that dashboard are set out below at section 4.4. It is likely that we will conduct a final review of the role of privacy safeguards once appropriate decisions regarding the design and functionality of the gateway are finalised.

Consultation questions: approach to the Rules, standards and privacy safeguards to accommodate the gateway data access model

3. Do you consider the proposed approach to the gateway rules, standards and privacy safeguards appropriate for CDR in energy?
4. If not, which aspects of the approach should be reconsidered or amended, and why?
5. Should the information security obligations contained in Schedule 2, Part 2 of the Rules be applied to the gateway, or should we adopt an alternative standard such as the AESCSF?
6. Should the gateway be subject to obligations relating to the privacy safeguards, beyond what is set out in Part 7 of the current Rules?
7. How should any disclosure of voluntary consumer data work under the gateway data access model (see section 3.3.1 for discussion of voluntary data)?

⁴⁷ See sections 56FD and 56FE of the Act for the legal effect of a binding data standard.

⁴⁸ We expect that aspects of Rules 7.2, 7.12 and 7.13 are suitable for application to the gateway, to the extent of its design and function.

4.2 Eligible consumer

Summary of proposals

We propose:

- to make a rule that a CDR consumer must have an account with a retailer to be an eligible CDR consumer. This position includes joint account holders, and we are considering the extent to which this should include persons who have been nominated by the primary account holder to transact on the account
- that, if the CDR consumer's account has been linked to multiple premises that have been previously supplied over the period the account has been active, the consumer will only be able to request the sharing of data relating to their current premises
- to exclude minors from being eligible CDR consumers for CDR in energy
- that the Rules do not limit consumers who do not have an online account with a retailer from being eligible CDR consumers.

For the initial scope of CDR in energy, we are considering:

- whether the CDR consumer's account with an electricity retailer must be 'active' for them to be an eligible CDR consumer
- whether the Rules should have the effect of excluding particular customers, such as larger commercial and industrial customers.

4.2.1 Context

This section concerns which CDR consumers should be considered eligible for accredited persons to make a request to AEMO on behalf of the consumer for the disclosure of the consumer's CDR data. The eligibility criteria are set out in the Rules and are specific to each sector.⁴⁹

Our ability to define an eligible CDR consumer in the Rules is limited by the definition of 'CDR consumer' in the Act.⁵⁰ The definition of a CDR consumer (for CDR data in the Act), in part requires that the CDR data relates to the person because of the supply of a good or service to the person, or to one or more of the person's associates, and that the person is identifiable or reasonably identifiable from the CDR data or other information held by a data holder.⁵¹ An associate includes a spouse or relative.

Where we consider there are persons who should be eligible CDR consumers but do not meet the definition of a CDR consumer, regulations would need to be made to include these consumers.⁵²

4.2.2 Current Rules

Schedule 3, clause 2.1 of the Rules provides that a CDR consumer for the banking sector is eligible if the consumer is:

⁴⁹ CDR rules, subrule 1.7(1).

⁵⁰ See subsection 56A(3) of the Act for the definition of 'CDR consumer'.

⁵¹ The reference to 'associates' is a reference to the meaning of section 318 of the *Income Tax Assessment Act 1936* (Cth) and includes spouses.

⁵² For example, this situation may apply to tenants where the landlord is the account holder. See subparagraph 56A(3)(a)(ii) of the Act for the regulations that would need to be made for such consumers to be considered CDR consumers.

- an individual who is 18 years or older, and
- has an account with the data holder that is an open account and set up in such a way that it can be accessed online.

Schedule 3, Part 4 of the Rules sets out specific rules that apply to joint accounts in the banking sector. These are discussed in section 4.2.3.1 below.

4.2.3 Issues in energy

The ACCC is considering who should be able to exercise CDR to request the sharing of their CDR data. We discuss each of our considerations in sections 4.2.3.1 to 4.2.3.5 below.

4.2.3.1 Account holders, joint account holders and nominated persons

We propose to make a rule that a CDR consumer must have an account with a retailer to be an eligible CDR consumer. This will cover individual and joint account holders. We detail our considerations on joint accounts below. This position will be subject to a requirement that the account holder is being supplied the service, or that the service is being supplied to one or more of the person's associates.

In addition to account holders, we seek stakeholder views on the extent to which persons who have been authorised to transact on the account by the account holder (known as 'customer authorised representatives' under national energy legislation) may be included as eligible consumers.⁵³ We refer to these persons as 'nominated persons' in this document. Our considerations on nominated persons are likewise discussed further below. For example, it may be appropriate for nominated persons to be able to authorise sharing of data relating to a premises at which they live and consume energy.

Linking eligibility to the account holder and possibly to persons nominated on the account ensures that only those persons who are 'known' to the retailer (and therefore are able to be authenticated) are able to consent to and authorise their CDR data to be shared. We note that one consequence of this approach would be to allow CDR data to be shared irrespective of occupancy of premises, so long as the CDR consumer holds an account with a retailer or is a nominated person and is being supplied the service.

An example of this is a tenanted property where the electricity account is in the landlord's name. As set out in the SPIA, one potentially negative consequence of this approach would be that an account holder who is a landlord may receive information about energy consumption by the occupants of a premises. This information may allow the landlord to infer particular behaviours that a tenant might not be comfortable with the landlord knowing. We are interested in stakeholder feedback about the risks and benefits inherent in this approach.

In particular, in accordance with recommendation 3(iii) of the SPIA, we seek stakeholder views on if and how Rule 4.12(3)(b) should be tailored to the energy sector to address privacy concerns relating to circumstances where the CDR consumer may not be the individual or only individual occupying a property. Rule 4.12(3)(b) prohibits accredited persons from seeking consent from a CDR consumer to use or disclose their CDR data for the purpose of identifying, compiling insights in relation to, or building a profile in relation to an identifiable person who is not the CDR consumer who made the consumer data request (for example, other identifiable persons living at a premises). For example, a

⁵³ Chapter 10 of the NER and Rule 3 of the National Energy Retail Rules refer to such a person as a 'customer authorised representative'.

rule could be made to prohibit the sharing of information that would identify any person occupying the property who is not the CDR consumer that made the data sharing request.

Linking eligibility to persons who are ‘known’ to the retailer would exclude from being eligible CDR consumers those persons consuming electricity under a deemed customer retail arrangement, or a deemed contract where the consumer has not identified themselves to the retailer.⁵⁴

We also propose to make a rule to the effect that, if the CDR consumer’s account has been linked to multiple premises that have been previously supplied over the period the account has been active, the consumer will only be able to request the sharing of data relating to the premises that is being currently supplied through their electricity retail contract. That is, a consumer cannot request to share data relating to a previously supplied premises, such as a scenario where a consumer has moved house. This is because we consider that most use cases are relevant to data that relates to the consumer’s current premises. However, we welcome stakeholder views on this proposal.

Joint account holders

We refer to the situation where there are two or more joint account holders who each:

- are known to the retailer
- are considered primary account holders
- have full permissions to act on the account, and
- are financially responsible for the account.

We understand that retailers have joint accounts consistent with the above situation, and that retailers collect and retain personal information for each joint account holder as they would for a single primary account holder.

We propose to make rules to the effect that where consumers with a joint account, as described above, hold individual authority to transact on the account (that is, they do not require the consent of the other joint account holder(s) to transact), they will be within scope as eligible CDR consumers.

We note that joint accounts in the banking sector are subject to specific rules as set out in Schedule 3, Part 4 of the Rules. Currently, only joint accounts with two account holders, who are individuals, are in scope for banking. Multi-party accounts and other complex accounts will be brought in scope in a subsequent version of the Rules.⁵⁵ For the initial scope of CDR in energy, we welcome stakeholder views on whether we have accurately characterised holders of joint accounts as each having individual authority to transact on the account. We also seek views on whether joint accounts in energy should similarly be confined to two individuals only, with complex accounts phased in later.

The joint account Rules for the banking sector provide that a data holder must provide a ‘joint account management service’ for joint account holders to jointly elect that each joint account holder may individually manage CDR data in relation to the joint account.⁵⁶ The joint account management service has been developed to mitigate the particular risks that can arise in relation to those at risk of financial or other exploitation by other

⁵⁴ See section 54 of the National Energy Retail Law and sections 37 and 39 of the *Electricity industry Act 2000* (Vic) for the meaning of ‘deemed customer retail arrangement’ and ‘deemed contract’ respectively.

⁵⁵ Schedule 3, clause 1.2 of the Rules defines a joint account as ‘a joint account with a data holder for which there are two joint account holders, each of which is an individual who, so far as the data holder is aware, is acting in their own capacity and not on behalf of another person.’

⁵⁶ CDR Rules, Schedule 3, subclause 4.2(1).

account holders, and to reflect the CX research finding that multi-party authorisation was the preferred method of accessing banking joint accounts by most research participants.⁵⁷

We note that the SPIA found consensus among stakeholders that energy data does not generally have the same sensitivities as banking data. We seek stakeholder views on this (see consultation questions 34 and 35).⁵⁸ For energy, we are not proposing to require a joint account management service. As noted above, our approach is that where there already exists an individual authority to transact on that account that will be a sufficient basis for a consumer to share data related to the account and thus an additional election to share through a joint account management service is not necessary. We note protections exist in the Rules where a data holder is able to refuse to disclose the required CDR data to prevent physical or financial harm.⁵⁹ Schedule 3, paragraph 3.2(3)(b) of the Rules does not permit one joint account holder in banking to request or authorise the disclosure of the other joint account holder's customer data, which is information that identifies or is about a person. We propose to make a similar rule for CDR in energy.

We seek stakeholder views on whether this is an appropriate approach for the energy sector. We are conscious of ongoing work in the energy sector on improving protections for customers affected by family violence, and intend to ensure our approach is consistent where relevant.⁶⁰

Nominated persons

By nominated persons we refer to those who have been added to the account as a known person by the primary account holder, and who have been authorised, to some extent, to transact on behalf of the primary account holder. That is, they have a lesser responsibility for the account than the primary account holder, with generally a corresponding lesser ability to transact on the account. We understand that retailers may have varying levels of nominated persons, such as persons who are not financially responsible for the account but who:

- can make enquiries on the account, but are unable to make any changes to the account
- can make enquiries and changes to the account
- have full access to the account.

