

Submission on “opt-out approach for Joint Accounts” and “Peer-to-Peer data access model for the energy sector” consultation papers

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The Consumer Policy Research Centre (CPRC) welcomes the opportunity to comment on Treasury’s consultation papers on both

- ‘Opt-out’ joint account data sharing model, and;
- The peer-to-peer model proposed for the energy sector.

CPRC aims to create fairer, safer and inclusive markets by undertaking research and working with leading regulators, policymakers, businesses, academics and community advocates. Data and technology issues are a research focus for CPRC, including emerging risks and harms and opportunities to better use data to improve consumer wellbeing and welfare.

Joint accounts

We oppose the proposed opt-out approach and recommend Treasury return to an opt-in approach for data-sharing for Joint Account Holders (JAH), requiring a two-to-authorise default in the first instance with options of consumers to set preferences thereafter.

Contrary to the consent model

As outlined in the consent model central to CDR, genuine consent requires an affirmative act, which is:

- voluntary,
- express,
- informed,
- specific to purpose,
- time limited, and
- easily withdrawn.

The opt-out approach to joint accounts that proposes a default sharing of data without this affirmative act from the second Joint Account Holder (JAH2) violates the first four aspects of the consent model. This model enables an ADR to collect JAH2’s data on the basis of assumed consent and places the onus on JAH2 to withdraw this assumed consent after the fact. CDR is premised on enabling and evidencing consumer consent for data sharing. If it is

seen to regularly operate in ways where that consent is not meaningful, the foundations of the regime are fundamentally undermined.¹

The justification for this opt-out approach may rely on an assumption that joint account holders are prepared to share money they are prepared to share their data about their transactions. This logic relies on a false equivalency - sharing financial transaction records can provide additional behavioural insights beyond the magnitude of joint expenditure, which in turn can be used for consumer profiling and pricing.

Prioritising firms access to data over consumer consent/protection

The impetus for the proposed approach seems to step from a need to reduce “undue friction”, leading to consumers abandoning the process. It’s unclear the extent or magnitude of this issue, whether this is hypothesised or is evidenced in unpublished consumer testing. Viewing “friction” as a problem to be circumvented suggests the CDR design prioritises firms access to data rather than the consumers own choices and user experience.

There has been some CX testing conducted with a small handful of consumers – which found the two-to-authorise model “aligns more strongly to mental models of how joint account sharing should work”.² CPRC strongly encourages Treasury to produce further CX research with larger consumer samples, and to establish a CDR regulatory sandbox with transparent reporting. Regulatory sandboxes can help to explore, trial, and iterate key aspects or elements of the regulatory framework for CDR before they are published, after which it be far more costly/onerous to reverse or redesign problematic aspects of regulation.

Future CDR paradigm

If the current read-access paradigm is intended to be “built-out” to enable write-access paradigm in the future, determining appropriate design now is particularly important to avoid significant future costs in redesigning and rebuilding systems.

While a write-access CDR paradigm creates significant opportunities for consumers, it also creates heightened risks of serious harms to consumers. Enabling one JAH to determine how and where a third-party can make decisions on behalf of both account holders not only violates the consent model, but can potentially result in consumers being switched to products or services that might leave both joint account holders financially worse off or receiving other aspects of a service that do not meet both JAH preferences.

Moreover, consumer advocates have expressed clear views about the design of write-access and the need for consents. CPRC’s research with consumers around the issue of Joint Accounts found consensus among consumer advocates that any future write-

¹ Consumer Policy Research Centre, *Joint Accounts & the Consumer Data Right: Perspectives from community organisations and consumer policy*, (Report for the Data Standards Chair, 2020), p. 9. Available online at: <https://consumerdatastandards.gov.au/engagement/reports/reports-cx/community-engagement/>,

²Consumer Data Standards, *Consumer Experience Research Phase 3: Round 3 – Joint Accounts and De-identification and Deletion*, April 2020, p. 36. <https://consumerdatastandards.gov.au/wp-content/uploads/2020/05/CX-Report--Phase-3--Round-3.pdf>
<https://consumerdatastandards.gov.au/engagement/reports/reports-cx/>

access CDR paradigm would require two-to-authorise consent to data sharing to avoid potential abuse and harm.³

