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Dear Daniel

Submission on the Consumer Data Right (Energy Sector) Designation 2020

AEMO is pleased to make this submission on the exposure draft of the Consumer Data Right (Energy Sector) Designation 2020 ("Draft Designation").

AEMO supports the designation of the Energy Sector for the purposes of the Consumer Data Right (CDR) and considers that it will play an important role in increasing competition, driving innovation and, ultimately, in enabling consumers to realise value from their data.

The Designation Instrument is to be made under section 56AC of the *Competition and Consumer Act 2010* (the Act) and forms the basis for the ACCC to make the Consumer Data Rights Rules under section 56BA of the Act. AEMO, as a key player, is interested to ensure that the scope and operation of the Designation Instrument is clear and achieves the goals of the CDR regime in the Energy Sector context. In addition, AEMO notes that the CDR Rules for the Energy Sector will operate in parallel with existing co-operative, State-based National Energy Laws and National Energy Rules which underpin the operation of wholesale and retail energy markets. CDR implementation should therefore ensure consistency between the new CDR regime and the national energy arrangements.

AEMO also notes that a crucial element of the CDR in the Energy Sector will be the role of the Designated Gateway as an intermediary – facilitating both the flow of information between retailers and accredited data recipients and prioritising the principle of cost efficiency through minimising the development of duplicated capabilities. As AEMO already plays a key role in creating a level playing field and facilitating consumer choice, it welcomes its role as the Designated Gateway when the CDR commences in the Energy Sector.

Additionally, the drafting decision to account for the fact that an energy consumer is not solely those who are sold a service but also those residents at a relevant premises who are supplied with the service. This is a key underpinning of creating a foundation for the CDR in energy for the large numbers of energy consumers who aren't necessarily an account holder with a retailer.

In Attachment A to this submission, we provide detailed comments on the Draft Designation Instrument.

For further information on the AEMO submission, please do not hesitate to contact myself or Luke Wines, Principal – Emerging Markets and Services on (03) 9609 8402.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Violette Mouchaileh', with a stylized flourish at the end.

Violette Mouchaileh
Executive General Manager, Emerging Markets and Services

Attachments: AEMO comments on the CDR Draft Designation Instrument

ATTACHMENT A: AEMO COMMENTS ON THE CDR DRAFT DESIGNATION INSTRUMENT

1. AEMO's role as Designated Gateway

AEMO welcomes the decision of the Treasury to introduce a Designated Gateway. AEMO considers that the role of a 'gateway' is to serve as the bridge between service providers, Data Holders and the market, enabling value to be unlocked for consumers through efficiency gains and costs being managed in the most effective manner.

Under section 6 of the Draft Designation, AEMO has been designated as the Designated Gateway for:

- (a) information about a customer or associate where the Data Holder is a Retailer; and
- (b) information about the sale or supply of electricity where the Data Holder is a Retailer.

However, under the current drafting, AEMO will not act as the Designated Gateway for:

- (a) retail arrangements relating to electricity, natural gas or both where the Retailer, Australian Energy Regulatory or Victorian Energy Compare is the Data Holder; or
- (b) retail arrangements relating to electricity (or electricity and gas) where the information related to the arrangement is tailored to a particular person (i.e. tailored product information) and the Data Holder is a Retailer.

AEMO comment

Although AEMO supports the direct flow of information about retail arrangements from the AER and Victorian Energy Compare without a Designated Gateway, AEMO questions why information about a retail arrangement tailored to a particular person (and thus potentially information about an identifiable individual) is treated differently to other information that relates to an identifiable individual held by a retailer.

As all other transfers of CDR Data held by retailers will be facilitated by the Designated Gateway, to exclude this information from the Gateway role may require retailers to introduce their own measures, including accreditation management processes, end-to-end authentication, management of relations with Accredited Data Recipients (ADRs), etc., to meet their obligations as data holders for a limited set of CDR Data while the flow of all other CDR Data provided by the retailers will be facilitated via the Designated Gateway.

2. The AEMO Role as Data Holder

As explored in the sections 3 to 5 of this submission below, the Draft Designation Instrument designates AEMO as the Data Holder for three types of CDR Data (Metering Data, NMI Standing Data Schedule and DER Register Information).

AEMO comment

Noting that a person cannot be a Data Holder if they are a Designated Gateway for that data, (s56AJ(1) CCA) AEMO considers that it is in the best interests of the energy sector if the provision of Metering Data, NMI Standing Data and DER Register Information under the CDR is

a function to be carried out by AEMO as Data Holder rather than being imposed on each Retailer.