For CDR purposes, we do not consider nominated persons to include persons who have been given a one-off authorisation by the primary account holder to transact with the retailer on their behalf.

Nominated persons could include financial counsellors, family members who may or may not occupy the premises, or employees (for business accounts). As a nominated person for that account, the data for that account is likely to identify them.⁶¹ However, not all such nominated persons are CDR consumers. Only certain nominated persons may be CDR consumers, that is, if they are supplied the service or the service is supplied to an associate of the person.

⁵⁷ DSB, [Consumer Data Standards: Consent Flow, Phase 2 CX Stream 1 Report](#), June 2019, p. 56.

⁵⁸ KPMG, [Consumer Data Right in the Energy Sector](#), Supplementary Privacy Impact Assessment for the Commonwealth Department of Treasury, 25 May 2020, p. 31.

⁵⁹ CDR Rules, Rule 4.7.

⁶⁰ We refer in particular to the Essential Services Commission's work on improving energy retailers' protections for customers affected by family violence: www.esc.vic.gov.au/electricity-and-gas/electricity-and-gas-inquiries-studies-and-reviews/family-violence-resources-review-2018#toc-our-broader-family-violence-framework.

⁶¹ See subsection 56AI(3) of the Act which provides that a person is a CDR consumer for CDR data if in part the person is identifiable or reasonably identifiable from CDR data or other information held by the data holder or ADR of CDR data.

Recommendation 3(i) of the SPIA was that the Rules should address how to allow such persons to make consumer data requests. Consistent with this, we are seeking views on which certain nominated persons stakeholders consider may be eligible CDR consumers, or should be eligible CDR consumers able to access CDR data.⁶² Accordingly, we wish to better understand whether our understanding of nominated persons as discussed above is accurate, and if not, how retailers characterise and deal with nominated persons.

We also seek specific feedback on how retailers authenticate nominated persons. We understand that retailers hold identifying information of nominated persons for verification purposes. We would like to know whether these authentication processes are consistent with those for account holders, such that nominated persons can also be authenticated for CDR purposes in line with the processes set out in section 4.3 below.

4.2.3.2 Minors

We are considering the extent to which minors should be included in the definition of eligible consumer, and welcome stakeholder views on reasons for their inclusion or exclusion. This is consistent with recommendation 3 of the SPIA, which was for the ACCC to review whether individuals under 18 years of age should be permitted to access CDR in energy.

We understand that minors comprise a very small proportion of account holders with electricity retailers, and that this issue was considered in the SPIA conducted in relation to the designation of the energy sector.

We note that the initial proposal to include minors in the definition of eligible consumer for CDR in banking received significant opposition during consultation on the banking rules framework.⁶³ Stakeholders were primarily concerned with minors' inability to understand what they are consenting to, and the risk of minors being subject to predatory and exploitative behaviour. It is for these reasons that we propose to exclude minors from being eligible consumers from the initial scope of CDR in energy. However, we recognise there may be compelling benefits to extending CDR in energy to minors, and seek stakeholder views on this.

We note that if minors are included as eligible CDR consumers, we may consider making rules to put in place additional safeguards for these consumers to mitigate the potential for exploitative practices. Interoperability and consistency between sectors will also need to be considered.

4.2.3.3 Active accounts

For the initial scope of CDR in energy, we are considering whether to make a rule to the effect that a CDR consumer must have an active account with an electricity retailer to be an eligible CDR consumer. That is, the CDR consumer must currently be in a retail contract with a retailer for the supply of electricity or linked to the person who is a party to the contract by being a nominated person. This is consistent with recommendation 3 of the SPIA, which was for the ACCC to review whether individuals with closed or inactive accounts should be permitted to access CDR in energy.

We seek stakeholder views on whether there are compelling use cases for the sharing of retailer-held consumer data sets for inactive accounts (that is, an account that exists for a

⁶² Section 56GE of the Act provides for the making of regulations that may declare the provisions in Part IVD of the Act apply in relation to a particular person or class of persons as if specified provisions were omitted, modified or varied as specified in the declaration.

⁶³ The rules framework underpinning the implementation of CDR in banking and stakeholder submissions are at: www.accc.gov.au/focus-areas/consumer-data-right-cdr-0/accc-consultation-on-rules-framework.

customer that has switched away from a retailer) and whether this should be brought in scope at a later time.

To be clear, if we make a rule that an eligible CDR consumer must have an active account with an electricity retailer, we consider that a consumer will still be able to share AEMO-held metering data sets relating to the period that the consumer had an active account with a previous retailer. This is contingent on the consumer being able to be authenticated with their current retailer and AEMO being able to verify that the customer was and is linked to the NMI for the time period relating to the data sharing request.⁶⁴

We understand that retailers maintain searchable records of inactive customer accounts to meet record keeping and data provision obligations. While there are clear distinctions between the banking and energy sectors in relation to closed accounts, it is noted that in the banking sector, closed accounts for current customers of major banks will be brought within scope in November 2020.

As noted above, recommendation 3(ii) of the SPIA is that CDR Rules may need to impose additional requirements on data holders if we decide to extend the definition of eligible CDR consumer to persons with closed or inactive accounts. This may include a modification to Rule 4.26 to ensure that a CDR consumer's authorisation does not lapse if their energy account becomes inactive. It may also require an additional step in the authentication process, whereby the data holder must notify the gateway and the ADR about when the CDR consumer became an eligible CDR consumer and any circumstances where a person ceases to be an eligible CDR consumer.

We welcome stakeholder feedback on what rules changes may be required if we extend the definition of eligible CDR consumer in this way. We will aim to strike the correct balance between preventing CDR consumer data being shared where a consumer is no longer an eligible CDR consumer, while also facilitating data sharing in respect of closed or inactive accounts where appropriate.

4.2.3.4 Online and offline accounts

Most energy retailers provide an area on their website or an app that a consumer can log into to access their account details and interact with their retailer (such as by paying a bill). In the energy context, we consider a consumer to have an online account with their retailer if the consumer's account is set up so that it can be accessed via such a website or app.

The ACCC understands that, while consumer uptake of online accounts may be increasing across retailers, a large proportion of consumers either do not have an online account with their retailer or do not use their online account as the dominant mode of interacting with their retailer. Some retailers do not offer online account functionality at all.

The lack of an online account does not necessarily mean that an energy consumer is not digitally enabled (see also section 4.3.3.2 for further discussion on digital enablement in the energy sector). We consider that the lack of an online account should not prevent an energy consumer from being able to share their CDR data. We think that this is particularly important in the energy sector, given the larger proportion of consumers who do not have an online account with their retailer (compared to consumers who do not have an online account with their bank) and the potential for CDR to increase engagement by supporting basic energy retail product comparison and switching use cases.

⁶⁴ The ACCC has made a submission to the AEMO's Market Settlement and Transfer Solutions (MSATS) standing data review seeking a 'change in account holder field' to enable AEMO to perform this check. See [ACCC submission to MSATS standing data review](#), 27 March 2020.

We therefore propose that the Rules do not limit consumers who do not have an online account with their retailer from being eligible CDR consumers but we would like to understand stakeholder views on particular barriers to inclusion of these consumers and how these barriers might be overcome.⁶⁵

We note that our preliminary position is linked to the chosen authentication model being able to support an authentication process that is not contingent on the consumer having an online account with their retailer. We will also need to consider how this preliminary position will impact the obligations for data holders to provide a consumer dashboard for consumers to see and manage their authorisations to disclose CDR data, given current Rules require both accredited person and data holder dashboards to be provided as an online service.⁶⁶

4.2.3.5 Large customers

We consider that CDR will most obviously be of value to mass market customers, including both residential and small to medium businesses, given CDR's ability to support comparison and other basic use cases.⁶⁷ We would like to understand stakeholder views on whether the rules should limit any particular customers from the initial scope of CDR in energy, or, alternatively, whether any particular data sets for particular customers should be excluded from the initial scope of CDR in energy.

For example, we understand that significantly large commercial and industrial customers have sophisticated energy management and data access arrangements and that these customers are often on bespoke or highly negotiated contracts with their retailer and metering data provider. It may be that CDR is not as immediately beneficial for these customers compared to residential and small business customers. However, we also understand that it may be useful for certain data sets such as metering data and NMI standing data to be available for all customers, for example, to assist in the conduct of building energy performance assessments in the commercial building sector.

We therefore seek stakeholder views on the costs and benefits of maintaining a broad approach to 'eligible CDR consumer', and what (if any) limitations we should consider at least initially, including limitations to data sets for particular customers. We are particularly interested in views on how to differentiate between large customers that are small to medium enterprises but consume high volumes of electricity, and significantly larger commercial and industrial customers.

⁶⁵ The Australian Government's Inquiry into Future Directions of CDR is also considering how CDR can be developed in a manner that accounts for diverse customer needs including vulnerable customers in terms of access to relevant technologies. See Australian Government, [Inquiry into Future Directions for the Consumer Data Right](#), Issues Paper, March 2020, p. 7.

⁶⁶ See CDR Rules, subrules 1.14(1) and 1.15(1).

⁶⁷ See definition of 'small customer' in the section 2(1) of the National Energy Retail Law and definition of 'domestic and small business customer' under section 3 of the Electricity Industry Act.

Consultation questions: eligible consumer

8. Do you agree with our approach to determining an eligible CDR consumer? Why or why not? What additional factors should we consider? In providing a response you may wish to address the following:
 - What are the risks and benefits of including minors as eligible CDR consumers? If minors are included, what additional safeguards are required (if any)?
 - What use cases exist for retailer-held consumer data sets for inactive accounts? What changes to data holder obligations would be appropriate to facilitate this?
 - How might we facilitate the inclusion of customers who do not have an online account with their retailer as eligible CDR consumers? What particular issues will need to be resolved?
 - Should any particular customers, such as large customers, be excluded from the initial scope of CDR in energy? How should our approach account for the spectrum of large customers (for example, significantly large customers versus mass market large customers)? What thresholds or definitions might we use in determining these customers?
 - Are existing protections in the Rules that place restrictions on accredited persons seeking consent and where disclosure of data would create a risk of harm (for example, Rules 4.12(3)(b) and 4.7) appropriate for CDR in energy or do they require some adaption?
9. Is our characterisation of energy joint accounts and energy nominated persons accurate?
10. Is our proposed approach to facilitating data sharing for joint accounts appropriate for the energy sector?
11. Should nominated persons or certain nominated persons be eligible CDR consumers?
12. What particular arrangements exist for nominated persons who are able to transact on business accounts?

