

Consumer Data Right  
Treasury

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### **Consumer Data Right Rules and Standards Design Papers**

The Australian Energy Council ('AEC') welcomes the opportunity to make a submission to Treasury's consultation on the Consumer Data Right rules and standards design papers ('Design Papers').

The AEC is the industry body representing 21 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, sell gas and electricity to over ten million homes and businesses, and are major investors in renewable energy generation.

The AEC welcomes the constructive decision to release Design Papers ahead of consultation on the CDR Energy Draft Rules. Given the intent to shift the data delivery model, it provides an opportunity for stakeholders to bring attention to any potential issues before the Draft Rules are circulated, at which stage substantive amendments tend to be more difficult.

At a high level, the AEC is comfortable with Treasury's proposal to move to a peer-to-peer data access model ('P2P model'). While the AEC was supportive of the AEMO Gateway model in the initial consultation in February 2019, it has become clear the assumptions behind this model cannot be met. Without the ability to leverage AEMO's existing systems to the extent expected, the costs of AEMO building the Gateway now appear very high and not proportionate to the benefits it will provide.

The P2P model will transfer the responsibility of building the data delivery model from AEMO to the data holder. This will make data holders accountable for providing key technical functions, including authentication, authorisation, and managing the dashboard. While it should reduce costs overall, it will increase the upfront costs for data holders so it is important that due consideration is given to the ability of retailers, as data holders, to absorb these costs. Ensuring there is reasonable time to build the IT systems and a fair approach to phasing will be critical components of a P2P model. This submission touches on these components as well as drawing attention to some features of the P2P model that require clarification.

The AEC has more concerns with respect to the proposed direction of the Joint Accounts Design Paper. Unlike in banking, joint accounts are not a common feature of the energy sector with data holders instead opting for a variety of different arrangements with their customers. To assist Treasury and the Data Standards Body ('DSB') to better understand these arrangements, AEC undertook a survey with its members (who are prospective data holders) about the accounts options they have and use. The aggregated results of this survey have informed the AEC's response to the Joint Accounts Design Paper, which emphasises that a blanket application of the joint accounts rules for banking onto the energy sector is not appropriate and will be cumbersome for data holders and customers to manage.

## CDR Rules and Standards Design Paper – Data Access Model

### Peer-to-peer data access model

The ACCC initiated the first stage of consultation on the preferred energy data access model back in February 2019. At this consultation stage, the AEC and its members submitted support for the AEMO Gateway model. This support was premised on two main assumptions: AEMO would be able to leverage its existing market systems to minimise the costs of delivering data from data holders to Accredited Data Recipients ('ADRs'); and functions like authorisation and authentication would be determined at a later date via public consultation, enabling energy retailers to provide input into the development of an approach that would effectively mitigate data security risks to themselves as data holders, and their customers.

Since then, the collective understanding of the CDR in energy has advanced and it became clear late last year that neither of these assumptions would be realised. AEMO signalled that its existing market systems cannot be fully leveraged and, as a result, the costs of building and implementing the Gateway would increase significantly. Equally, the DSB began consultation on making AEMO the 'master of consent' for processes like authorisation and authentication. This appeared partly driven by a desire to give the Gateway value through greater functionality given the increase in costs. The AEC raised concern about these developments to Treasury and the ACCC at the time, in particular, that:

- AEMO does not have experience performing a customer-facing role, which may create familiarity issues from the customer's perspective, impeding on the initial confidence of customers to use the CDR.
- Data holders will be exposed to a reputational risk outside of their control if AEMO's security protocols fail.
- The increase in implementation costs means the Gateway is no longer a cost-efficient model and those who will recover the costs, data holders, have no capacity to control the costs.

At a theoretical level, shifting to a P2P data access model goes some way to resolving these concerns. It is anticipated that data holders can build and implement the P2P model at lower cost and will have greater incentive to manage operational costs efficiently given their direct exposure. Furthermore, data holders administering consent management processes provides familiarity to the customer, preserves the existing relationship between retailer and customer, and ensures a clearer line of responsibility over data security.