Vulnerable consumers

CPRC's report on Joint Accounts highlights a range of issues raised by consumer organisations and advocates around consumers experiencing vulnerability and in particular financial abuse, elder abuse, domestic or family violence.⁴ There are foreseeable use cases where the opt-out approach and even proposed risk mitigations does not resolve these issues, and in many cases may compound them for those at risk of or already experiencing harm.⁵

Further work is required to consider how checks and protections might be included in the CDR design. Again, further CX research, a regulatory sandbox with transparent reporting and further workshops with consumer advocates experienced in managing domestic violence and financial abuse issues might enable Treasury to trial and develop a CDR design that mitigates these risks.

Peer-to-Peer design for energy CDR

In our 2018 submission to the ACCC's consultation, CPRC's took an agnostic position on whether the AEMO gateway model or the peer-to-peer model was preferred, on the basis that further detail was required about either approach.

The rationale to shift from the ACCC's preferred AEMO gateway model to the peer-to-peer model remains unclear. We suggest there is further value in elaborating on this decision and the consequences for the marketplace.

Cost impacts

The consultation paper asserts that implementing processes of CDR in energy may increase "total cost for AEMO and thus retailers". However, the consultation paper outlines retailers will be required to take on a significant number of new responsibilities under the peer-to-peer model. A peer-to-peer model also may require ADRs to build their own dashboards compliant with the rules/or buy in white-label dashboards. It is inevitable these new responsibilities and requirement to build digital assets will also add significant costs for energy retailers. There may also be the opportunity to explore a centralised consumer dashboard, which is not reliant on either peer-to-peer or gateway model design. This also the added advantage of improved consumer experience and comprehension due to all data shares being located in the one place, rather than across different entities.

The key question is whether the peer-to-peer model creates more significant costs than the AEMO gateway model – by reducing duplication of responsibilities across retailers, and potentially through a single dashboard design and other open-source implementation assets made available through a design library.

³ CPRC, *Joint Accounts & CDR*, p.22.

⁴ See CPRC, *Joint Accounts & the Consumer Data Right*

⁵ See Financial Rights Legal Centre, *Submission to treasury on 'Opt-out' joint account data sharing model*, 26th May 2021.

The costs borne by financial sector to build the peer-to-peer model for banking and financial services may provide an indicative cost of the opportunity cost to roll-out CDR through a peer-to-peer model in energy.

Multiple accounts

In its current market design energy consumers don't have multiple electricity accounts with a single provider. However, consumers often have bundled gas and electricity accounts with one provider, may be joint account holders for their electricity bill, may share the costs of energy with others in rental accommodation, or share costs through an embedded network. There are also a number of future use cases where multiple electricity accounts might emerge – dedicated Electric Vehicle tariffs, solar gardens, or other flexible trading arrangements as outlined in the Energy Security Board's *Post 2025 Market Design Options*.⁶ It may be prudent to retain multiple account design for energy markets to facilitate enable future innovation.

In other sectors, such as telecommunications, consumers do have multiple accounts with single providers, and we also note a handful of companies already offer cross-sector bundling of services.⁷ Designing economy wide standards that facilitate multiple accounts also would seem to be prudent.

CDR Priorities

More broadly we would like to see Treasury provide a hierarchy of issues or priorities. Consumer representatives receive no funding to participate in CDR consultation matters which limits capacity to effectively represent consumers or produce research into consumers attitudes, preferences or comprehension around CDR design and implementation, let alone detailed and considered submissions on each issue as it arises.

Treasury might consider adopting a hierarchy of issues or priorities based on the magnitude of the issue in question with evidence to demonstrate the magnitude. This enables all stakeholders to allocate resources effectively and to provide meaningful input on key consultation processes.

If you have any queries about this submission and the attached reports, please contact Ben Martin Hobbs, Senior Research and Policy Manager at ben.martinhobbs@cprc.org.au.



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⁶ Energy Security Board, *Post 2025 Market Design Options – A paper for consultation Part B*, April 2021. <https://esb-post2025-market-design.aemc.gov.au/32572/1619564172-part-b-p2025-march-paper-appendices-esb-final-for-publication-30-april-2021.pdf>

⁷ <https://www.canstarblue.com.au/electricity/telco-energy-companies/>