4.3 Authentication

Summary of proposals

We propose:

- to extend the strong consumer authentication model used in CDR in banking, based on consumer redirection, to CDR in energy
- to facilitate a model based on authentication by the CDR consumer's current retailer
- to allow other data holders to rely on authentication by the CDR consumer's current retailer, to avoid CDR consumers needing to authenticate with multiple data holders.

4.3.1 Context

Our proposed approach to authentication of ADRs in CDR in energy is described at section 4.1 of this document.

We recognise that for consumer authentication there is a balance to be struck between ensuring security of data sharing and a satisfactory consumer experience. As we extend the rules to the energy sector, we remain of the view that the balance should be weighted towards ensuring a high degree of security for consumer data, provided that friction in the user experience is kept within acceptable bounds.

4.3.2 Current Rules

The Rules require the Data Standards Chair to make data standards about ‘authentication of CDR consumers to a standard which meets, in the opinion of the Chair, best practice security requirements.’⁶⁸ Those standards are applied in the Rules and as binding standards.

The authentication obligation imposed on data holders is as follows:

- a. data holders are required to provide online services that can be used by accredited persons to make consumer data requests (Rule 1.13)
- b. these online services are required, among other things, to conform with the data standards (subparagraphs 1.13(1)(a)(v) and (b)(iii)), and
- c. the authentication requirement is a binding data standard, with the effect described above at section 4.1.3.5 (subrule 8.11(2)).

In practice, in the banking sector after giving consent, the consumer is redirected from the ADR’s website to the data holder’s authorisation function. The consumer is asked to provide a pre-existing user ID, after which the data holder sends the consumer a one-time password (OTP) via an existing channel or mechanism. Entry of the OTP allows the data holder to authenticate the consumer. The data holder must then obtain the consumer’s authorisation decision before it releases any CDR consumer data.⁶⁹

4.3.3 Issues in energy

4.3.3.1 Using a redirect model for CDR in energy

The authentication flow described at section 4.3.2 was selected both for its appropriateness in relation to data sharing in banking and for its extensibility to other sectors, including energy. In principle, we consider it is appropriate to follow a similar approach, leveraging existing consumer authentication processes, by requiring a redirect model for authentication in relation to data sharing in energy.

This has a number of benefits. We consider that the high degree of security ensured by a redirect model (a type of ‘strong authentication’, where the data holder must verify the consumer’s identity) will foster consumer trust in CDR. The consistency of approach will also facilitate interoperability, benefitting ADRs that seek to provide cross-sectoral CDR services to consumers. Finally, it will give assurance to retailer data holders that data transfers are authorised by verified end-consumers, mitigating the risk of reputational damage caused by data breaches.

We recognise, however, that certain features of the energy sector are likely to require a modified approach to authentication. These include:

⁶⁸ CDR Rules, Rule 8.11(c)(i).

⁶⁹ See <https://consumerdatastandardsaustralia.github.io/standards/#authentication-flows>

- the role of AEMO as a designated gateway, acting between ADRs and data holders (see figure 2 at section 4.1.1 for a visual representation of how this changes information flows)
- the presence of AEMO as a data holder with whom consumers have no pre-existing relationship. This could lead to CX issues if consumers are asked to authenticate with the gateway, due to consumer unfamiliarity with AEMO
- the fact that the data held by AEMO as a designated data holder is not contextualised (that is, it is not linked to a particular consumer at a premises), meaning AEMO lacks the ability to verify a consumer's identity without retailer input, and
- the likelihood that ADRs will need data from more than one data holder for certain use cases.

In relation to the fourth of these issues, while it is currently the case that in the banking sector a consumer might need to authenticate with more than one data holder for a single ADR use case, this is because it is common for the consumers to simultaneously have multiple financial products and multiple service providers. In energy, we do not consider it is appropriate that a customer should have to authenticate with multiple data holders for a single electricity supply service. This is consistent with our view on the provision of dashboards by a single data holder, as discussed in section 4.4.3.

Further, while AEMO lacks the ability to verify a consumer's identity without retailer input, we are conscious that AEMO holds potentially valuable data sets that may facilitate certain beneficial use cases for CDR consumers, such as tailored price comparisons. We therefore discuss the potential for the ACCC to phase in retailer data holders in groups over a period of time at section 4.6.3, including in relation to authentication, and seek stakeholder views accordingly.

Finally, we are also seeking feedback on whether it would be appropriate from a policy perspective to adopt an alternative or additional method of authentication in relation to these specific data sets. Instead of 'strong authentication', which relies on the consumer's identity, it may be possible to permit authentication based on some other factor(s), allowing AEMO to share data it holds without the need for retailer input. We welcome views on whether it would be appropriate to permit these specific data sets to be shared, for example, where a person is able to provide the NMI, postcode and the name of the current retailer for a premises.

This approach may have the benefit of providing access to a limited version of CDR data sharing for a wider range of consumers. However, we are also mindful of the potential risks in respect of privacy and information security, and the costs of creating an authentication model that does not align with other CDR sectors such as banking. We would welcome additional feedback to assist us in considering the advantages and disadvantages of alternative approaches to authentication.

In light of the above, our current preference is for strong authentication. We have therefore worked with the DSB and AEMO to develop two possible redirect models for strong consumer authentication in CDR in energy. The first, Model 1, requires data holders to carry out consumer authentication. In Model 2, the gateway is given a more significant, centralised role.

4.3.3.2 Digital enablement in the energy sector

We understand that digital access in energy is less well advanced than in the banking sector. As discussed in more detail at section 4.2.3.4, it may therefore not be appropriate to import the banking sector requirement for an eligible consumer to have an online account in order to make a request under CDR in energy.

We do not consider, however, that the fact that a consumer does not have an online energy account necessarily means that they will not be digitally enabled. The DSB's CX research, for example, found that participants with low or no digital adoption in energy 'used digital channels elsewhere, including online banking to pay energy.'⁷⁰ The DSB concluded this suggests digital adoption is 'sector and not consumer driven.'⁷¹ This is consistent with our view that most consumers are likely to interact with CDR in energy via apps offered by technology companies, and so we expect that in most cases authentication will occur via redirection of these consumers to online portals.

Some stakeholders have expressed concern that online-only authentication models will exclude some consumers from accessing CDR in energy, particularly older consumers.

We can confirm that the authentication models described below can, in principle, accommodate offline consumers. We are keen to get feedback, however, on the potential privacy implications of accommodating offline authentication. While this is a risk with any redirect model, as identified in the Review into Open Banking in Australia (**Farrell Review**),⁷² we would welcome views on the extent of potential risks in implementing either model in a way that encourages consumers to, for example, engage with data holder authentication services by telephone.

⁷⁰ Data Standards Body, [Consumer Experience Research Phase 3: Round 1 and 2](#), March 2020, p. 17.

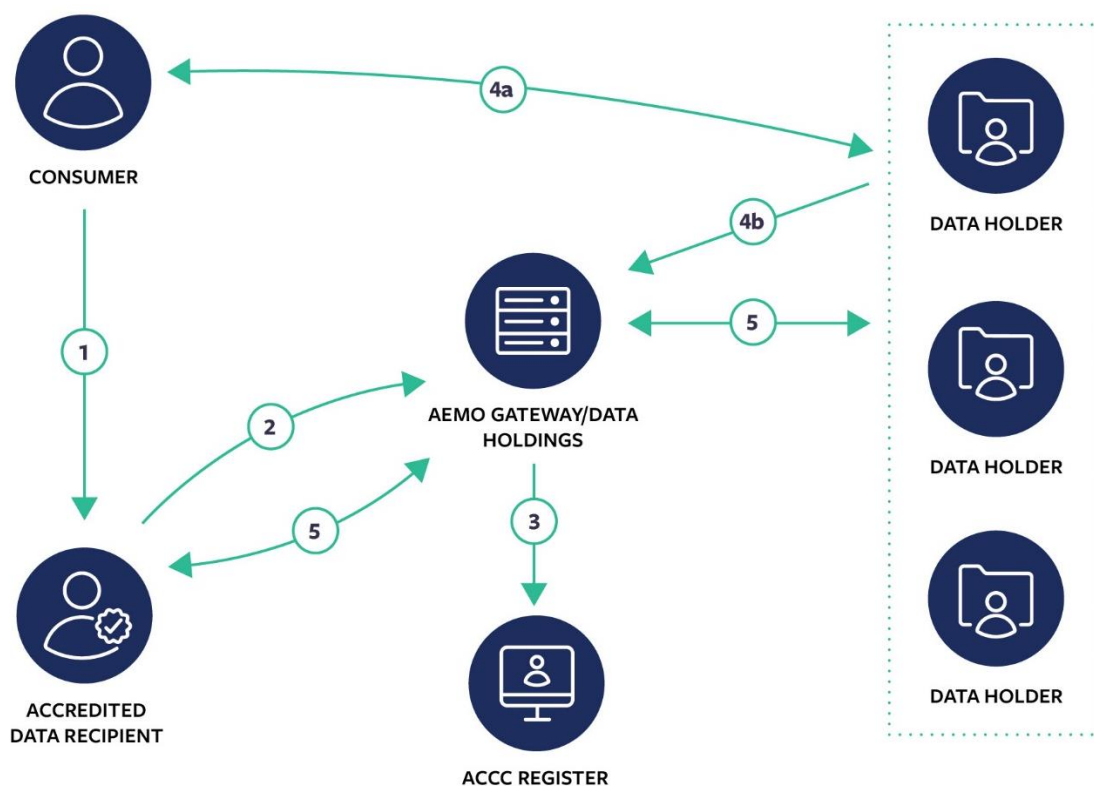
⁷¹ *ibid.*

⁷² The Treasury, [Review into Open Banking in Australia](#), Final Report, December 2017, p. 84.

