

## INTELLIHUB'S SUBMISSION ON MBIE'S DISCUSSION PAPER ON "EXPLORING A CONSUMER DATA RIGHT FOR THE ELECTRICITY SECTOR"

10 October 2024

### Introduction

1. Intellihub Limited ("**Intellihub**") welcomes the opportunity to make a submission to the Ministry of Business, Innovation & Employment ("**MBIE**") on its discussion paper about "exploring a consumer data right for the electricity sector" ("**Discussion Paper**").
2. Intellihub is a leading utility services company that delivers metering services, distributed energy equipment and management platforms that enable innovative new energy services. Intellihub is a registered metering equipment provider ("**MEP**") under the Electricity Industry Act 2010 ("**EIA**") and the Electricity Industry Participation Code ("**Code**") and is the sole shareholder of Influx Energy Data Limited, which is also a registered MEP.
3. In this submission, we set out the key points that Intellihub considers are critical to ensuring that the proposed designation of the electricity sector under the Customer and Product Data Bill ("**Bill**") is successful in promoting competition and innovation in the retail electricity market, while minimising the risk of unintended consequences. We also provide specific responses in **Appendix One** to relevant questions in MBIE's template submission form.

### Overview of Intellihub's position

4. Intellihub supports the designation of the electricity sector under the Bill. The establishment of what is commonly referred to as a "consumer data right" ("**CDR**") for the electricity sector has the potential to make it easier for consumers to access information, compare services, and switch providers. As identified in the Discussion Paper, these changes can benefit consumers through enhanced retail competition, including improved access to new and innovative products and services.<sup>1</sup>
5. The potential benefits of a CDR are particularly relevant to the electricity industry, as the need and opportunity for innovative customer solutions will continue to grow as technology develops and electrification of the economy occurs at pace. Customers need to be empowered via access to services that allow them to flexibly manage their electricity demand, to improve electricity affordability. Such services will be developed and provided by the regulatory settings supporting market conditions that are conducive to innovation and market driven solutions.
6. However, we are also mindful of the potential for regulatory intervention to distort market incentives. If regulatory settings change too quickly, it is difficult to assess the potential impacts of those changes on market dynamics and any unintended consequences that may arise. These risks are heightened when regulatory changes occur in industries that are already subject to finely balanced and complex regulatory frameworks, or where the industry faces rapidly evolving markets and technology, both of which apply to the electricity sector.
7. For these reasons, our overall recommendation is that:
  - (a) MBIE proceeds with caution when implementing a CDR for the electricity sector, including by adopting a staggered or 'least regrets' approach to implementation to mitigate the potential consequences of 'regulatory error' – as this could undermine

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<sup>1</sup> Discussion Paper at [6].

the key benefits of a CDR for consumers. A staggered approach would align with the way the Bill has been designed, which is to give law makers significant flexibility to configure regulations to meet the specific needs of each sector and to develop them over time. Such a phased approach would also be consistent with the approach of other jurisdictions such as Australia.<sup>2</sup>

- (b) Regulations be implemented with a focus on achieving the primary purpose of promoting retail competition, while carefully avoiding the risk of creating inefficiencies or undermining competition in other areas of the sector. To do this, the regulations should be as targeted as possible to the outcomes that they are seeking to achieve, which includes limiting any intervention in the market to the minimum that is required to give effect to the purpose of the Bill.
8. By taking this approach, the implementation of the CDR is more likely to strike the right balance between realising the potential benefits of a CDR for consumers, while minimising the risks associated with attempting to move too quickly. We therefore encourage MBIE to use the flexibility provided by the statutory framework to adopt an iterative and low risk approach to designing CDR regulations for the electricity sector.
9. The following paragraphs summarise our specific recommendations in relation to the design of the CDR for the electricity sector.

#### **Summary of recommendations**

10. To ensure the CDR is successful, Intellihub recommends that:
- (a) **Electricity retailers (not MEPs) should be designated as data holders.** Electricity retailers are best placed to respond to requests from customers (or accredited requesters) for customer and product data. That is because retailers hold a direct relationship with consumers and are already responsible under existing regulatory settings for dealing with any customer requests related to electricity consumption. They are also the only entities with access to all relevant product data (underlying distribution network tariff data, meter type/configuration, and retail plan data including additional fees, discounts, credits or other benefits). If the designation was to extend to MEPs to make them subject to data sharing obligations in respect of consumption data, then this would create significant inefficiencies given MEPs do not hold personal information about consumers to verify data requests – electricity retailers do. Therefore, designating electricity retailers as data holders, and excluding MEPs from the scope of that designation, would be efficient and reduce the risk of introducing unnecessary costs into the electricity sector (which would ultimately be borne by consumers through higher electricity prices).
  - (b) **Power quality data should not be designated as customer data.** The introduction of the CDR should apply to existing customer datasets, rather than imposing obligations in respect of data that is not yet readily available to the market. In particular, it is arguable that 'power quality data' does not fall within the definition of "customer data" under the Bill given it is not "about" a customer – it relates to the characteristics and conditions of an electricity network. This ambiguity supports a position that the designation of customer data pursuant to sections 97 and 100(1)(b) of the Bill should expressly exclude power quality data, in addition to the fact that significant investment is required to build capability to generate, store and transmit