### Practical operation of a P2P data access model in energy

While the P2P model proposed in the Design Paper appears workable, the AEC has some questions about how the model will operate in practice.

Advice from Treasury has been that the Designation Instrument does not need amending to shift to a P2P model in energy. The AEC agrees this is technically possible, but questions whether it is preferable to try and "back-solve" the implementation to ensure that no legislative changes are required. As an example, the existing designation gives AEMO sole responsibility to provide meter data. Under a Gateway model this makes sense, as AEMO holds the data and does not need to seek the same data from a third party (the retailer in this instance) to action the request from the ADR. However, in a P2P model, the retailer effectively acts as the gateway, and is required to seek meter data it will often already hold from AEMO to pass the information onto the ADR. Given this, the AEC is interested in exploring the possibility or

benefits of amending the designation to enable retailers to either seek meter data from AEMO, or to provide the meter data they hold directly.

Another question that remains is how ADRs will access generic tariff information from data holders through a P2P model, and whether there will be any obligations on retailer data holders to integrate generic tariff data with their own data in the same manner it will be required to integrate meter data. The high-level diagrams provided within the Design Paper do not make clear how these requests will be actioned.

It also remains unclear from the Design Paper what responsibilities AEMO will have with respect to complaints processes. The Paper states that ‘the unique nature of AEMO’s role’ means it ‘will not be subject to the existing dispute resolution requirements for data holders’.<sup>1</sup> It then explains that retailers will be responsible for handling customer complaints related to AEMO held data. This creates a scenario where retailers, who are ultimately responsible for the customer experience, are unable to mitigate the risks of AEMO failing to perform its responsibilities. This outcome could be partially resolved if retailers were designated to provide meter data.

Another issue that will influence the viability of a P2P model is the threshold to determine the customers captured. The AEC understands this will be consulted on when the CDR Energy Draft Rules are released, however seeks to emphasise here that Treasury should consider a threshold that aligns with the reasons for shifting to a P2P model. That is, any threshold should ensure the costs are proportionate to the benefits of capturing that level of customer, especially in the context of a data holder only building the technical infrastructure behind the P2P model to facilitate a small sub-set of large C&I customers. Equally, it should be considered to what extent the likely use cases for large C&I customers are economy-wide, or specific to energy, and therefore better managed through bespoke arrangements.

Finally, the AEC encourages Treasury to work with data holders, AEMO, and other key stakeholders with respect to developing a solution to safely enable the provision of historical metering data. This is a feature of the CDR that is likely to be critical to the customer experience going forward, but also poses privacy and security concerns for customers if not implemented correctly.

### **Phasing**

The AEC supports Treasury adopting a staged approach to the application of the CDR rules in the energy sector, but stress that the presence of a staged implementation approach should not be taken as a reason to accelerate the rollout of the CDR to the early tranches. Data holder participants designated in the early tranches should expect to receive reasonable time to build and test the technical infrastructure needed to enable the P2P model.

The AEC supports tranche 1 as outlined in the Design Paper. However, as noted above, Treasury and the DSB should clarify what role, if any, data holders will play in facilitating product data. If it is assumed that ADRs will make requests to Victorian Energy Compare and Energy Made Easy directly to seek this data, then the AEC considers this is a category of data would be a natural first tranche of the CDR rollout.

With respect to future tranches, the AEC considers that the retailer participation thresholds should not be identified until the costs and impacts of becoming a data holder in energy are better understood. This

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<sup>1</sup> Treasury, ‘Peer-to-peer data access model in the energy sector: CDR rules and standards design paper’, Australian Government, 30 April 2021, p8.

will enable policy makers and industry to better identify an appropriate phasing approach that ensures the majority of customers are able to utilise the CDR, without unreasonably burdening smaller retailers with significant implementation costs.