4.3.4 Proposed authentication models

4.3.4.1 Model 1

Figure 3: Information flows in Model 1



1. Consumer consents to an accredited data recipient obtaining their data
2. The accredited data recipient contacts the gateway, seeking to access the consumer's data from a specific data holder
3. The gateway authenticates the accredited data recipient using the ACCC Register
- 4a. Consumer is redirected to the data holder's authentication and authorisation service. The data holder authenticates the identity of the consumer via a One Time Password. The consumer authorises the data holder to disclose their data to the accredited data recipient
- 4b. Current retailer data holder confirms successful authentication and authorisation to the gateway, and provides information to link the consumer to the relevant NMI
5. The accredited data recipient requests a specific set of data that is covered by the authorised consent. The consumer's data is shared with the accredited data recipient via the gateway

We consider that advantages of Model 1 include:

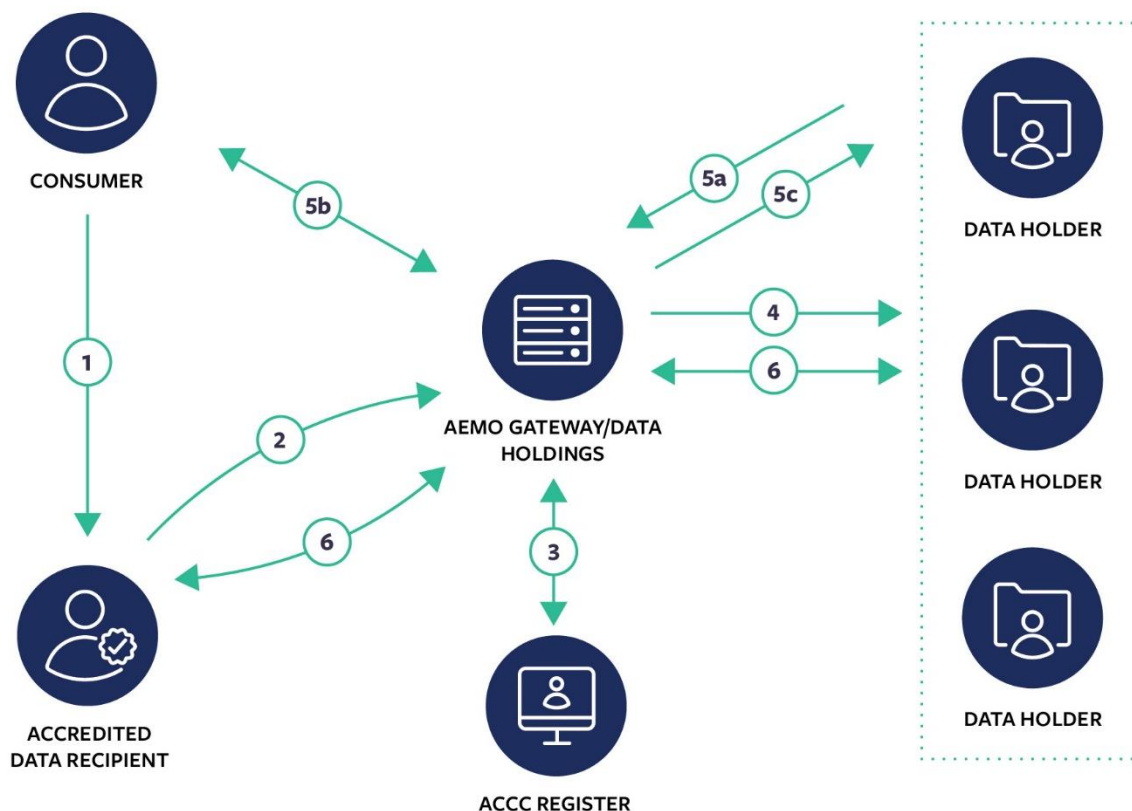
- authentication is wholly carried out by the consumer's current retailer, with whom they have an ongoing relationship
- the model leverages existing retailers' authentication processes (albeit some of these may currently be implemented offline, rather than via an online portal)

- flexibility for market-led solutions for outsourced consumer authentication services to be developed and offered to retailers in future,⁷³ and
- consistent with recommendation 4 of the SPIA:
 - there are comparatively fewer data flows than in Model 2, below, as consumers/ADRs only need the name of the consumer's retailer in order for the consumer to be redirected to the correct authorisation endpoint
 - there is no need for the gateway to receive additional personal data from the consumer that could contextualise designated data that AEMO holds as a data holder, and
 - Model 1 will encourage retailers to develop robust authentication systems prior to seeking the consumer's authorisation.

⁷³ If we proceed to implement Model 1, we will have regard to recommendation 3(ix) of the SPIA to ensure that outsourced authentication of this kind is managed via an appropriate outsourcing arrangement.

4.3.4.2 Model 2

Figure 4: Information flows in Model 2



1. The consumer consents to an accredited data recipient obtaining their data
2. The accredited data recipient contacts the gateway, seeking to access the consumer's data. The accredited data recipient provides the consumer's identity to the gateway
3. The gateway authenticates the accredited data recipient using the ACCC Register
4. The gateway identifies the current retailer and requests consumer contact details to facilitate authentication and authorisation
- 5a. Current retailer provides contact details to gateway
- 5b. Consumer is redirected to the gateway's authentication and authorisation service. The gateway uses the consumer's contact details to send a One Time Password. The consumer authenticates by entering the One Time Password on the gateway's authentication screen and authorises the data holder(s) to disclose their data to the accredited data recipient
- 5c. The gateway confirms successful authentication and authorisation to the data holder(s)
6. The accredited data recipient requests a specific set of data that is covered by the authorised consent. The consumer's data is shared with the accredited data recipient via the gateway

We consider that advantages of Model 2 include:

- lower authentication capability required for retailers, potentially leading to lower retailer build costs⁷⁴, and
- AEMO's IT expertise and scale may lead to quicker and more efficient implementation.

⁷⁴ We would be grateful for feedback on the effects of different authentication models on data holder costs. Please see section 5 for guidance on how to submit this feedback.

However, Model 2 necessitates the transfer of additional personal information and/or CDR data to the gateway than Model 1. For example, the ADR will need to identify the CDR consumer to the gateway, and the gateway will need to source the CDR consumer's contact details from the retailer. This is likely to increase the privacy and data risks, given the relevant data will be transferred and held by more parties than would be the case under Model 1.

To mitigate these risks, if we proceed to implement Model 2, we will have regard to recommendation 3(viii) of the SPIA that our rules should ensure that a data holder is only required to supplement personal data that the ADR has provided to the gateway for the purposes of authentication. We will also specify, and thereby limit, the personal information (if any) that the data holder must disclose to the gateway under Model 2.

Whichever authentication model we select, we will have regard to recommendation 3(x) of the SPIA that ADRs should be required to provide any information that is necessary to ensure that the gateway and data holder(s) can appropriately source the CDR consumer's data. We agree that this will mitigate the risk of data being disclosed inappropriately, for example if there is a mismatch between such as the NMI held by the data holder and the gateway.⁷⁵

4.3.4.3 Preferred option

Having considered the costs and benefits outlined above, and consistent with recommendation 4 of the SPIA, our preferred option is Model 1. However, we welcome feedback from all stakeholders on the following consultation questions.

In addition, while the options above are about the provision of authentication and authorisation functionality to a consumer, how the dashboard is presented to the consumer is a separate question. For example, it may be appropriate for an AEMO-provided portal to be 'white labelled' with the retailer's brand in order to provide the CDR consumer with a consistently-branded experience between their interaction with energy inside and outside CDR. Further CX research could also test what branding supports a trusted and low friction consumer experience.

Consultation questions: authentication

13. Do you agree that strong consumer authentication based on a redirect model is the correct authentication model for CDR in energy? If not, please set out your preferred alternative model, and the risks and benefits of that approach.
14. Do you agree that data holders should be able to rely on a single authentication carried out by another data holder?
15. What are the risks and benefits of allowing customers to engage with a redirect-based authentication model offline (for example, by telephone)?
16. What are the costs and benefits for stakeholders associated with Model 1 and Model 2?
17. Do you agree with our preference to implement Model 1 as the authentication model for CDR in energy?
18. Should the ACCC and DSB also facilitate Model 2, for example as an alternative for retailers who are unable to build the authentication capability required by Model 1?

⁷⁵ It may be that these safeguards would be more appropriately implemented via the data standards, and will liaise with the DSB to ensure this is captured appropriately.

19. If the ACCC and DSB facilitate Model 2, what consumer experience factors should we take into account with respect to how dashboards should be presented to CDR consumers?

4.4 Dashboards

Summary of proposals

- Our proposals relate to the provision of data holder dashboards. We consider the approach to accredited person dashboards will remain consistent with the current Rules.
- Our preference for the provision of data holder dashboards is that one party, either the retailer data holder or AEMO as the gateway, be responsible for providing the dashboard in relation to all energy consumer data requests for a consumer in relation a single product (that is, the consumer's current electricity supply).
- We provide three options for achieving this:
 - Option 1 - dashboard to be provided by the consumer's current retailer for all energy consumer data requests relating to the consumer
 - Option 2 - dashboard to be provided by AEMO for all energy consumer data requests relating to the consumer
 - Option 3 - dashboard to be provided by the consumer's current retailer for all energy consumer data requests relating to the consumer using an AEMO-provided authentication data application programming interface (API).
- The intended effect of each of these options is that the consumer will only need to engage with one dashboard to manage their authorisations.

4.4.1 Context

The Rules require accredited persons and data holders to each have an online system in place that allows consumers to manage their consumer data sharing consents and authorisations, respectively. The Rules refer to these consent/authorisation management systems as consumer dashboards (**dashboards**).

We note that the functionality of dashboards may change as the CDR regime evolves. In particular, an inquiry into the future directions of CDR is currently looking at the scope of current CDR 'read' access functionality and options to expand it. This could include looking at how best to enable consumers to keep track of, and manage, their various consents.⁷⁶

For CDR in energy, our focus is on the approach to data holder dashboards. We consider the approach to accredited person dashboards will remain consistent with provisions in the current Rules.

4.4.2 Current Rules

Rule 1.15 sets out a data holders' dashboard obligations. If a data holder receives a consumer data request from an accredited person on behalf of a CDR consumer, the data

⁷⁶ Australian Government, [Inquiry into Future Directions for the Consumer Data Right](#), Issues Paper, March 2020, p. 5.

holder is required to provide an online dashboard that can be used by the CDR consumer to manage:

- authorisations to disclose CDR data in response to the request, and
- withdrawal of authorisations.