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<sup>2</sup> In Australia, consumer data sharing obligations in the energy sector were imposed on electricity retailers. However, the introduction of those obligations was staggered based on the size of the retailer and the complexity of the data request. For example, consumer data sharing commenced on 15 November 2022 for the 'initial energy retailers', being the largest three electricity retailers (i.e. AGL Energy Group, The Origin Energy Group and The Energy Australia Group), but only in respect of 'non-complex' consumer data requests. These retailers were not required to comply with 'complex' requests until 15 May 2023.

such data. The Minister's broad discretion under the Bill to determine the contents of the designation regulations provides an opportunity for this clarification to be made, and would reduce the risk of the CDR potentially distorting incentives to invest and compete in developing power quality data for future use. As noted above, the designation should focus on enhancing competition in the retail electricity market to avoid undermining incentives on industry participants in 'upstream markets', such as the metering services market in which power quality data is being developed. This would help to ensure that MEPs continue to be incentivised to invest in developing new datasets and data technology, which would enhance competition and innovation and result in greater benefits to consumers.

- (c) **The designation of 'customer data' should exclude data about large businesses.** If the CDR captures customer data that does not relate to individuals and small business consumers, there is a risk that large businesses could claim data access rights as "customers" of other businesses (i.e. the definition under the Bill includes any person that acquires, or is seeking to acquire, goods or services from a data holder, without any further qualification as to the nature of the customer). On its face, the current drafting of the Bill could potentially encourage large businesses to seek to compel their suppliers to disclose "customer data" to them, on the basis that such data is "about an identifiable customer" (even though it does not relate to any identifiable individual). Therefore, to avoid cutting across existing commercial arrangements and undermining competition and incentives to invest in data products, the designation regulations introduced pursuant to sections 97 and 100(1)(b) of the Bill should expressly limit the scope of "customer data" to data about individuals and small business consumers, and exclude data about large businesses (such as generators, retailers, distributors, and flexibility traders). As noted above, the Minister has broad discretion under the Bill set the scope of the designation regulations which could be used to implement this recommendation.
- (d) **The method for the transfer of data should not be overly prescribed.** Prescribing a specific delivery method in the designation regulations through which customer or product data is required to be transferred from data holders to customers (or accredited requesters) would likely undermine competition, reduce incentives to innovate and may increase costs unnecessarily. While providing uniformity under the CDR as to the format of a dataset is appropriate (as this will make it easier to use and compare data received from different data holders), there is an existing market for data sharing technologies that could be leveraged to improve the efficiency and effectiveness of how data is transferred under the CDR regime. Given the rapidly evolving technology landscape within the electricity sector, it is crucial that regulatory settings are designed in a way that provides an opportunity for industry participants to compete and innovate at all levels of the supply chain, including in respect of data sharing technologies. The potential consequences of distorting incentives to invest in these technologies are significant and long-lasting, as the efficient transfer of data is fundamental to establishing a successful CDR regime.

**(1) Electricity retailers (not MEPs) should be designated as data holders**

11. To maximise the potential for a CDR to be successful in the electricity sector, it should be implemented in a way that is consistent with the existing roles and relationships between MEPs, electricity retailers and consumers. The arrangements between these parties are well-established, efficient, and serve the interests of consumers. Under these arrangements:
- (a) MEPs do not typically provide electricity metering services directly to electricity consumers. Instead, they provide services to third parties such as electricity retailers and distributors, which includes measuring the amount of electricity consumed at a point of connection to the electricity network (referred to as "consumption data"). The "raw" consumption data that is collected by MEPs is used to facilitate charging

for electricity (and related services) to consumers by electricity retailers (and is also used to determine how much electricity retailers have purchased from the wholesale market).