However, unlike Retailers, AEMO is in a unique position where it:

- (a) has no direct relationship or interaction with any consumers;
- (b) does not directly collect (nor is responsible for) any data to which it has been designated as a Data Holder; and
- (c) is reliant upon the actions of third parties for the provision and quality of the data to which it has been designated as a 'Data Holder'.

Practically, this means that AEMO will not always have CDR Data for a particular arrangement (for example, when a consumer is, and has always been, on a supply arrangement with their Local Retailer).

3. Data Holders for Metering Data

The Draft Designation currently designates Metering Data that relates to an arrangement (other than metering data for type 7 metering installations) as CDR Data. The proposed approach is a split Data Holder role:

- (a) AEMO to the extent that AEMO is specified as a person who 'holds' such information, or on whose behalf such information is held; and
- (b) Retailers (in this situation, AEMO will act as Designated Gateway for that Metering Data).

AEMO comment

With regards to the definition of metering data, AEMO notes that the proposed definition of Metering Data is that "it has the meaning given by the National Electricity Rules. Metering data under the NER is a very broad definition and includes "*Accumulated metering data, interval metering data, calculated metering data, substituted metering data, estimated metering data and check metering data*" (with each term being defined in the National Electricity Rules for a variety of contexts). AEMO supports the inclusion of this type of data as CDR Data but notes that further specification may be required when the CDR Rules are drafted to ensure consistency between the CDR regime and the National Electricity Market regime. This is especially important given potential changes (as set out below).

With regards to the designated data holders, and as noted above, AEMO believes that it is not in the best interests of the energy consumers for the role of Data Holder for Metering Data to be split between the Retailers and AEMO.

As market operator, AEMO is responsible for settlement of the National Electricity Market (NEM). This means that AEMO ensures that market generators are paid for the energy they supply, and retailers pay for the energy their customers use. With the introduction of Global Settlement reforms, the Metering Data AEMO has available to undertake this function will be the most comprehensive single set in the NEM. Global Settlement (an alternative methodology to the current settlement-by-difference methodology that has been used since the start of the

NEM in 2008) means that AEMO will be settling the market using the same process for all retailers which will provide a greater level of visibility of energy uncertainties (such as electrical losses, unmetered loads and estimation errors) and increase the detail of the of Metering Data AEMO receives.

AEMO considers that this upcoming change, combined with the considerable duplication associated with requiring Retailers and AEMO to both develop the required capabilities and technical infrastructure needed to act as Data Holder for Metering Data, makes it impracticable for Retailers to be designated as Data Holders for Metering Data in addition to AEMO.

With regards to the date of designation, AEMO further notes that section 6(3) of the Draft Designation specifies 1 July 2018 as the earliest day applicable for the energy sector to begin holding such information. With regards to the additional data that AEMO will receive as a result of the change to settlement processes, AEMO requests that the Designation Instrument reflects that this data is not designated until the point at which AEMO receives it.

4. Definition of NMI Standing Data

AEMO supports the inclusion of NMI Standing Data as another category of CDR data. As NMI Standing Data consists of the technical data related to each connection point in the NEM, AEMO considers that it is best placed to be classified as Data Holder.

The Draft Designation currently designates information of a kind set out in the NMI Standing Data Schedule, as in existence from time to time, that relates to the arrangement, as CDR Data. The definition in section 4 states that NMI Standing Data Schedule has the meaning given by the National Electricity Rules and that the Data Holder is AEMO.

AEMO comment

AEMO supports the inclusion of some NMI Standing data as CDR Data but, as with Metering Data, further specification may be needed when the CDR Rules are developed to allow for flexibility and to ensure consistency between the CDR regime and the National Electricity Market regime.

AEMO notes that specifically calling up the "in force" definition of NMI Standing Data Schedule in the Designation Instrument may not translate into a clear outcome. For example, clause 3.13.12A of the National Electricity Rules (NER):

- relates to the scheme that must be developed for NMI Standing Data under clause 3.13.12A of the NER for the NEM (excluding Victoria) while the Jurisdictional NMI Standing Schedule that applies to Victoria is developed under clause 3.13.12 of the NER); and
- together with the Jurisdictional NMI Standing Schedule, does not encompass the data held in the five Market Settlement and Transfer Solutions (MSATS) master tables. A key omission is the metering register, which AEMO must maintain per clause 7.12.1 of the NER (detailed in schedule 7.1 of the NER), which contains information that AEMO considers pertinent for consideration as CDR data. The definition of the class of

information to be designated need be updated to reflect this, such that the accurate data set intended is captured.