The data holder dashboard can be used to notify the CDR consumer of the disclosure of CDR data, as required under privacy safeguard 10.⁷⁷

In the banking sector, data holders are required to meet specific requirements for the provision of dashboards for joint accounts. If an accredited person makes a consumer data request that relates to a joint account, the other joint account holder must also be provided with a dashboard.⁷⁸

4.4.3 Issues in energy

We consider specific arrangements for data holder dashboards will likely be needed in the energy sector. This is because multiple parties, being retailers and AEMO, are designated as data holders for different energy consumer data sets relating to the consumer's electricity supply. This distinction does not arise in the banking sector, where currently all data sets for a product are held by one party, namely the consumer's bank.

As the Rules currently operate, each data holder is responsible for providing a dashboard to a CDR consumer in relation to accredited person requests for the consumer data sets that the data holder itself holds. Therefore, if the status quo were retained for the energy sector:

- retailers (and, if in scope, historical retailers) would be responsible for providing a dashboard for customer data, billing data and tailored tariff data requests, and
- AEMO would be responsible for providing a dashboard for NMI standing data, metering data and DER register data requests.

We consider this is not an ideal outcome from a consumer experience perspective, given a single consumer data request may span data sets held by AEMO and retailers. We do not think it is appropriate that a consumer should be required to visit multiple dashboards to withdraw authorisation in relation to a single product, being the consumer's electricity supply. A consumer is also unlikely to know, and nor should be expected to know, which data holder holds which data sets, and therefore where to go to manage their authorisations.

For these reasons, our preference for the provision of data holder dashboards is that one party is responsible for providing the dashboard in relation to all consumer data requests for a consumer. We provide, and invite stakeholder views on, three options for achieving this in sections 4.4.3.1 to 4.4.3.3 below.

Each of these options will require the dashboard provider to have the ability to change or withdraw authorisations upon consumer request where the dashboard provider is the data holder and to do so in accordance with the current approach in the Rules. In addition, we are proposing to require the dashboard provider to facilitate a change to or withdrawal of authorisations in relation to data that it does not hold.

Our final position on dashboards will be impacted by our position on phased implementation and whether we proceed with exempting certain retailers from CDR

⁷⁷ CDR Rules, Rule 7.9.

⁷⁸ CDR Rules, Schedule 3, clause 4.4.

obligations (see section 4.6.4 for further detail on phased implementation). If this is the case, it may be appropriate to allow for a combination of the below options (for example, option 1 or option 3 could apply to retailers with CDR obligations, with option 2 applying where retailers are exempt).

4.4.3.1 Option 1 - retailer to provide dashboard

In this option, the dashboard would be provided by the consumer's current retailer for all energy consumer data requests relating to a single product (that is, the consumer's current electricity supply). The retailer would be obligated to provide a dashboard in relation to consumer data requests for both the data that it holds (consistent with Rule 1.15) and AEMO-held data sets.

The intended effect is that the consumer will only need to engage with one dashboard provided by their retailer to manage their authorisations for a single product.

The retailer, as the consumer-facing data holder with a direct relationship with the consumer, would be required to convey to the consumer information about all of the data that is disclosed including data disclosed by AEMO. It is likely that we would need to make a rule that required AEMO, as data holder, to notify the retailer of the disclosure of CDR data, in order for the retailer to provide that notification on the dashboard.

The retailer could choose to engage a third party provider for dashboard services. However, any conduct engaged in on behalf of the retailer would be deemed, for the purposes of the Act and the Rules, to have been also engaged in by the retailer.⁷⁹

4.4.3.2 Option 2 - AEMO to provide dashboard

In this option, the dashboard would be provided by AEMO for all energy consumer data requests. AEMO would be obligated to provide a dashboard in relation to consumer data requests, both for the data that it holds (consistent with Rule 1.15) and for the data for which it is a designated gateway (that is, retailer-held data sets).

The intended effect is that the consumer will only need to engage with one dashboard provided by AEMO to manage their authorisations for a single product.

For this option, we would make a rule to the effect requiring AEMO as a gateway for CDR data to provide a dashboard on behalf of a retailer, where the retailer is a data holder for that CDR data.

Similar to option 1 above, AEMO could engage a third party provider for dashboard services. However, any conduct engaged in on behalf of AEMO would be deemed, for the purposes of the Act and the Rules, to have been engaged in by AEMO.

We note that to be able to provide a dashboard to a consumer, this option would require AEMO to have some way of authenticating the consumer, which may involve AEMO accessing or holding information about the consumer that they currently do not hold or access. We consider that authentication options for an AEMO-provided dashboard could align with the options provided in section 4.3.4.

⁷⁹ See subsections 84(2) and (4) of the Act.

4.4.3.3 Option 3 - retailer to provide dashboard using AEMO-provided authorisation data API

In this option, AEMO would be designated as a data holder for authorisation information.⁸⁰ Authorisation information would encompass the details of each authorisation as set out in subrule 1.15(3). Standardised APIs for all consumer data requests will be created by AEMO based on the authorisation information that they receive from retailers when acting as the gateway, and the authorisation information they hold themselves as a data holder. Dashboards, which can present information via these APIs, would then be required to be provided by the consumer's current retailer.

The retailer would be obligated to provide a dashboard that is able to display the information relating to energy consumer data requests for both the data that it holds (consistent with Rule 1.15) and AEMO-held data sets, and from which the consumer could manage all of their authorisations. The intended effect is that the consumer will only need to engage with one dashboard provided by their retailer to manage their authorisations for a single product. Additionally, the standardisation provided by the AEMO API containing authorisation information will allow for greater consistency of data holder dashboards across the sector.

The retailer as the consumer-facing data holder with a direct relationship with the consumer would be required to convey to the consumer information about all of the data that is disclosed, including data disclosed by AEMO. It is likely that we would need to make a rule that required AEMO, as data holder, to notify the retailer of the disclosure of CDR data, in order for the retailer to provide that notification on the dashboard. The retailer could choose to engage a third party provider for dashboard services. However, any conduct engaged in on behalf of the retailer would be deemed, for the purposes of the Act and the Rules, to have been also engaged in by the retailer.

4.4.3.4 Opportunities for CX research

In considering the approach to data holder dashboards, opportunities arise for testing through CX research. In particular, at present retailers have a consumer-facing relationship whereas AEMO does not. It follows that consumers may naturally expect to be able to manage their data sharing authorisations with their retailer. It may also be that some consumer education would be needed to enhance consumers' understanding of AEMO's role as a data holder and gateway. This is an area that may warrant testing through CX research.

In addition, while the options above are about the provision of a dashboard to a consumer, how the dashboard is presented to the consumer is a separate question. For example, it may be appropriate for an AEMO-provided dashboard to be 'white labelled' with the retailer's brand in order to provide the CDR consumer with a consistently-branded experience between their interaction with energy inside and outside CDR. Further CX research could also test what dashboard branding supports a trusted and low friction consumer experience.

Consultation questions: dashboards

20. Of the three options for data holder dashboards, which do you prefer and why?
21. What are the advantages and disadvantages of each of the options?
22. What other options should we consider?

⁸⁰ We note that this information is not currently designated information.

23. Noting our intention to include customers without an online account with their retailer as eligible CDR consumers (see section 4.2.3.4) how might dashboards be provided for these consumers?
24. What consumer experience factors should we take into account with respect to how dashboards should be presented to CDR consumers?

4.5 Dispute resolution

Summary of proposals

- We propose to make rules that align energy sector internal dispute resolution (**IDR**) requirements with existing requirements as set out in section 81 of the National Energy Retail Law (**Retail Law**) and clause 59A of the Energy Retail Code (Victoria).
- We are considering whether additional rules are needed to align energy sector IDR requirements with the banking sector IDR requirements.
- We propose that the gateway be subject to IDR requirements, but this is contingent on the extent to which consumers are aware of the gateway's role in facilitating data sharing.

4.5.1 Context

4.5.1.1 External dispute resolution

Accredited persons and data holders must also be a member of a recognised external dispute resolution scheme in relation to CDR consumer complaints. The Act requires that the ACCC may, by notifiable instrument, recognise an external dispute resolution scheme for the resolution of disputes in relation to CDR.⁸¹ We note that the Treasury is considering the appropriate external dispute resolution scheme arrangements for CDR in energy. As such, this section of the paper deals only with internal dispute resolution (**IDR**).

4.5.1.2 Internal dispute resolution

As a first step to resolve complaints from CDR consumers, data holders and ADRs are required to have IDR processes in place that meet the requirements of the designated sector in which they operate (or one of its designated sectors, in the case of an ADR).

4.5.2 Current Rules

The Rules currently provide that IDR processes are a requirement for:

- accredited persons that operate at the 'unrestricted level',⁸² and
- designated data holders.⁸³

The required IDR processes are set out in the Rules by sector. Data holders, in relation to a particular sector, are required to meet the IDR requirements for that sector, while accredited persons must have processes that meet the IDR requirements in relation to one or more designated sectors.

⁸¹ See section 56DA of the Act.

⁸² CDR Rules, paragraph 5.12(1)(b).

⁸³ CDR Rules, Rule 6.1.

Accredited persons or data holders operating in the banking sector meet the IDR requirements if their IDR processes comply with the provisions of Regulatory Guide 165 (RG 165) for the purposes of CDR consumer complaints, as outlined in Part 5.1 of Schedule 3 of the Rules. RG 165 is published by the Australian Securities and Investments Commission (ASIC) and sets out its requirements for IDR systems.

Currently, the IDR requirements in the banking sector apply to CDR consumer complaints (that is, complaints made by a CDR consumer to or about a data holder or ADR). IDR requirements do not relate to complaints to or about CDR entities (that is, CDR participants or designated gateways) from other CDR entities.

