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Submitted by email to: consultation@oaic.gov.au

20 November 2019

OAIC – Consumer Data Right – Privacy Safeguards Guideline consultation

AGL Energy Limited (**AGL**) welcomes the opportunity to respond to the Office of the Australian Information Commissioner (**OAIC**) consultation paper - the Privacy Safeguard Guidelines (**guideline**).

AGL has been at the forefront of the energy industry in our support for the development of a Consumer Data Right (**CDR**). We believe that consumers should have access to and control over data that directly relates to them. It is therefore paramount that the privacy protections provided for under the existing Privacy Law and the CDR Privacy Safeguards (**PS**) are clear, consistent and effective for both consumers and industry.

We are supportive of the work done by the OAIC in developing this guideline to assist stakeholders understand the operation and interactions of the existing Australian Privacy Principles (**APP**) and the new PS. We would encourage the OAIC to consider providing further guidance and examples where the APP and PS are to act in parallel for an Accredited Data Recipient (**ADR**) or data holder.

We further encourage the OAIC to ensure that this guideline is regularly reviewed and updated in step with industry designations (such as the upcoming energy designation) to ensure that the guidance material remains relevant and is consistent with the CDR framework as it develops for the designated sectors. For example, the energy designation will use a gateway to share information, which is different to the decentralised 'economy model' model the banking sector will use. Hence, guidance on the PS and their role/applicability on the designated gateway would be useful.

We would also consider further guidance around other energy specific requirements such as the definition of energy CDR consumer, and existing energy rules and obligations would be valuable. For example, there may be information of a consumer that is not a CDR consumer contained within energy CDR data. This will include other occupants of the house (who are not the account holder) such as a share-house arrangement, spouse, children. If CDR consumer in energy is defined as the account holder, there will need to be clear information from decision makers on how the privacy and rights of others will be protected. AGL would welcome the opportunity to work with OAIC to develop appropriate energy sector examples.



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The remainder of the submission provides feedback on some of the specific clauses in the guideline. We would welcome the opportunity to discuss our submission with the OAIC and to work closely with you as the energy sector is being designated. Should you have any questions please contact Kat Burela on [REDACTED]

Yours sincerely,

Christopher Streets

A/ General Manager Energy Market Regulation

Guideline section	AGL comment
Chapter B	<p data-bbox="383 533 1348 600">B.35 The draft guidelines states that for a person to be a CDR consumer, CDR data must ‘relate to’ that person.</p> <p data-bbox="475 611 1356 750">We note that the various CDR instruments apply varying definitions for a CDR consumer. We therefore, encourage consistency across these instruments. This will greatly assist industry participants understand and apply the CDR regime in a consistent manner.</p> <p data-bbox="475 761 1268 828">Below are examples of how CDR consumer definitions vary across regulatory instrument¹:</p> <ul data-bbox="526 840 1380 1310" style="list-style-type: none"> • the draft guideline references the CDR legislation explanatory memorandum which states that “where information is primarily about a good or service but reveals information about a person’s use of that good or service, it ‘relates to’ the person”. • the CDR Act uses “relates to” (s56AI(3)); • the draft banking designation instrument uses the word “about” rather than “relates to”; • the ACCC CDR Rules for banking state that a CDR consumer is “for the particular CDR data in relation to the reference” to the provision of the Rules (See Rule 1.7(2)); and • the Privacy Impact Assessment (PIA) (at 22.2.2) references the definition of CDR Data – which must relate to the CDR consumer – and provides context of the goods or services that have been supplied to them or their associate. <p data-bbox="475 1317 1356 1422">Our comments on inconsistent definitions across regulatory instruments are also applicable for B.11 of the draft guideline regarding the term CDR data.</p>
Chapter C Consent	<p data-bbox="383 1462 1388 1608">C.18 This clause provides guidance that where a consumer is a business and wishes to use the accredited person’s good or service through the CDR regime, the accredited person should ensure the consent is given by a person who is duly authorised to provide the consent on the entity’s behalf.</p> <p data-bbox="475 1619 1388 1765">AGL request further clarification on circumstances where a consumer is a business. In particular, guidance on how a person in a business may be able to prove (and verify) that they are authorised to request CDR data would be valuable guidance in applying the PS requirements in this circumstance.</p>
Chapter 6	<p data-bbox="383 1805 1388 1872">6.15 The draft guidance states that disclosure of CDR data by an ADR to itself but in their capacity as a different entity requires notification.</p>

¹ For relevant definitions refer to the Treasury Law Amendment (Consumer Data Right) Bill 2019 Treasury Law Amendment [Explanatory Memorandum](#) and [Legislation](#), the [draft banking designation instrument](#), the [ACCC CDR draft banking Rules](#).



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This guidance appears contrary to the Privacy Act which allows for disclosure within a group of entities. Further information on the practical implications/application for businesses would be appreciated given the potentially sizeable impact on businesses.