- (b) Consumption data can only be attributed to a specific individual once it is combined with additional information about the consumer (such as their name and address) held by the electricity retailer. Prior to this, there is no way to use raw consumption data to determine a customer's identity. That is because:
    - (i) MEPs do not hold a direct relationship with electricity consumers, which means MEPs do not have access to information about the consumer that would enable them to attribute consumption data to specific individuals.
    - (ii) Retailers do hold a direct contractual relationship with the consumer for the supply of electricity. Therefore, once consumption data is provided to the consumer's electricity retailer, the retailer can match it to specific consumers.
12. This is how the electricity industry currently operates under relevant regulatory frameworks – i.e. while the MEP collects consumption data, it is required to make this data available to the retailer, and it is the retailer (not the MEP) that is responsible for dealing with any customer requests related to electricity consumption.<sup>3</sup>
13. Designating MEPs as data holders under a CDR would be inconsistent with existing regulatory settings. MEPs are not in a position to comply with an obligation to disclose consumption data to a customer (or accredited requester). There would be no way for an MEP to determine whether consumption data relates to the individual making the request. Therefore, to comply with an obligation to respond to customer data requests, an MEP would need to take steps to obtain and process personal information about individual consumers. This would effectively require retailers to share their confidential customer databases with MEPs to validate requests, which would be a significant departure from the existing and well-established arrangements within the electricity industry described above.
14. As noted in the Discussion Paper, although all holders of a designated dataset could theoretically be subject to the CDR, this should not occur where there are strong efficiency reasons to designate a smaller set of data providers.<sup>4</sup> In the case of consumption data, there are clear efficiency benefits to solely designating electricity retailers as data holders:
- (a) electricity retailers (not MEPs) are the custodians of electricity consumers' personal information, and it is the retailer that holds the customer facing relationship. MEPs are not subject to any existing obligations that require direct engagement with electricity consumers' personal information. That is why it is the retailer that is the regulated 'agency' under the Privacy Act 2020 in respect of consumers' personal information and required to comply with applicable privacy obligations;
  - (b) it is the retailer that is responsible for responding to any customer requests related to electricity consumption under the Code.<sup>5</sup> This position is well-established and has been endorsed by the Electricity Authority ("**Authority**") as part of its recent consultations related to access to data, including:

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<sup>3</sup> Clauses 11.32A and 11.32B of the Code.

<sup>4</sup> Discussion Paper at [75].

<sup>5</sup> Clauses 11.32A and 11.32B of the Code.

- (i) the Authority's consultation on improving retail market monitoring.<sup>6</sup> Specifically, when proposing updated obligations on retailers to disclose certain data to the Authority, including consumption data, the Authority notes that it "does not... consider it efficient to collect half-hour consumption data from the metering equipment providers because the Authority would need to duplicate the data cleaning carried out by retailers".<sup>7</sup> That is because MEPs only have access to "raw" consumption data, which retailers are required under the Code to "clean" to ensure it is complete (such as addressing any gaps in the data). Designating MEPs as data holders would undermine these arrangements, including by requiring MEPs to develop capability to "clean" data, which would be inefficient given retailers already have established capability to do this; and
- (ii) the Authority's recent Code amendment omnibus consultation, which included proposed changes to the Code to improve consumer access to their electricity information.<sup>8</sup> In particular, the Authority proposed amendments to the Code to reduce the timeframe for retailers to respond to consumer data requests, remove the ability for retailers to charge for multiple data requests, and to clarify that consumers may request exported generation information from retailers. The fact that each of these proposals relates to retailers is consistent with the Authority's view that it is the responsibility of the retailer (not MEPs) to provide electricity data to consumers. Reflecting this, the Authority considered that "the costs of implementing the proposals to be negligible" for retailers, given that "responding to a consumer's request for their electricity information has been a business-as-usual service retailers must provide since 2016";<sup>9</sup>
- (c) as MEPs do not currently hold or process large amounts of personal information, they would need to implement, at significant cost (which would ultimately be borne by consumers through higher electricity prices), security and technical measures to enable the collection and management of personal information. This would include implementing comprehensive security protocols to enable retailers to provide their confidential customer databases to MEPs, as MEPs would require access to these databases to verify the authenticity of requests;
- (d) the designation of MEPs would significantly increase the volume of personal information held about electricity consumers by third parties, given personal information would be duplicated between retailers and MEPs. There would also be complexity associated with MEPs maintaining up-to-date records of consumer information, such as verifying when a consumer has switched retailers or moved house. In particular, as MEPs do not hold a direct relationship with consumers, they would need to regularly exchange sensitive information with retailers about changes in consumers' circumstances. This would potentially increase the risk of customer data being subject to security and data privacy breaches;
- (e) electricity retailers already hold all of the relevant customer data identified in the Discussion Paper for designation under the CDR,<sup>10</sup> including the name of the current account holder, their current plan, meter type/configuration, installation control point (ICP), and address, as well as consumption data (which MEPs are obligated to

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<sup>6</sup> Electricity Authority, *Improving retail market monitoring: amended information notice and updated analysis – Consultation Paper* (1 October 2024) at page 14.

<sup>7</sup> Electricity Authority, *Improving retail market monitoring* (2024) at [7.14].

<sup>8</sup> Electricity Authority, *Code amendment omnibus four – Consultation Paper* (3 September 2024) at [2].