4.5.3 Issues in energy

Requirements currently exist for energy retailers to have in place IDR procedures for handling small customer complaints. These are set out in the Retail Law and the Energy Retail Code (Victoria), at section 81 and clause 59A respectively. Retailers must have IDR procedures that are ‘substantially consistent with the Australian Standard AS ISO 10002-2006 (*Customer satisfaction—Guidelines for complaints handling in organizations*) as amended and updated from time to time.’⁸⁴

We understand AS ISO 10002-2006 has now been superseded by AS/NZS 10002:2014, and is now the relevant complaints management standard for retailers.⁸⁵ In relation to CDR in banking, RG 165 still references AS ISO 10002-2006 specifically and has not yet made the transition to AS/NZS 10002:2014. We understand ASIC is in the process of updating RG 165 to incorporate AS/NZS 10002:2014, but this may be on hold temporarily.⁸⁶

We consider it appropriate to retain the approach of having sector-specific IDR requirements that are consistent with the existing requirements in the Retail Law and the Energy Retail Code. However, we are aware that this approach raises an overarching question about the broader CDR approach to IDR, and whether sector-specific IDR requirements should be maintained, or whether we should seek consistency of IDR requirements as more sectors are brought into the CDR regime.

Regarding our approach to IDR requirements for CDR in energy, we are considering:

- whether IDR requirements should be aligned with the banking sector IDR requirements, given there are some elements of RG 165 that go beyond AS ISO 10002-2006 and AS/NZS 10002:2014, and
- whether the gateway should be subject to IDR requirements for CDR consumer complaints.

In addition to the overarching question about consistency, we also note that some CDR participants in banking have raised the issue of whether the Rules should require IDR processes for complaints from CDR participants to and about these same parties.

4.5.4 Our proposed position

4.5.4.1 IDR approach for CDR in energy

We propose to make rules that align energy sector IDR requirements with the existing requirements as set out in section 81 of the Retail Law and clause 59A of the Energy Retail Code. We seek stakeholder views on whether additional rules are required to, in turn,

⁸⁴ National Energy Retail Law, section 81(3); Energy Retail Code, clause 59A(1).

⁸⁵ See www.standards.org.au/standards-catalogue/sa-snz/publicsafety/gr-015/as-slash-nzs--10002-colon-2014

⁸⁶ See ASIC, *Consultation Paper 331, Internal dispute resolution: Update to RG 165*, May 2019.

align energy sector IDR requirements with the banking sector IDR requirements as provided in Schedule 3, Part 5 of the Rules.

RG 165 contains the following requirements that are not addressed in AS ISO 10002-2006 or AS/NZS 10002:2014:

- outsourcing IDR procedures⁸⁷
- timeframes within which businesses should acknowledge, respond to and seek to resolve complaints⁸⁸
- multi-tiered IDR procedures⁸⁹
- documenting internal facing IDR processes, policies and/or procedures⁹⁰, and
- establishing appropriate links between IDR and external dispute resolution.⁹¹

We would like to understand the extent to which retailers' current IDR processes are consistent with these additional requirements of RG 165.

We may make rules requiring the gateway to comply with IDR requirements for CDR consumer complaints, but this is contingent on gateway design and the extent to which consumers are aware of the gateway's role in facilitating data sharing.

4.5.4.2 Broader CDR IDR approach

We note that as additional sectors are brought into the CDR regime and more CDR participants operate across sectors, a uniform approach to IDR may need to be adopted. This is an issue that we will continue to consider as the CDR regime evolves.

In regards to data holders that operate across both sectors, we propose that they must meet the IDR requirements of the primary sector in which they operate (that is, the sector for which the data holder has been designated), and if that primary sector is energy, that they should also meet the additional requirements of RG 165 outlined above.

We do not consider the issue of whether the Rules should require IDR processes for complaints from CDR entities to and about these same parties, to be an issue to be addressed in the development of the rules for CDR in energy. However, we may seek to address this issue in future considerations of the broader CDR IDR approach, and so welcome any stakeholder views on this issue.

Consultation questions: internal dispute resolution

25. Do you agree with our proposed approach to energy sector IDR? If you are an energy retailer, to what extent do you consider your current IDR processes as required under the Retail Law or Energy Retail Code meet Schedule 3, Part 5 of the Rules?
26. How important do you consider consistency of IDR approaches across sectors at this stage of the CDR regime?
27. Do you think the Rules should provide for IDR processes for complaints by CDR entities to and about these same parties? Why or why not?

⁸⁷ ASIC, Regulatory Guide 165, RG 165.76 - RG 165.77

⁸⁸ *ibid.*, RG 165.86 - RG 165.101

⁸⁹ *ibid.*, RG 165.121 - RG 165.123

⁹⁰ *ibid.*, RG 165.126 - RG 165.129

⁹¹ *ibid.*, RG 165.130 - RG 165.132

4.6 Phased implementation

Summary of proposals

We propose:

- to adopt a phased approach for the sequencing of retailers, by bringing the largest retailers into the regime initially and then phasing in remaining retailers above a customer number threshold in a second tranche (or earlier on a voluntary basis)
- to exclude small retailers below a customer number threshold from data holder obligations until they exceed the threshold or choose to come into the regime voluntarily
- that AEMO is subject to data holder obligations at commencement of consumer data sharing, and
- to consider requiring most, or all, retailers to comply with the authentication process at commencement of consumer data sharing to permit the sharing of AEMO data sets.

4.6.1 Context

Electricity retailers vary significantly by size, with some only servicing a few hundred customers and others servicing more than two million. As such, there will be wide variability in electricity retailers' ability to manage the obligations of CDR.

Therefore, similar to the approach taken in banking, we are considering a phased implementation approach for CDR in energy that targets the retailers most able to successfully implement the regime in the first instance.

4.6.2 Current Rules

The CDR Rules currently outline a phased approach for the application of CDR to the banking sector, both in relation to the sequencing of data holders and data sets. Broadly:

- data sharing obligations will initially only apply to the four major banks, with remaining banks coming online 12 months later (with the option to come online earlier if they choose)⁹²
- alternative phasing arrangements apply for certain accredited persons (such as non-bank lenders, and banks who become accredited before they are scheduled to be phased into the regime)⁹³, and
- product reference data sharing obligations commence before customer data sharing obligations.

4.6.3 Issues in energy

In deciding how a phased approach will work in the energy sector, we will need to have regard to the following issues:

- the ability of different retailers to manage CDR obligations
- whether to exempt any retailers, such as those who might be too small to be able to comply with data sharing obligations at all

⁹² Subject to completion of any testing and other on-boarding requirements required by the ACCC at the relevant time.

⁹³ These accredited persons are data holders by virtue of subsection 56AJ(3) of the Act. This 'reciprocity' provision states that an accredited person can be a data holder if it holds CDR data that was not disclosed to it under the CDR Rules.

- whether retailers who are either exempt from, or not yet subject to, data sharing obligations should nonetheless be required to participate in the authentication process. This is because AEMO cannot authenticate a customer without some retailer involvement, and customers may derive benefit from access to AEMO data in advance of their retailer being brought fully into CDR (see section 4.3.4 for the authentication options under consideration)
- how to treat energy data holders who become accredited before they are scheduled to be phased into the regime
- the most viable sequencing of when each data set should be phased in, and
- any technology and testing constraints that may impact how many retailers can practically be accommodated in the regime at commencement of consumer data sharing.

4.6.4 Proposed position

Our current thinking in relation to a phased approach is summarised below.

4.6.4.1 The use of a threshold

We will likely adopt a threshold to determine when certain retailers should be phased into the regime, and which retailers should be excluded from data sharing obligations. We are considering using retailer customer numbers as the basis for this threshold. At present, we envisage such a threshold excluding all small-tier retailers from data sharing obligations.

4.6.4.2 Sequencing of data holders

A phased implementation of data holders affects the ability to request them to disclose consumer data, and in particular retailer-held consumer data sets. Table 2 sets out our consideration of options for the phased implementation of data holders. For all options, we propose that AEMO is subject to data holder obligations at commencement of consumer data sharing.

Table 2: Options for sequencing of data holders

	Tranche 1	Tranche 2	Exclusions
Option 1	AEMO, largest Incumbents (Origin Energy, AGL, EnergyAustralia) and local incumbents (ActewAGL, Ergon, Aurora)	Remaining retailers \geq threshold	Exclude remaining retailers $<$ threshold
Option 2	AEMO and largest Incumbents (Origin Energy, AGL, EnergyAustralia)	Remaining retailers \geq threshold	Exclude remaining retailers $<$ threshold
Option 3	AEMO and 10 largest retailers	Remaining retailers \geq threshold	Exclude remaining retailers $<$ threshold

Each of the above options consists of two tranches, separated by at least 6 months (but likely longer), with the largest retailers coming into the regime during the first tranche. The threshold discussed in section 4.6.4.1 will be used to determine which retailers must come into the regime in the second tranche.

At a minimum, we would seek to have the largest incumbent energy retailers (Origin Energy, EnergyAustralia and AGL) included in the first tranche. We also expect to allow retailers that fall into the second tranche or below the threshold, if they are ready to share CDR data early, to come into the regime voluntarily at an appropriate time after the first tranche goes live.⁹⁴ Similar to the reciprocity requirements that apply under the current Rules, we also intend to consider an alternative phasing timetable for data holders who become accredited. This would bring forward obligations that would otherwise apply for those data holders at a later date.

4.6.4.3 Authentication obligations

The two authentication options considered in this paper both require some retailer involvement in the authentication process (see section 4.3.4 for the authentication options under consideration). We may therefore seek to require all or the majority of energy retailers (including those that fall below the threshold) to comply with the authentication process at the commencement of consumer data sharing to permit the disclosure of AEMO-held data sets.

4.6.4.4 Small retailers

We propose to exempt small retailers from data sharing obligations if they are below the threshold, unless they choose to come into the regime voluntarily. As discussed in section 4.6.4.3 above, we may require some or all retailers, including small retailers, to comply with the authentication process.

4.6.4.5 Sequencing of data sets

We are currently considering the below approach for the phasing of data sets.

Table 3: Proposed approach for sequencing of data sets

Tranche 1	Tranche 2
<ul style="list-style-type: none"> Generic product data 	<ul style="list-style-type: none"> NMI data Metering data DER register data Customer data Billing data Tailored tariff data

The above approach resembles the one taken in banking. We propose that prior to the commencement of consumer data sharing, generic product reference data (held by the AER and DELWP) be implemented first. We propose that when consumer data sharing commences, all consumer data sets will be available, subject to the approach taken to data holder phasing (see section 4.6.4.2).

