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Angelene Falk
Commissioner
Office of the Australian Information Commissioner
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Dear Ms Falk

Draft Privacy Safeguard Guidelines Consultation

EnergyAustralia welcomes the opportunity to make this submission to the Australian Information Commission's consultation on the Draft Privacy Safeguard Guidelines (Draft Guidelines).

EnergyAustralia is one of Australia's largest energy companies with around 2.6 million electricity and gas accounts in New South Wales, Victoria, Queensland, South Australia, and the Australian Capital Territory. We also own, operate and contract an energy generation portfolio across Australia, including coal, gas, battery storage, demand response, wind and solar assets, with control of over 4,500MW of generation capacity in the National Electricity Market (NEM).

EnergyAustralia notes that the Draft Guidelines have been drafted before consultation has commenced on the ACCC's Consumer Data Right Rules for the energy sector (Energy Rules). We expect that the Energy Rules will be significantly different from the Consumer Data Right Rules (banking) (Banking Rules), mainly due to key structural differences in the design of the rules for those sectors. For example, the energy sector will have a designated gateway and consumers cannot request data from data holders directly, whereas in the banking sector this is not the case. Therefore, as drafted, the Draft Guidelines based on the Banking Rules, are not appropriate for the energy sector and will need to change to reflect these structural differences. We ask that the Commission consult publicly on any changes to the Guidelines for the energy sector.

We also note that the Commission has made guidelines, to be distinguished from regulatory obligations. This submission focuses on the guidelines themselves and not the obligations that they discuss (the Privacy Safeguards and Banking Rules). EnergyAustralia will reserve its comments on the obligations for other consultations. However, at a high level, we have concerns with the ACCC adopting the privacy obligations in the Banking Rules for the energy sector without changes. Specifically:

- The application of privacy safeguards (and CDR Rules) and the Australian Privacy Principles (APPs) to different CDR participants, and the detailed rules that determine which applies, could lead to confusing and inconsistent outcomes for CDR participants and customers. This is particularly the case where data holders also elect to be accredited persons as it will not always be clear which data is being handled or referred

to.[1] The implementation of a separate Privacy Safeguard regime will likely require building a separate "CDR specific" system to house CDR data to ensure the appropriate protections (which are different to those required under the Privacy Act) are applied. This will likely result in data duplication and double handling, and increased operational costs as a result.

- The notification of collection (by an Accredited Data Recipient (ADR)), disclosure of data (by a data holder)[2] and where incorrect data has been disclosed (by a data holder); for many data types in each of the six priority data sets[3], is excessive and will likely result in poor customer experience.
- If the notification/disclosure requirements were applied to the energy sector, it would be more efficient for the first two notifications to be provided by AEMO, as the central gateway with full visibility of these exchanges.
- The obligations relating to unsolicited CDR data are set out in Privacy Safeguard 4. These obligations should mirror the obligations under APP 4. That is, an ADR or Accredited Person should only be obliged to destroy or de-identify unsolicited CDR data it receives if the CDR entity determines that it could not have collected that CDR data under Privacy Safeguard 3. This particular drafting in APP 4 is easier to understand compared to Privacy Safeguard 3 and has the same effect.

Our issues specific to the Draft Guidelines are:

1. They specify that notification of collection and disclosure by the ADR and data holder "should generally occur in as close to real time as possible". Real time disclosure is a higher standard than the "as soon as practicable" requirement in the Rules. We ask for clarification on what "real time" means.

2. Please provide flow chart diagrams to illustrate the de-identification and destruction requirements and the processes for each under the Banking Rules (and Energy Rules when made). These will assist industry in understanding them.

3. Where possible, we encourage the Commission to identify links between the Privacy Safeguard Guidelines and the APP Guidelines to avoid developing divergent definitions for similar concepts. For example, where concepts such as "use", "reasonable steps" or "disclose" are discussed in the APP Guidelines, the corresponding discussion of those concepts in the Privacy Safeguard Guidelines should expressly refer to the APP Guidelines.

Should you wish to discuss this submission please contact Selena Liu at [redacted].

Yours sincerely

Selena Liu
Industry Regulation Lead

[1] CDR data under the CDR regime to which the Privacy Safeguards apply or personal information under the Privacy Act to which the APPs apply
[2] Rules 7.4 and 7.9 of the Consumer Data Rules (Banking)
[3] https://treasury.gov.au/consultation/c2019-t397812