<sup>9</sup> Electricity Authority, *Code amendment omnibus four* (2024) at [2.29].

<sup>10</sup> Discussion Paper at [59].

provide to retailers pursuant to Schedule 10.6 of the Code). In contrast, MEPs only hold a small subset (i.e. consumption data) of the full range of customer data, without any means of attributing that data to specific customers. Therefore, designating MEPs as data holders would duplicate obligations between MEPs and retailers in respect of one type of data (i.e. consumption data), even though retailers would be solely responsible for responding to data requests in respect of all other types of customer data. This approach would be inefficient, costly, and create confusion as to the responsibility for compliance with existing obligations;

- (f) electricity retailers hold all of the relevant product data identified in the Discussion Paper for designation under the CDR,<sup>11</sup> including distribution network tariff plans, pricing plans, plan types, network data, meter type/configuration, and additional fees, discounts, credits or other benefits. As MEPs do not provide any products to consumers, they do not hold any product data would need to be designated under the CDR. Given retailers will already be required to comply with product data requests, it would be inefficient and confusing if consumers were required to obtain consumption data from a different entity; and
- (g) the primary purpose of the CDR regime is to promote competition in retail markets, which is irrelevant to competition in the 'upstream' metering services market. Entities designated under the CDR should be limited to participants in the retail markets in which the CDR is designed to promote competition and innovation. Imposing data sharing obligations in non-retail market markets, such as the metering services market, would impose regulatory compliance costs on MEPs without any corresponding benefits to participants in that market, as the CDR has not been designed to enhance competition in upstream markets.

15. The Discussion Paper identifies that a key consideration when determining who to designate as a data holder is whether the data transfer obligations can be fulfilled most cost-efficiently by one entity or a group of entities.<sup>12</sup> In our view, it is clear that designating electricity retailers as data holders, and excluding MEPs from the scope of that designation, would be the most cost-efficient approach and reduce the risk of giving rise to unintended consequences.

16. In a counterfactual scenario where MEPs are designated as data holders, we note that:

- (a) to be consistent in that approach, it would be necessary to designate other industry participants that also hold data relevant to the CDR regime as data holders. For example, in our view, there is no conceptual difference between designating MEPs as data holders in respect of consumption data, and designating distributors as data holders in respect of tariff and network data (and in some cases consumption data). Although there would likely be inefficiencies associated with requiring distributors to provide such data under the CDR regime, we do not consider that these inefficiencies would be any more significant than requiring MEPs to provide consumption data. For example, in both cases, the distributor/MEP would be reliant on obtaining personal information about individual consumers from the electricity retailer to authenticate and process each request; and
- (b) the designation of multiple entities as data holders (e.g. retailers, distributors and MEPs) would give rise to significant inefficiencies and costs, all of which would eventually be passed on to consumers through higher electricity prices. These costs could be avoided by aligning the CDR with existing industry arrangements – i.e. by designating retailers as the participants with sole responsibility for complying with requests for customer and product data. The costs and inefficiencies of spreading

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<sup>11</sup> Discussion Paper at [66].

<sup>12</sup> Discussion Paper at [76].

data access obligations across multiple entities would outweigh any potential benefits to consumers and risk undermining the effectiveness of the CDR regime.

17. For completeness, we note that the statement in the Discussion Paper that "retailers often contract out data obligations to MEPs to respond to customer data requests" is not consistent with Intellihub's experience. It would be unusual for a retailer to request that Intellihub provide data to consumers directly. To the extent that other MEPs do act as a retailer's agent for consumer data requests, we note that the arrangements that retailers use to comply with their data sharing obligations is a separate issue to the question of which entity should be subject to that obligation. As described above, we consider that the data sharing obligations under the CDR must rest with the retailer, and this is the case irrespective of whether a retailer fulfils that obligation directly or contracts a third party to respond to data requests on its behalf.<sup>13</sup>

*Recommendation*

18. For the reasons above, Intellihub recommends that:
- (a) all electricity retailers be designated as data holders in respect of relevant customer data and product data; and
  - (b) MEPs be excluded from the designation of data holders.
19. This change would be consistent with existing regulatory settings and the objectives of the CDR, and reduce the risk introducing unnecessary costs and inefficiencies to the electricity sector.

**(2) Power quality data should not be designated as customer data**

20. The explanatory note to the Bill explains that the primary purpose of designating a sector under the Bill is to:
- (a) empower individuals (or those they have authorised) to request existing data relevant to them, which will lower barriers to customers switching between providers and promote retail competition;
  - (b) facilitate the transfer of existing data that can be used in the provision of innovative new retail services to individuals, such as flexibility services; and
  - (c) increase rivalry between providers of retail services and incentivise them to take steps to remain competitive, including by investing in more attractive product offerings, as well as create opportunities for new entrants to break into established markets.
21. Accordingly, the introduction of the CDR should be focussed on driving better outcomes in retail markets, and only impose obligations in respect of data that already exists and is readily available to the market. If the scope of the designation of the electricity sector goes beyond this, there is a risk that it could apply to arrangements outside of retail markets and potentially distort incentives to invest and compete in the development of new datasets.
22. In particular, we are concerned that the extension of the CDR to 'power quality data' would be at risk of undermining incentives to continue to invest in building the capability to store and use this data in the future.