⁹⁴ As noted above, this would be subject to completion of any testing and other on-boarding requirements required by the ACCC at the relevant time.

Consultation questions: phased implementation

28. What do you consider is an appropriate measure of retailer scale to justify being brought within scope of CDR in energy?
29. Should we apply a different measure of retailer scale for retailers serving large customers?
30. If you favour a particular measure of retailer scale (for example, customer numbers) what threshold should we set between the different tranches?
31. Which of the options for the phasing of data holders do you prefer? Why? Do any of the above options present any significant issues that we should be aware of?
32. What are the costs and benefits of phasing in retailers for the purposes of facilitating authentication only, in particular if this occurs at an earlier date than the date at which they must be able to fully participate by serving data into CDR?
33. Do you agree with our proposals to permit data holders to come into the regime early on a voluntary basis, and to phase data holders into the regime earlier than scheduled if they become accredited?

4.7 Issues relating to accreditation

Summary of proposals

Tiered accreditation

We welcome stakeholder feedback on:

- the view that energy data generally does not have the same sensitivities as banking data
- whether the current ‘unrestricted’ level of accreditation should permit persons to receive all energy data, as well as banking data
- whether it would be appropriate to create a lower tier of accreditation that could allow parties to receive less sensitive CDR data across CDR sectors, subject to appropriate restrictions
- how existing accreditation requirements, such as the current assurance reporting obligations, should be adjusted if such a lower accreditation tier is introduced.

Streamlined accreditation

- We welcome stakeholder views on whether we should take an approach similar to streamlined accreditation in the banking sector for energy data holders and government agencies that wish to become ADRs.

Conditions for accredited persons to become a data holder

- We seek stakeholder views on the conditions under which an accredited person may become a data holder for the energy data it receives under CDR.

4.7.1 Tiered accreditation

4.7.1.1 Background

The Farrell Review recommended that the accreditation system for CDR should be ‘tiered’, according to the risk of the data set and the participant.⁹⁵ This would avoid accreditation criteria creating an unnecessary barrier to entry by imposing prohibitive costs or otherwise discouraging parties from participating.⁹⁶

Under the Rules, there is currently a single level of accreditation, the ‘unrestricted’ level. This enables an ADR to receive all CDR data within scope for banking and, in view of the sensitivity of this data and the high degree of access rights, is subject to stringent obligations as set out in Rule 5.12 of the Rules. In particular, the ADR must take the steps set out in Schedule 2 of the Rules in order to ensure the security of CDR data. It must also, when applying for accreditation, provide an assurance report from a suitably qualified and independent auditor in respect of its information security controls.⁹⁷ Biennial assurance reports and attestation statements are also required after accreditation on an ongoing basis, in accordance with Schedule 1, clause 2.1 of the Rules.

In our Rules Outline, however, we signalled an intention to introduce additional levels of accreditation in subsequent versions of the Rules and, where appropriate, as the CDR regime was extended.⁹⁸ We are actively considering how additional tiers should be facilitated across CDR.

4.7.1.2 Energy data

As noted in section 3.2.2, the SPIA found consensus among stakeholders that energy data does not generally have the same sensitivities as banking data. We welcome further stakeholder views on this. But provided that energy data is not more sensitive than banking data, we consider the current ‘unrestricted’ level of accreditation, with its stringent obligations, should permit persons accredited at this level to receive all energy data, as well as banking data.

Further, if feedback continues to support the position that energy data is less sensitive than banking data, we will consider whether creating a lower tier of accreditation to access energy data is appropriate.

Policy development in this area will be subject to the evidence and feedback we receive. We are now also seeking stakeholder views on how the existing accreditation requirements could be adjusted if we were to introduce a lower tier of accreditation based on the lower risks posed by energy data.

4.7.1.3 CDR-wide tiering

We are mindful of the potential benefits to CDR of taking a cross-sectoral approach to accreditation. Promoting consistency of accreditation criteria and lowering barriers to entry has the potential to encourage greater ADR participation and innovation across sectors, leading to increased benefits for consumers. We are therefore also seeking stakeholder views on whether it would be more appropriate to create a lower tier of accreditation that could allow parties to receive less sensitive CDR data across CDR sectors, subject to appropriate restrictions.

⁹⁵ The Treasury, [Review into Open Banking in Australia](#), Final Report, December 2017, p. ix.

⁹⁶ *ibid.*, recommendation 2.8, p. 27.

⁹⁷ ACCC, [Consumer Data Right Supplementary Accreditation Guidelines](#), 25 May 2020, paragraph 2.1, p. 6.

⁹⁸ ACCC, [Consumer Data Right Rules Outline](#), 25 January 2019, paragraph 5.2, p. 12.

Given feedback has indicated banking data is generally more sensitive than energy data, we are interested in stakeholder views regarding whether any lower cross-sector tier should allow access to:

- all (or the majority of) energy data sets, and
- a limited subset of banking data sets.

Access could be limited through legal and/or technical restrictions. For example, access could be limited by the Rules placing restrictions on both what CDR data the lower tier is able to request, and what CDR data the data holder is permitted to disclose to the lower tier.

4.7.1.4 Conditions on accreditations

We understand the requirement to provide an assurance report on an accredited person's information security controls, before accreditation and on an ongoing basis, may represent a significant cost for persons applying for accreditation at the 'unrestricted' level. Given the sensitivities of banking data, the ACCC considers the requirement to be appropriate for the 'unrestricted' level.

However, we are interested in understanding views on whether the current assurance reporting obligation is also appropriate for a lower tier ADR receiving less sensitive CDR data (whether energy data only, or extended to include limited banking data sets). One option would be to require lower-tier ADRs to provide a less comprehensive assurance report before accreditation and/or on an ongoing basis. Alternatively, the lower-tier ADRs could be required to provide attestation statements to the Data Recipient Accreditor, removing the need to provide assurance reports.

We are seeking stakeholder views on how we could lower the cost of a lower tier of accreditation, while also ensuring the ACCC receives appropriate assurance that accredited persons at that tier are able to manage CDR data securely. We will continue to develop our thinking on this based on the evidence we gather.

4.7.2 Streamlined accreditation

The Rules for CDR in banking provide a streamlined accreditation process for ADIs that are specified by the Rules to be data holders and wish to be registered as ADRs on the Register. These Rules specify that such a person is not subject to the accreditation criteria set out in subrule 5.5(a); instead, they must be an ADI, but not a restricted ADI.⁹⁹

An ADR accredited through the streamlined process currently receives accreditation at the 'unrestricted' level. This permits them to access all data sets subject to CDR in banking. This streamlined approach is based on the high degree of information security, prudential standards and regulatory scrutiny already required of ADIs in the financial sector.

We are interested in stakeholders' views on whether we should take a similar approach in CDR in energy, allowing for a streamlined accreditation process for energy data holders that wish to become ADRs. We are also considering whether a streamlined accreditation process would be suitable for government agencies that wish to become accredited.

In particular, we would welcome feedback on whether existing information security standards and other regulatory obligations or sectoral arrangements, such as the AESCSF,

⁹⁹ CDR Rules, subrule 5.5(b) and Schedule 3 clause 7.3.

may provide us with sufficient assurance that energy data holders can be accredited according to a streamlined process, without compromising information security standards.

However, unless we receive evidence that energy data holders are subject to equivalent mandatory obligations as those applicable to ADIs, we consider it is unlikely to be appropriate to grant streamlined accreditation for energy data holders at the ‘unrestricted’ level, permitting access to all data sets subject to CDR. Instead, we may grant a lower degree of streamlined accreditation with more limited access. This could be consistent with one of the lower tiers proposed in section 4.7.1.3, above.

Our preliminary view is that any streamlined accreditation requirements for energy data holders should not override the requirement for ADRs to have adequate insurance or a comparable guarantee that will properly compensate consumers for any losses that may arise from a breach of an ADR’s obligations.¹⁰⁰

4.7.3 Conditions for accredited person to be a data holder

Section 56AJ(4)(c) of the Act enables the ACCC to set conditions in the Rules under which an accredited person may become a data holder for CDR data it receives under CDR.

In CDR in banking, the conditions set by the ACCC were intended to cover situations including where a consumer ‘switches’ to a new ADI to acquire a new product that is substantially the same or similar to the product they previously held.¹⁰¹ For further examples of these types of situations, please see examples 1.3 and 1.17 in the Explanatory Memorandum to the *Treasury Laws Amendment (Consumer Data Right) Bill 2019*. One effect of these conditions, if met, is that the privacy safeguards no longer apply to the relevant CDR data.

The ACCC’s view is that similar provisions are likely to be appropriate across CDR, as there will generally be value to customers who switch in being able to transfer their data to a new provider. Where we extend these provisions to new sectors we propose to retain the same or similar conditions in order to effectively safeguard the consumer. In particular, we intend to retain the requirement for informed consumer consent before a data holder is permitted to cease holding CDR data subject to the privacy safeguards.

We are therefore seeking stakeholder views on the appropriateness of applying similar conditions to energy, with necessary amendments. Additionally, we note that new conditions may be required to recognise the different way in which data is held in energy, as compared to banking. For example, we will consider whether a condition is required to exclude AEMO in respect of data it may receive in its capacity as the designated gateway for the sector.

Similarly, it may be necessary to specify that an accredited person who is a data holder in energy would only become a data holder for data sets it receives via CDR if it is already a designated data holder for the data sets. This is because we do not expect data holders to build the necessary functionality to hold other data sets, and potentially serve them back into CDR, if they are not designated as a data holder of such data sets.

¹⁰⁰ CDR Rules, Rule 5.12(2)(b).

¹⁰¹ CDR Rules, Schedule 3, clause 7.2.

