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22 March 2019

Consumer Data Right in Energy – Consultation Paper: Data Access Models for Energy Data

The Australian Energy Council ('AEC') welcomes the opportunity to make a submission to the ACCC on the *Consumer Data Right in Energy – Consultation Paper: Data Access Models for Energy Data* ('Consultation Paper').

The AEC is the industry body representing 23 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

The AEC supports introducing a Consumer Data Right ('CDR') into the energy sector. We consider it has the potential to enhance competition in the retail market and provide better outcomes for consumers. But, this potential will only be realised if the CDR is supported by a data delivery model that recognises the unique features of the National Electricity Market ('NEM') and in particular, the existing interactions between the Australian Energy Market Operator ('AEMO') and market participants. Given this, the AEC considers model 2, the *AEMO Gateway Model*, to be the most viable option for delivering the CDR in the energy sector.

This submission will outline the AEC's position as to why Model 2 represents the best approach. It will then raise some concerns about the projected timeframe for implementation and whether this will allow proper consideration of customer consent and authorisation matters, which can only take place once the data model has been determined.

Analysis of CDR Data Model Options

Model 1: The AEMO Centralised Model

The AEC does not support designating AEMO as the sole data holder of consumer energy information. This model would require substantially amending the existing national energy legislation to give AEMO the power to hold and manage customer data, on top of the technical difficulties with implementing such a solution. There does not appear to be any benefits to implementing an approach neither aligned to the rest of the economy, nor existing practices in the energy market. The AEC further considers there are security limitations to this approach. Not only does it create 'single point of failure' risks, there are additional concerns with storing large amounts of consumer data in a manner not considered when AEMO or its systems were developed. Moreover, the requirement on retailers to continually transfer new customer data to AEMO is likely to result in higher compliance costs, to be recovered from consumers. We consider this approach should be immediately disregarded.

Model 2: The AEMO Gateway Model

The AEC favours using AEMO as a gateway to process transfers of data between data holders and data recipients. This model takes into account the unique circumstances of the energy sector, namely AEMO's existing role in operating the market and the systems already in use today. Having AEMO act as a gateway recognises its technical expertise in developing data standards and the accreditation process. At the same time, AEMO's lack of experience in storing large amounts of personal information is not exposed.

While this model does rely on a single point for dissemination of information, the security risks are lower than model 1 given participants will continue to hold their own data, and will only be provided on request. We expect the AEMO systems to be highly scalable, noting that the systems already transfer millions of pieces of data between market participants every day. As noted by some stakeholders at the ACCC's CDR Forum on 18 March 2019, if the AEMO systems fail, the energy market will experience significantly greater issues than being unable to deliver data to recipients.

Model 3: The Economy-Wide CDR Model

The AEC does not believe model 3 properly captures the 'sector-specific considerations' that the Consultation Paper otherwise sets out to do. The presence of AEMO and its systems in the operation of the NEM is an important characteristic that sets the energy sector apart and makes transferring the banking model of direct contact between data holders and data recipients inefficient. We anticipate this model would require higher implementation costs than model 2 given retailers already interact with the AEMO systems today. These increased costs will be recovered through higher energy bills. The AEC views this as running contrary to the ACCC's assessment criteria, which specifies consideration of the 'interests of consumers and efficiency of relevant markets'.

Model 3 also poses some problems with user functionality. The Consultation Paper raises the problem of a consumer who changes retailers having to possibly wait while the customer's current retailer seeks data from the customer's previous retailer. Similarly, in the event of retailer failure, consumer data might be lost or the retailer of last resort will be required to find the data.

The AEC notes that some potential data recipients will offer services across multiple sectors and might consider option 3 to be the best method of ensuring a comparable customer experience across the economy. We agree that customer experience is critical, both to build trust in the new framework, but also for efficiency of operation. That being said, we consider an energy specific technical functionality as described in model 2 does not necessarily mean the customer experience has to differ between sectors. Data recipients should be able to develop and deliver an effective customer interface irrespective of the model determined.

Timeframe for Implementation of CDR

The CDR is currently anticipated to be implemented in the energy sector in the first half of 2020. This timeframe was set by the COAG Energy Council in December 2018. The AEC is concerned that the process might become rushed as the ACCC attempts to meet what is essentially a contrived deadline. Our strong preference is that the ACCC develops the rules and procedures for energy, prior to determining an appropriate period for implementation to ensure the CDR delivers positive outcomes when it commences. In our experience of similar reforms to this, setting a deadline prior to finalising the necessary rules often results in highly constricted implementation periods, and ultimately sub-

optimal consumer outcomes. These concerns were corroborated by both industry and consumer groups alike in the recent Senate Economics Legislation Committee report on the *Treasury Laws Amendment (Consumer Data Right) Bill 2019* published on 21 March.¹

Consumer Consent and Authorisation Matters

The AEC agrees with the ACCC that a high level model should be agreed prior to determining the necessary practical steps to implement it. Of key concern to energy retailers is customer consent and authorisation. Given its importance, we consider consultation on the consent process should be prioritised following the determination of a model to allow stakeholders time to agree on the steps necessary to deliver energy data securely.

The AEC considers that some energy data may not be as sensitive as data held by the banking sector. Given this, we would encourage the ACCC to identify use cases for the CDR to determine appropriate consent and authorisation processes.

Western Australia and Northern Territory

The AEC seeks clarification on how the models discussed in the Consultation Paper might apply to the energy market in Western Australia and the Northern Territory. Given these jurisdictions are not currently part of the NEM, there may not be the same existing interactions or scale of operations with the AEMO systems. Consideration should be given then as to whether the current CDR framework allows for a localised approach in Western Australia and the Northern Territory or if a uniform national approach is required.

The AEC looks forward to continuing to work with the ACCC and other stakeholders to ensure this critical reform is delivered in a manner that empowers consumers and improves their experience in the energy market. Determining the model is just the first step in a process that will require significant collaboration and effort between market participants, the ACCC, and potential data recipients to ensure the end result is beneficial for all.

For any questions about our submission please contact me by email at Ben.Barnes@energycouncil.com.au or on (03) 9205 3115.

Yours sincerely,



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¹ Senate Economics Legislation Committee, *Treasury Laws Amendment (Consumer Data Right) Bill 2019*, March 2019, pp27-32.