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<sup>13</sup> Discussion Paper at [77].

23. While the Discussion Paper notes that power quality data is a type of data that "may be designated",<sup>14</sup> it is arguable that it does not fall within the definition of "customer data" under the Bill, and therefore is not able to be designated under the CDR regime. That is because power quality data is non-personally identifiable meter data that describes the characteristics and conditions of an electricity network – it is not data that is "about" a customer. This interpretation would be supported by the primary purpose of the CDR regime (i.e. promoting retail competition) given power quality data is not typically relevant to the retail electricity market. However, as explained further in paragraph 33 below, there is a degree of ambiguity in the definition of customer data under the Bill that could result in data outside of retail markets being captured. Accordingly, we consider that power quality data should be expressly excluded from the CDR regime via the designation regulations.
24. That approach would be consistent with how a CDR has been developed for the energy sector in Australia. The Australian Government recognised the potential risks of including complex datasets (such as power quality data) within the scope of the CDR at the outset. To mitigate these risks, the Australian Treasury proceeded with implementing the CDR on an iterative basis, with more complex datasets to be excluded from initial implementation to ensure that high value / low-cost use cases could be prioritised. Reflecting this, the Treasury stated at the time that the CDR "roll out is focused on data sets which cover the largest numbers of consumers in the sector and those that can be accessed most efficiently in the timeframes set out for the initial version of the regime".<sup>15</sup> Accordingly, the introduction of the Australian CDR was limited to a narrow range of "priority datasets" that represented clear value to consumers without requiring a disproportionate amount of time and cost to implement.<sup>16</sup> As power quality data does not meet either of these criteria, it is not surprising that it was omitted from the Australian Government's priority datasets.<sup>17</sup>
25. The costs and inefficiencies of including power quality data under the CDR regime would be significant. Within meter services markets, where MEPs such as Intellihub compete to win retailers or distributors as customers (as distinct from the 'downstream' electricity retail market, where retailers compete to win households and businesses as customers), MEPs expect to have arrangements in place with distributors (as well as with flexibility traders) to incentivise investment in the provision of power quality data. Under these arrangements, the parties can agree commercial terms that reflect the costs and benefits to each party associated with the transfer of that data. In the absence of commercial arrangements, which would occur if power quality data is subject to data access rights under the CDR, it is unlikely that such data would continue to be developed by MEPs to a point where it can be used. That is because:
- (a) There are technical constraints that apply to the delivery of power quality data:
    - (i) the iterative transition from analogue meters to smart meters has resulted in variances of capability within the meter fleet to generate power quality data. Therefore, in order for MEPs to provide power quality data, it is necessary for the MEP to incur significant costs to upgrade the meter fleet; and
    - (ii) there are also limitations in the ability of MEPs to store and transmit power quality data. While meters might capture the data, additional investment is required to transmit and store that data at scale. Therefore, MEPs would be required to incur further costs to build this capability over time.
  - (b) While there may be use cases that can leverage power quality data in the future, the development of these use cases should be market driven and led by demand signals.

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<sup>14</sup> Discussion Paper at [62].

<sup>15</sup> Australian Government - The Treasury, *Priority Energy Datasets Consultation – Consumer Data Right* (29 August 2019) at page 11.

<sup>16</sup> Australian Government - The Treasury, *Energy sector consumer data right*. Retrieved from: <https://treasury.gov.au/consumer-data-right/energy-sector-consumer-data-right>

<sup>17</sup> The priority datasets were limited to: National Metering Identifier Standing Data Fields; customer provided data; billing data; generic tariff data; tailored tariff data; distributed energy resource data; metering data (electricity usage). Retrieved from: <https://treasury.gov.au/consumer-data-right/energy-sector-consumer-data-right>



This will help to ensure the resources are invested efficiently and avoid introducing unnecessary costs to consumers in downstream markets through higher electricity prices.