Due to the breadth, nature and quality of the data held within the five MSATS master tables, AEMO would suggest that a subset of standing data stored for each NMI may need to be considered when the CDR Rules are developed. The data captured in these tables serves a broad range of purposes in the electricity sector but is likely to be of minimal value beyond those existing needs. Attempting to expose the entire, or a large majority of the, dataset is likely to be more costly than the associated benefit to consumers.

5. CDR Data - DER register information

The Draft Designation currently designates DER register information that relates to the arrangement as CDR Data. The proposed definition of DER Register Information in section 4 says it "has the meaning given by the National Electricity Rules. The Data Holder is AEMO.

AEMO comment

As for the other data for which AEMO is Data Holder, AEMO considers that the data in the DER Register could be identified and specified as needed via the CDR Rules, particularly as the prospect for further evolution of this register is already underway.

AEMO again notes that section 6(3) of the Draft Designation specifies 1 July 2018 as the earliest day applicable for AEMO to beginning to hold such information. However, it is important to note that the DER Register has only been operational since 1 December 2019 and, as a result, cannot be designated before this date.

6. Consumers

Section 5 of the draft Designation Instrument defines "customer" as:

"... a person who purchases electricity under the arrangement, or to whom electricity is supplied in connection with the arrangement".

The definition of 'associate' is:

"...an associate of the customer, to whom electricity is supplied in connection with the arrangement".

AEMO comment

In implementing the CDR regime in the Energy Sector, it is important to recognise that the supply of electricity is made to 'premises' rather than to a particular person. This means that a proportion of information within the energy sector does not necessarily relate only to the individual who has a direct relationship (account) with the retailer but rather may relate to all residents at the relevant premises who consume the supplied electricity (for example, Metering Data).

AEMO supports a broad approach to the application of the CDR in the Energy Sector that reflects that data within the energy sector has the potential to be about, and relevant to, all residents at a set of premises.

Furthermore, in recognition of the broader concept of 'consumer' within the Energy Sector, consideration should be given throughout the development of the CDR in the Energy Sector to facilitating access to information under the CDR by retail account holders, residents who are known to/identifiable by the retailer and residents who are not known to/identifiable by the retailer. This approach would require resolution of some questions and require appropriate consideration of the potential concerns that result. In order to manage the potential risks of disclosure of the data on such a basis, appropriate accreditation and data management principles would be required. Such an approach would not be appropriate for CDR Data that identifies an individual on its face (for example, billing data and customer supplied data) but could be appropriate, based upon their relative sensitivity, for Metering Data, NMI standing Data and DER register information.

7. Exclusion of NMI Standing Data, Metering Data and DER Register Information from the concept of 'Materially Enhanced Information'

The Draft Designation (section 11) excludes 'Materially Enhanced Information'¹ relating to information about the sale or supply of electricity in section 8 from the CDR. There is a qualification so that if the 'Materially Enhanced Information' falls within section 8(2) or section 8(3), the exclusion does not apply.

This means that any Materially Enhanced Information produced by AEMO that is related to NMI Standing Data, Metering Data and/or DER Data may be captured as CDR Data.

AEMO further notes that the Explanatory Statement states that "*...information of the kind listed specifically in subsections 8(2) and (3) cannot be materially enhanced and will always be subject to the consumer data right. This is because information listed in subsections 8(2) and (3) is factual and based solely on observation.*"

AEMO comment

AEMO suggests that as power system and market operator for the NEM, and the multiplicity of uses and interrelationships of Data, that the information that it has as a Data Holder should in the first stages of implementation of the CDR, be excluded from Materially Enhanced Information. That is, AEMO considers that subsection 8(4) should only exclude Materially Enhanced Information that falls within the terms of subsection 8(3) and that any Materially Enhanced Information relating to subsection 8(2) should be excluded from the operation of the CDR.

¹ Materially Enhanced information has been defined as information that is wholly or partly derived through the application of insight or analysis to information to which section 8 applies and that insight or analysis was applied by the Data Holder (or on their behalf) and it rendered the information significantly more valuable than the source material.