



12 December 2016

Mr Peter Harris
Chairman
Productivity Commission
GPO Box 1428
Canberra ACT 2601

Dear Mr Harris

Productivity Commission Inquiry into Data Availability and Use - Draft Report

Origin Energy (Origin) appreciates the opportunity to comment on the Productivity Commission's Draft Report into its Inquiry into data availability and use in Australia.

Origin understands the policy intent behind the Inquiry is to clarify and improve the way in which consumers and the public and private sector have access to information and data. Origin is supportive of this intent, particularly the way in which businesses and consumers can access and best utilise the information to make more informed choices. This is important as we move further into a digital world.

However, Origin has concerns that a number of proposals have the potential to increase compliance and operational costs for businesses which may ultimately be passed through to customers with limited benefits to customers to offset these costs. This includes the proposed requirement to notify customers each time data related to them is released to a third party.

Origin is also concerned that a "one size fits all" approach to data sharing and availability requirements should not be implemented across industries in Australia. There is a need to review industries on a case by case basis to determine the data sharing models that exist and whether there are any shortfalls in these models. For example, the energy industry already has rules related to data sharing with customers and Origin believes that these are adequate to meet customer requirements.

It should be further noted that many businesses are investing heavily into digital technology and data sets to value add and be competitive. These data sets have commercial value. The requirement to expose data sets on an open basis could devalue businesses and restrict innovation in the development of customer products and services. For example, an insurance company may collect and collate information about a customer to complete a detailed risk assessment. It would not seem reasonable that the insurance company should be required to share more than basic data about the customer. The Commission needs to ensure that only essential data is shared and business interests are protected.

Origin provides further comments on key elements of the recommended reforms proposed in the Commission's Draft Report below.

Legislative and Governance Structure

Origin notes that it is proposed that a new Commonwealth *Data Sharing and Release Act* be drafted to facilitate the sharing and release of data. While Origin supports the development of this Act, we support further consultation with regards to the interface between the new *Data Sharing and Release Act* and the current *Privacy Act 1988*. We believe key protections in the *Privacy Act 1988* should be retained and not duplicated in other legislative instruments. Duplication will only cause ambiguities and uncertainties in the market.

Further, the new *Data Sharing and Release Act* needs to take into account industry specific legislation and the detailed requirements contained in them. For example, the National Energy Rules requires energy retailers provide small customer historical data for the previous two years. Origin does not believe that these requirements need to be contradicted in other legislative instruments and rather the *Data Sharing and Release Act* should contain high level principles for industries to include in data reviews.

Origin believes that careful consideration also needs to be given to the authorities or bodies that are tasked with the review and implementation of the Commission's recommendations. While there are national bodies (ie Australian Competition and Consumer Commission, Information Commissioner) that will play a role in the framework design, there will also be industry specific bodies (ie Australian Energy Regulator) that need to be considered. We require greater clarity over the role that the National Energy Regulator will have with implementing the recommendations compared with that of the ACCC. Clear roles will facilitate better policy decisions, ensure regulations do not contradict each other and create a better functioning market.

Origin wishes to highlight that in 2015-16, less than 100 utility customer complaints were made to the Privacy Commissioner¹. This suggests that the current framework under the *Privacy Act* is working well, with minimal complaints being made to the regulator, and that adding a further legislative regime or regulator may be creating more layers of compliance to fix a problem that does not exist.

Right to be informed of disclosure of data to a third party

A recommendation contained in the Draft Report relates to the right for a customer to be informed if data related to them is released to a third party. It is not entirely clear to Origin the form and extent of the proposed notification requirements. However, Origin believes the Commission needs to give serious consideration to what this requirement means in a practical sense.

In today's world, companies engage third parties to carry out specific services and functions of their business. The third parties are often engaged as businesses do not have the capabilities internally and outsourcing the activity is more cost effective to the operation of the business. This outsourcing services could be related to metering, billing, call centre, marketing or credit collections. Origin does not believe it would be operationally cost effective or feasible to provide notifications each time a business utilises one of these third parties. Further, it is likely to lead to increased levels of customer dissatisfaction as customers receive excessive notifications about disclosures that are essential to providing a service such as electricity and gas.