- (c) If power quality data is included under the CDR, there is a significant risk of undermining incentives on MEPs to continue to invest in upgrading meter fleets and developing the infrastructure required to utilise power quality data. The result would be that innovation in the industry would be stifled to the detriment of consumers.
26. Accordingly, Intellihub's view is that a staggered or 'least regrets' approach should be adopted, in which the designation of customer data is initially limited to datasets that already have proven use cases and the potential to offer consumers demonstrable value (such as consumption data), with more complex and nascent datasets to be considered for inclusion in the CDR once a market for that data has formed and potential use cases become clearer. At present, the complexity and risks associated with incorporating power quality data into the CDR significantly outweigh any potential benefits to customers. On that basis, we consider that power quality data should be excluded from the scope of the CDR until such time that clear use cases have been established which confirm that the value to consumers of providing access to power quality data would materially exceed the costs of doing so.
27. We note that this approach would be supported by MBIE's evaluation criteria in the Discussion Paper for deciding whether to designate a dataset. Specifically:
- (a) the designation "needs to materially promote the interests of the consumer";<sup>18</sup>
  - (b) there must be "an evaluation of the ease of providing the data, which includes a deliberation of the likely costs of satisfying the CDR technical standards";<sup>19</sup>
  - (c) designating consumer data that is not readily stored or used digitally "could lead to the incurrance of material costs to meet the data transfer technical standards" and, therefore, "might lead to that data not being subjected to a CDR".<sup>20</sup>
28. For each of these criteria, the designation of power quality data would not be appropriate, given any potential benefits to consumers of designating this dataset under the CDR (which Intellihub considers are negligible based on current market settings) would be significantly outweighed by the costs of providing it to consumers.

#### *Recommendation*

29. For the reasons above, Intellihub strongly recommends that the designation of customer data pursuant to sections 97 and 100(1)(b) of the Bill expressly excludes power quality data. We note the Minister has broad discretion under the Bill to determine the contents of the designation regulations, which would allow the Minister to specify that certain datasets, such as power quality data, fall outside the scope of designated customer data.
30. This recommendation is consistent with our view that, where there is no existing practice of using data to provide a good or service to a customer (as is the case with power quality data, i.e. the technical ability to store and transmit the data has not been developed), that dataset should be excluded from the CDR. The Bill is not intended to prescribe the development of new data services – rather, it seeks to incentivise businesses to invest in creating new products and services, which it achieves through giving customers greater control over their existing

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<sup>18</sup> Discussion Paper at [55].

<sup>19</sup> Discussion Paper at [57].

<sup>20</sup> Discussion Paper at [57].

data and making it easier for them to switch providers. As noted above, this approach would also be consistent with the approach in Australia, where the implementation of a CDR for the energy sector has been initially applied to a narrow range of existing datasets.

### **(3) Designation should focus on individuals rather than all "customers"**

31. To the extent that large businesses that participate in the electricity industry (e.g. generators, retailers, distributors, and flexibility traders) are given rights under the Bill to request data from data holders, there is a risk that the CDR framework could be used for unfair commercial gain, or to seek to undermine existing commercial arrangements between industry participants.
32. In particular, in the event that MEPs were designated as data holders (which would be contrary to Intellihub's views, including for the reasons described above regarding the fact that MEPs only hold raw data), it may be possible for a distributor to seek to use data access rights under the CDR to obtain, at zero cost, non-personally identifiable meter data from MEPs, such as power quality data (i.e. where power quality data is viewed as being "customer data" under the Bill and is not excluded from the CDR, contrary to Intellihub's recommendation above).
33. For example, based on the current drafting of the definitions in the Bill, it may be possible for a distributor to seek access to power quality data on the basis that:
  - (a) the distributor "acquires, or is seeking to acquire, goods or services" from an MEP, and is therefore a "customer" of the MEP;
  - (b) as noted above, while the capability to store and transmit power quality data at scale does not currently exist, some meter equipment can generate this data and, in that sense, it is arguably "held" by the MEP; and
  - (c) while power quality data is not attributable to any individual (given it is raw data related to conditions of a network), it is "about" a distributor because it relates to the network which they operate, and is therefore the distributor's "customer data".
34. We note that this is not a theoretical concern. Some industry participants have already signalled interest in potentially leveraging the CDR regime to obtain access to non-personally identifiable data (such as power quality data) that is used in upstream markets. For example, as part of its recently published report into the challenges faced by electricity distributors, Ara Ake implies that the CDR regime is a potential pathway for distributors to access smart meter data, given it is currently "expensive for [distributors] to purchase" and is needed to "maintain affordability for consumers".<sup>21</sup> However, the report fails to recognise that requiring MEPs to provide such data to distributors, at zero-cost, would impose even greater overall costs on the sector (which would ultimately be borne by consumers through higher electricity prices), as the development of these upstream data resources requires significant investment (as explained in paragraph 25 above). Therefore, while well-intentioned, we are concerned that the suggestion in the Ara Ake report of including non-personally identifiable meter data within the scope of the CDR would have far-reaching consequences – i.e. potentially undermining existing commercial arrangements and incentives to invest in developing data resources, reducing competition in contestable electricity markets, and stifling innovation.