Consultation questions: issues relating to accreditation

Energy data

34. Do you agree that energy data sets are less sensitive than banking data sets?
35. Should any energy data sets, or subsets of those data sets, be treated with a higher degree of security (due to potential sensitivities), similar to banking data?
36. If you agree that some or all energy data sets are generally less sensitive than banking data sets, do you support the introduction of a lower tier of accreditation for ADRs seeking to access those energy data sets?
37. If so, how should the obligations for ADRs at the lower tier differ from those applicable to ADRs at the existing 'unrestricted' tier? In particular, should the obligation to provide an assurance report be modified as outlined above?¹⁰²

CDR-wide tiering

38. Alternatively, do you consider that we should consider introducing a lower tier of accreditation on a cross-sectoral basis for both banking and energy?
39. If so:
 - a. what energy and banking data sets would be appropriate for a lower-tier ADR to access?
 - b. how should we restrict access to CDR data sets for ADRs accredited at the lower tier?
 - c. how should the obligations for ADRs at the lower tier differ from those applicable to ADRs at the existing 'unrestricted' tier?
 - d. what should be the criteria for accreditation at the lower tier (having regard to the ADR's obligations) and what level of evidence should be required in support of an application?

Streamlined accreditation

40. Do you agree that data holders in energy, if they wish to become ADRs, should have access to a streamlined accreditation process analogous to that applicable in banking?
41. If so, can we rely on existing information security and other regulatory obligations in granting streamlined accreditation to such data holders?
42. If so, why are the existing obligations sufficient, and do you consider the obligations to be sufficient to grant streamlined accreditation at the 'unrestricted' tier, or at a lower tier introduced by the ACCC?
43. If not, but you remain supportive of some form of streamlined accreditation, what additional obligations should we impose as part of a streamlined accreditation process for energy data holders?
44. Do you agree with our preliminary view that any streamlined accreditation requirements for energy data holders should not override the requirement for ADRs to have adequate insurance or a comparable guarantee that will properly compensate

¹⁰² CDR Rules, Schedule 1, clause 2.1.

consumers for any losses that may arise from a breach of an ADR's obligations?

Conditions for accredited person to be data holder

45. Do you agree with our view that conditions like those set out in Schedule 3, clause 7.2 of the Rules should be adopted in CDR in energy, with appropriate modifications? If so, what modifications are required?

5 Estimating the regulatory costs of CDR in energy

5.1 Context

In accordance with the Office of Best Practice Regulation's requirements, the ACCC will be updating the initial estimate of the regulatory costs associated with CDR in energy as we develop and finalise the rules.

We would therefore like to use this opportunity for consultation to revisit some of the existing cost estimates that have been made for CDR in energy, specifically the implementation and ongoing costs for data holders to comply with the regime as well as the cost of complying with the Rules for ADRs.

We appreciate that stakeholders may not be able to provide precise estimates. However, comments on whether the costs are likely to be towards the lower or upper end of any range, and why, would be helpful. If data holders and potential accredited persons are unable to provide cost estimates at this time, we note that there will be a further opportunity to provide input when we consult on the draft rules for CDR in energy.

5.2 Data holder costs

5.2.1 Technology and operational costs

HoustonKemp estimated rough implementation and ongoing costs for the technical build that energy data holders would need to construct (such as an API) to meet their CDR obligations. This was included in its 2018 final report for 'Open consumer energy data'. These costings have been reproduced below.

Table 4: Reproduction of *Table 1 'Assumed establishment and ongoing cost for each data provider'* from HoustonKemp's 'Open consumer energy data' Final Report

	Establishment costs	Ongoing costs per year
Verification and data transfer system	\$78,000 - \$312,000 per data provider	\$7,800 - \$62,400 per data provider
System changes	\$26,000 - \$104,000 per data provider	\$2,600 - \$20,800 per data provider
Data portal	\$50,000 - \$100,000 per data provider	\$5,000 - \$20,000 per data provider
Application programming interface	\$10,000 - \$50,000 per data provider	\$1,000 - \$10,000 per data provider
Testing	\$78,000 - \$312,000 per data provider	\$7,800 - \$62,400 per data provider

Total	\$242k - \$878k per data provider	\$24k - \$176k per data provider per year
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Source: HoustonKemp, [Open consumer energy data](#), June 2018, p. 30.

As can be seen in the table above, data holder technology costs (in present value) were estimated to be:

- around \$242,000 - \$878,000 in one-off establishment costs, and
- between \$24,000 - \$176,000 in on-going costs per year.

Importantly, the above costs do not account for the other operational and back office costs that may be incurred for data holders to comply with their CDR obligations.

Given that some time has elapsed since the above costs were estimated and more information about CDR in energy is now available, we would now welcome feedback on:

- any updates or new estimates for the above data holder technology costs in Table 4, and
- any estimates for other operational costs not included in Table 4.

5.2.2 Authentication costs

As mentioned in section 4.6.4.3, we are considering requiring all (or the majority of) energy retailers to comply with the authentication process outlined in section 4.3. To this end, we would be very interested to receive any estimates of costs that would be incurred to comply with Model 1 and Model 2 discussed in section 4.3.4.

5.3 Accredited data recipient costs

An ADR in CDR regime may incur the following costs to comply with the Rules:

- upfront IT investment costs and recurring IT infrastructure/services costs
- training staff to deal with new systems and regulation if they are required
- updating systems and staff knowledge in order to keep up with data standards and Rules, and
- costs associated with satisfying the accreditation criteria and complying with the ongoing obligations of an ADR.

Informal estimates conducted internally for the banking sector yielded the following regulatory costs that an ADR may incur to comply with the Rules:

- \$118,000 in start-up costs, and
- \$75,000 in ongoing annual costs.

We would be interested in any more detail around the possible implementation and ongoing regulatory costs that an ADR might incur to comply with the rules for CDR in energy.

5.3.1 Tiered accreditation

Section 4.7.1 of this paper discusses the possibility of introducing a lower 'tier' of accreditation. Currently, only a single 'unrestricted' level of accreditation exists where an ADR is subject to the obligations set out in rule 5.12 of the Rules. In particular, the ADR

must take the steps set out in Schedule 2 of the Rules in order to ensure the security of CDR data. It must also provide biennial assurance reports and attestation statements in respect of its information security controls.

If a lower tier of accreditation were adopted, such as where an ADR:

- could access all (or the majority of) energy data sets, but only limited banking data sets, and
- would be required to provide a less comprehensive assurance report before accreditation and/or on an ongoing basis, or only provide attestation statements to the Data Recipient Accreditor (removing the need to provide assurance reports)

then this would likely lower the regulatory costs incurred for ADRs in that lower tier in applying for and complying with the CDR Rules.

We would be interested to receive any regulatory cost estimates in respect of applications for accreditation, and ongoing compliance, at a lower tier of accreditation. In providing such estimates, please specify what lower obligations you are estimating against and the assumptions/information relied upon for the estimate.

Specifically, we would be interested to receive any estimated costs that an ADR would incur in order to provide an assurance report on their security controls in accordance with Schedule 1, clause 2.1(3) of the Rules.¹⁰³

Consultation questions: estimating the regulatory costs of CDR in energy

46. Can you provide a rough breakdown of the implementation and ongoing regulatory costs that an energy data holder might incur? An estimated range would be appropriate.
47. Can you estimate what costs might be involved for a retailer to comply with authentication Model 1 and Model 2 identified in section 4.3.4?
48. Can you provide a rough breakdown of the implementation and ongoing regulatory costs that an ADR seeking energy data might incur? An estimated range would be appropriate.

¹⁰³ CDR Rules, Schedule 1, clause 2.1(3).

Appendix A - Schedule outlining energy specific rules

Rule	Outline of expected rules ¹⁰⁴
	Amendments required for CDR in energy, may be addressed in the generic Rules or in the schedule for provisions relevant to the energy sector.
Part 1—Preliminary	<p>Rules to reflect:</p> <ul style="list-style-type: none"> that the AER and DELWP will be the data holders providing product data request services in electricity. Initially, we do not expect that other data holders will be required to provide product data request services¹⁰⁵ the gateway's role in the provision of a consumer data request service, and which person is responsible for providing data holder dashboards.
Part 2—Product data requests	Rules to reflect the AER and DELWP's role as data holders responsible for responding to product data requests and about what product data must be disclosed for CDR in energy. As set out above, we do not expect that Part 2 obligations will apply to other data holders, initially. ¹⁰⁶
Part 4—Consumer data requests made by accredited persons	Rules to accommodate the gateway's role in consumer data requests and disclosures and any specific protections required to support the sharing of CDR data.
Part 5—Rules relating to accreditation etc.	Amendment of rules concerning the Register of Accredited Persons to reflect introduction of the gateway as a CDR entity. In particular, this may result in consequential changes to Division 5.3 in respect of new interactions between the Accreditation Registrar and the gateway.
Part 6—Rules relating to dispute resolution	Rules to subject the gateway to IDR requirements, contingent on the extent to which consumers are aware of the gateway's role in facilitating data sharing.
Part 7—Rules relating to privacy safeguards	Rules to implement privacy safeguards requirements on the gateway.
Part 8—Rules relating to data standards	Rules about the development of data standards for CDR in energy.
Part 9—Other matters	Additional rules to accommodate the gateway in CDR in energy. For example, we intend to include record keeping and reporting requirements that align with the gateway's role.
Schedule 2—Steps for privacy safeguard 12—security of CDR data	To the extent that the rules impose obligations on the gateway to protect CDR data under privacy safeguard 12, these may be reflected in changes such as amendments to Schedule 2, or a new schedule

¹⁰⁴ Please note that this outline is not exhaustive. It is intended to indicate in broad terms certain changes we expect to make to the rules to facilitate CDR in energy. Additionally, the proposed changes outlined may not in every case be addressed in the section of the generic Rules or energy Schedule as identified in the table. This Appendix A is subject to consultation and future rules development work by the ACCC and its rules drafters.

¹⁰⁵ See [Consumer Data Right \(Energy Sector\) Designation 2020](#).

¹⁰⁶ See [Consumer Data Right \(Energy Sector\) Designation 2020](#). Please note that we have not yet considered in detail whether a data holder who is also an accredited person should become a data holder for energy product data they may receive via CDR.

held by accredited data recipients	specifying minimum information security controls for the gateway.
Schedule for provisions relevant to the energy sector	<p>We intend to create a schedule for provisions specific to the energy sector, including:</p> <ul style="list-style-type: none"> • defined terms • definition of eligible CDR consumers (who are able to make consumer data requests) • CDR data that may be accessed under the Rules • joint accounts and other complex account arrangements • internal dispute resolution • streamlined accreditation of retailers • any exemptions for the sector • any arrangements for voluntary data in energy, and • the staged application of the rules to energy sector participants.