Origin thus believes provisions around these requirements should be developed by the market on an industry basis rather than by the Government. Participants are best placed to develop frameworks that meet the needs of consumers and is at least cost to businesses. Allowing sectors to determine the nature of consent that meets the requirements will lead to a more positive experience and outcome for customers.

¹ Office of the Australian Information Commissioner, Annual Report 2015-16, p42.

It is noted that the Commission proposes that a customer should have a right to challenge the disclosure of data to a third party. While this may be appropriate for certain industries, Origin does not believe that the challenge provisions should be available for the energy industry. We cannot operate a business whereby customers, on an individual basis, can challenge their details being provided to a mail house for the purpose of a bill being issued or a metering agent collecting data for the purpose of billing. Businesses cannot run efficiently or effectively if customers can cherry pick the functions to which we provide services.

Edit or Correction Powers

The Commission recommends that customers should have the right to request edits or corrections to data (related to accuracy) held on them. However, the right would not compel a data holders to change their datasets unless they were found to be incorrect.

Origin supports this position and considers this a reinforcement of its current obligations under *Australian Privacy Principle 13*. As data custodians, we need to ensure data remains accurate and verifiable.

Right to stop collection

The Commission suggests that consumers should have an explicit new right to require that a data holder stops collecting information on them. It is noted that the capacity to “opt out” would have a number of exceptions attached to this requirement including that a customer cannot opt out if the *“information is necessary for continued delivery of a product or service to the individual”*.

This exception seems fundamental to the reason most businesses collect information in the first place and in Origin’s view would be better cast as a right to collect unless the customer requests not to and the information is no longer necessary for continued delivery of a product or service.

Energy data and customer information is essential and utilised by the industry for network management and planning purposes, to bill customers and ensuring that we have adequate systems to deliver electricity and gas to customers. Origin would have major concerns if energy customers had the ability to ‘opt out’ of data collection processes.

Origin supports the Commissions views that the right to stop data collection should not include historical data collected on the customer.

Data transfer

Origin agrees with the Commission that customers should have a right to request data about themselves and for this data to be provided in a machine readable format. However, there is a need to determine the information that consumers require, how best to present this data and whether this information is already available to consumers.

Origin agrees that standards should be developed on an industry basis. The energy industry already has rules that make it easier for customers or their authorised representatives to get their electricity consumption data from their retailer or distributor in an easy-to-understand, timely and affordable manner. These rules could be used as a starting point for any review process.

Further, Origin recommends that data requirements should be limited to small customers in the energy market as data requirements for large customers vary greatly and are best dealt with on a case by case basis. This would ensure that data provided to large customers is relevant to their business and customised to the needs of the customer.

It is not entirely clear to Origin the proposed parties to which we would be required to transfer data. At a minimum, Origin suggest that the transfer of data needs to be an “authorised third party agent” and not just any third party. Authorised third party agent represents a relationship that exists between the customer and third party whereby the customer has provided explicit informed consent to third parties to access their data. We should not be required to provide data without sufficient proof of their authority.

As stated in our previous submission, energy customers can access data about them through various means. Customers are able to log into web portals to obtain energy consumption data, in-home energy displays can be installed and usage can be viewed on apps on hand held devices. Further, third parties (with the customers’ consent) are able to request standardised data from an energy provider at any time with this data having the capabilities to be downloaded to market analysis tools. We believe that these options are diverse and adequately provide a means for customers to obtain information regarding their account.

Closing

Origin would welcome the opportunity to work with the Productivity Commission to further discuss the energy data initiatives that are operating in Australia and the way in which the energy market and consumers utilise data.

Should you have any questions or wish to discuss this information further, please contact Caroline Brumby on (07) 8665 7155.

Yours sincerely



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