### **Consumer accounts**

In banking, there is an industry standard for the term ‘account’ that allows all banking accounts to share common features. In contrast, no similar industry standard exists in the energy sector meaning how accounts are established and the characteristics of an account vary across retailers. For this reason, the AEC does not consider that the term ‘account’ has a ubiquitous meaning like it does in banking and that alternative terminology should be explored. The AEC does not intend to suggest what a preferable term would be, but instead encourages Treasury and the DSB to consult further with data holders to reach a term that is more relevant and relatable for the customer.

## **CDR Rules and Standards Design Paper – Joint Accounts**

### **Joint accounts**

A primary intent of this Design Paper is to understand whether the current rules for joint accounts, as used in banking, can apply on a cross-sectoral basis. To assist the AEC’s response to this question, we undertook a survey among our members about how their accounts systems operate and whether joint accounts are a feature. The results of the survey indicate there are fundamental differences between banking and energy that would make a blanket application of the current rules inappropriate and highly cumbersome for energy data holders. The below paragraph summarises the results.

All respondents to the AEC’s survey, which cumulatively serve the majority of customers, said they do not use joint accounts. The arrangement that all respondents stated they use is to have an account holder who is financially responsible (the terminology used to describe this arrangement varies between ‘primary account holder’, ‘single account holder’, and ‘account’) and then an option for additional or secondary persons to be added to the account. The powers of the additional person varied between respondents. Most respondents made it clear that they were not an account ‘holder’ but rather an authorised party/parties with a particular relationship to the account holder. Three respondents said the additional person/s was an account ‘holder’ with some powers and could constitute a multiple account holder arrangement. The prominence of multiple account holder arrangements with two or more people that are financially responsible is very low. In only one retailer arrangement could the additional account holder have equal powers to the primary account holder and this was only if the primary account holder granted authority to the secondary person and the secondary person signed a letter of authority.

Based on the above, it is clear the absence of joint accounts is more than a semantic decision and there are substantive differences in the account arrangements of energy data holders when compared to banking. The different level of authority between the primary account holder and additional account person means there is not ‘equal privileges’ across both parties, which the ACCC has said indicates a joint account holder arrangement.<sup>2</sup>

Consistent with this feedback, the AEC considers that the joint account rules are not suitable for energy data holders nor their customers. Our preferred approach is for the energy account rules to be similar to the secondary user provisions, which more closely resemble the primary/subordinate user arrangements

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<sup>2</sup> ACCC, ‘CDR Rules Expansion Amendments Consultation Paper’, Australian Government, September 2020, p37.

described above. Any application of the secondary user provisions to the energy sector should be subject to consultation on how the meaning of ‘secondary user’ and ‘secondary user instruction’ set out in the *Competition and Consumer (Consumer Data Right) Amendment Rules (No. 3) 2020* best apply to energy account arrangements, noting the differences across retailers. This may be an area that requires consultation in the CDR Energy Draft Rules. The AEC considers such consultation necessary so an appropriate threshold can be set for what constitutes a secondary user. This is because respondents have indicated the authority of the secondary user in energy can vary greatly, from financial responsibility for the account to simply being an enquiry contact.

### **Opt-out data sharing model**

As a matter of principle, the AEC does not support a customer’s data being shared without their consent, which would be the practical outcome of an opt-out model. While requiring ADRs to obtain consent from both parties in a Joint Account Holder arrangement may create some friction, this is a necessary precaution to maintain the privacy and security of each customer’s data. Having these precautions in place is especially important to prepare for the CDR’s eventual expansion to action initiation as is anticipated.

Noting the comments made earlier about Joint Account Holder arrangements not being used in energy, the opt-out provisions being considered here may not be relevant to energy consumers. However, this will depend on the direction Treasury and the DSB take with respect to the questions in this Design Paper, and further consultation may be necessary to understand the implications for energy participants.

The AEC looks forward to continuing to work with Treasury to develop the Consumer Data Right for energy in a manner that is cost-efficient and safely and securely optimises the customer experience.

Any questions about this submission should be addressed to Rhys Thomas, by email to [Rhys.Thomas@energycouncil.com.au](mailto:Rhys.Thomas@energycouncil.com.au) or by telephone on (03) 9205 3111.

Yours sincerely,



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