#### *Recommendation*

35. For the reasons above, Intellihub recommends that the designation of customer data pursuant to sections 97 and 100(1)(b) of the Bill should be limited to data about individuals and small

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<sup>21</sup> Ara Ake, *EDB Challenge – Learnings and insights report* (October 2024) at page 21.

businesses, and therefore exclude large businesses from having rights to make data requests under the CDR. As noted above, the Minister has broad discretion under the Bill to determine the contents of the designation regulations, which would enable the Minister to specify that designated customer data excludes data about large businesses (e.g. businesses with more than 20 employees).

36. This would reduce the risk of the CDR framework being used by large businesses (particularly industry participants such as generators, retailers, distributors, and flexibility traders) for unfair commercial gain, or to seek to undermine existing commercial arrangements.

#### **(4) The method for the transfer of data should not be overly prescribed**

37. Care should be taken to ensure that the technical specifications relating to the method of transferring regulated data from data holders to customers (or accredited requesters) are not overly prescriptive. While providing uniformity under the CDR as to the format of a dataset is appropriate (as this will make it easier to use and compare data received from different data holders), there is risk that specifying a particular method for the transfer of data could reduce competition in the market for data sharing technologies. For example, we consider that moving to a centralised approach for the transfer of meter data (as adopted in Eastern Australia with the Australian Energy Market Operator (AEMO) acting as a "data coordinator") would remove the opportunity for businesses to compete in the development of more efficient or effective data sharing technologies, which would deter investment in technology development and stifle innovation.
38. Further, there are already well-functioning mechanisms and data exchange relationships to facilitate the provision of consumption data to consumers. Therefore, it is likely that the introduction of strict requirements regarding the method of data transfer would potentially create inefficiencies by resulting in these existing technologies being underutilised, as well as disrupting existing data transfer arrangements under the Code. The potential reduction in competition and higher costs faced in upstream markets would eventually be passed on to consumers, either through lower quality products and/or higher prices for retail services.
39. As noted above, the promotion of competition, innovation and efficiency is particularly important within the electricity industry. This is a highly complex industry which faces significant challenges as a result of increasing electricity demand, which is driven by an increasing reliance on electricity to meet New Zealand's energy requirements. To the extent that regulations distort incentives to compete in the market for data sharing technologies, there is a risk that New Zealand's transition to greater electrification will be hindered, given the efficient transfer of data is fundamental to establishing a successful CDR and increasing the availability of electricity solutions and services. This would ultimately be to the detriment of consumers due to increased costs being passed on through higher electricity prices.

#### *Recommendation*

40. For the reasons above, Intellihub recommends that the designation regulations and standards related to the method of data transfer be implemented in a way that:
  - (a) does not prescribe data sharing methods in a way that prevents or stifles competition between businesses to develop new data sharing technologies; and
  - (b) creates opportunities for businesses to design more efficient methods of data sharing to enhance the effectiveness of the CDR regime.

## APPENDIX ONE

### RESPONSES TO TEMPLATE SUBMISSION FORM

#### RESPONSES TO QUESTIONS

*The Energy Use Policy team welcomes your feedback on as many sections as you wish to respond to; please note you do not need to answer every question.*

| Status quo and problem definition                          |   |
|--|---|
| 1.   | What are your experiences of accessing consumer and product data for electricity under the status quo?  |
|  | -   |
| 2.   | Do you agree with our summation of the status quo and problem definition? Is anything missing or incorrect in your view? And please provide any evidence you may have to support your views.  |
|  | -   |
| 3.   | Do you think that regulatory options are necessary to unlock better access to customer and product data?  |
|  | -   |
| 4.   | What do you consider to be the likely outcomes for access to customer and product data in the absence of a CDR for electricity?   |
|  | -   |
| What a consumer data right for electricity could look like |   |
| 5.   | Who else may be impacted by a designation of the electricity sector? Should particular groups or classes of entities be explicitly included or excluded from a potential designation?   |
|  | For the reasons set out in paragraphs 31 to 36 of our submission, we consider that large businesses (e.g. more than 20 employees) should be excluded from a designation.  |
| 6.   | What customer data do you think is the most important? And what else (now or in the future) would be important? And why? What are the benefits from consumers having ready access to this data?   |
|  | -   |
| 7.   | If access to customer data is designated for all consumers (residential, small business, large business and large consumers) what are the potential benefits, risks or costs associated with each type of customer? And why?  |
|  | For the reasons set out in paragraphs 31 to 36 of our submission, if customer data is designated for large businesses, there is a risk that the CDR regime could be used to undermine existing commercial arrangements, reduce competition in contestable electricity markets, and stifle innovation. |
| 8.   | What product data do you think is the most important? And what else (now or in the future) could be important? And why? What are the benefits from this data?   |
|  | -   |
| 9.   | Are there any other issues with product data we should be aware of? And why? Please provide examples.   |

|                                     |   |
|-------------------------------------|---|
|                                     | For the reasons set out in paragraphs 20 to 30 of our submission, if power quality data is included in the scope of CDR regime, there is a risk of undermining incentives on MEPs to continue to invest in upgrading meter fleets and developing the infrastructure required to utilise power quality data.   |
| 10.                                 | What factors should be considered when identifying who the best data holder is under a potential CDR regime? And how might contracting agreements affect the application of a CDR in regard to data holders? (e.g., contracts between metering equipment providers and retailers to share data).  |
|                                     | For the reasons set out in paragraphs 11 to 19 of our submission, we consider that electricity retailers (not MEPs) should be designated as data holders. If the designation was to extend to MEPs to make them subject to data sharing obligations, then this would create significant inefficiencies given MEPs do not hold personal information about consumers to verify data requests – electricity retailers do. Designating electricity retailers as data holders, and excluding MEPs from the scope of that designation, would be efficient and reduce the risk of introducing unnecessary costs into the electricity sector (which would ultimately be borne by consumers through higher electricity prices).  |
| 11.                                 | Do you agree with our initial framework for how to identify/designate data holders? Why or why not?   |
|                                     | -   |
| 12.                                 | What actions could be designated for electricity under a CDR? And why? What are the potential benefits from these? Please provide examples.   |
|                                     | -   |
| <b>Potential benefits and risks</b> |   |
| 13.                                 | What are your thoughts on the potential impacts of a designation on the interests of consumers? Are there any specific benefits that are likely to be enabled with designation? What is the likely scale of the benefits, and over what timeframe would they occur?   |
|                                     | -   |
| 14.                                 | Do you have any comments on the specific interests of different types of consumers, such as, residential, business, industrial, rural, Māori, or other groups of consumers?   |
|                                     | -   |
| 15.                                 | What are your views on the nature and scale of costs/benefits? Who would these costs/benefits apply to and when?  |
|                                     | The introduction of the CDR has the potential to result in significant costs and inefficiencies for the electricity sector depending on how it is implemented. In particular, for the reasons set out in paragraph 14 of our submission, if the designation was to extend to MEPs to make them subject to data sharing obligations (which would be contrary to our recommendation), then this would create significant costs and inefficiencies for the sector given MEPs do not hold personal information about consumers to verify data requests. Ultimately, these costs would be borne by consumers through higher electricity prices. Similarly, for the reasons set out in paragraphs 20 to 30 of our submission, the complexity, risks and costs associated with incorporating power quality data into the CDR significantly outweigh any potential benefits to customers, which is why we are recommending that power quality data be excluded from the scope of the CDR. |
| 16.                                 | Would you be able to quantify potential additional costs to your organisation associated with designation under the Bill?   |

|   |  |
|---|--|
|   | For the reasons set out in paragraphs 20 to 30 of our submission, while we do not have a detailed breakdown of costs, we note that designating power quality data under the CDR regime would result in significant costs for MEPs, as this data is not readily available and significant infrastructure development would be required to generate, store and transmit it.  |
| 17.   | Do you have any comments on the benefits and risks to security, privacy, confidentiality, or other sensitivity or customer data and product data?  |
|   | For the reasons set out in paragraphs 14(a) and 14(d) of our submission, if the designation was to extend to MEPs to make them subject to data sharing obligations (which would be contrary to our recommendation), MEPs would face significant complexities as a result of being required to hold and maintain a significant volume of personal information about consumers. This would be inconsistent with well-established industry settings (in which data sharing obligations rest solely with the retailer) and potentially increase the risk of customer data being subject to security and data privacy breaches. |
| 18.   | Are there any risks from the designation to intellectual property rights in relation to customer data or product data?   |
|   | -  |
| <b>Other aspects of a potential designation</b> |  |
| 19.   | What do you consider to be important if designing an accreditation regime for the sector?  |
|   | -  |
| 20.   | What are your views on fees for requests for customer electricity data under the Bill? If fees are charged, what limits or restrictions should be placed on fees? Do you have any comments on the costs and benefits of the various options?   |
|   | -  |
| 21.   | Are there any particular considerations for electricity that should be taken into account for a consumer consenting process?   |
|   | -  |
| 22.   | Do you think that standards should be led by industry, by government or co-led? What is the role of industry in developing standards? And why?   |
|   | -  |
| 23.   | How do you believe a CDR and the Code could/could not work together?   |
|   | For the reasons set out in paragraph 14 of our submission, we consider that aligning the CDR regime with existing arrangements under the Code (in particular, the role of the electricity retailer as the custodian of customer data and responsible for responding to requests related to consumption data) is critical to ensuring roll out of the CDR regime is efficient and achieves its intended benefits for consumers.   |
| <b>General Comments:</b>                        |  |
|   |  |