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Energy Security Board – Submission on Consumer Data Right Rules and Regulations (version 4)

Dear Kate,

Energy Security Board (ESB) welcomes the opportunity to provide feedback on the Treasury's draft Consumer Data Right (CDR) Rules and Regulations (version 4) published on 17 August 2021, which covers Rule amendments to support CDR in the energy sector.

The ESBs recent advice on the Post-2025 Electricity Market Design[1] has highlighted the increasingly central role played by consumers, with distributed energy resources (DER) in homes now a major element of meeting consumer demand and managing system-wide supply. Having access to timely and accurate data is becoming increasingly important for consumers to be able to make informed decisions on energy services, and to enable service providers to more easily offer consumers innovative products and flexible consumer technologies.

The CDR will play a critical role and has been recognised as a key element of the ESB's Data Strategy. Managing and supporting complex new consumer services and technologies depends on enabling greater communication, personalised consumer advice and digitalised tools. Electrification of transport and bundling of services also highlights the need for energy to better coordinate data with other sectors. CDR provides a welcome mechanism for safe and secure common frameworks supporting these needs.

ESB largely supports Treasury's proposed CDR Rules and Regulations in the exposure draft and recognises the in-depth work undertaken by Treasury with energy stakeholders.

The attached submission supports the key proposals raised for discussion by Treasury:

1. **all NEM retail customers are eligible CDR consumers, irrespective of size** – ESB identifies important use cases even for very large energy users, such as reducing barriers to flexible demand services in the energy transition and streamlining mandated government reporting processes.
2. **process for responding to correction requests for AEMO-held CDR data** – ESB agrees this should leverage existing energy processes where possible to promote consistency overtime and minimise costs, and that this should be a broad principle applied wherever appropriate.
3. **staged application of rules to the energy sector** – ESB broadly supports Treasury's two-tranche approach and the proposed timelines. The rapid rate of energy market transition requires timely delivery of CDR to all consumers, but there remains a need to reduce barriers to smaller service providers. ESB agrees the energy sector should aim to prioritise changes required to support CDR services as soon as possible. AEMO and AER will provide advice on their requirements to meet the proposed timelines.

[1] https://esb-post2025-market-design.aemc.gov.au/

ESB also raises two further concerns identified to be resolved:

- ensuring **switching retail providers does not limit consumer access** to their own meter data under the peer-to-peer model. This is critical to key CDR use cases and enabling greater consumer choice and effective competition, particularly as consumers will be able to engage multiple service providers. While Treasury's proposed model seeks to support this, resolution of key details of this model working with AEMO is required to allow supporting system development, prior to development of systems for Tranche 2.
- **caution in prescriptive drafting of data requirements**, given overlap in CDR and energy frameworks and rapid ongoing change energy data needs.

ESB welcomes further engagement with Treasury on these issues or any other matters to support timely delivery.

Yours sincerely

Kerry Schott AO

Chair, Energy Security Board

Attachment A

Energy Security Board Submission to the Consumer Data Right: Rules amendments (version 4)

Proposal 1: *all NEM retail customers are eligible CDR consumers, irrespective of size*

The rules require data holders to share energy CDR data in relation to all retail customers in the National Electricity Market (NEM), irrespective of their level of consumption.[2]

ESB supports both in principle and practice.

- CDR should in principle seek to **support all consumers with common datasets**, with as few barriers as possible, such that service providers can build market services supported by CDR for a wide variety of customers. This should include large users and vulnerable consumers wherever possible.
- ESB supports that **large energy users are included wherever datasets can be standardised** and are available
    - There are a large number of valuable use cases which can benefit from CDR access to large metering data which is already shared and held by AEMO. These include (further details provided in Attachment B)
        - **Government-mandated reporting and assessments** which create costs for business, including commercial buildings under NABERS/Commercial Building Disclosure, and energy reporting such as for the Clean Energy Regulator and jurisdictional clean energy and efficiency programs. Many of these programs currently result in expensive manual processing of paper billing, even over complex and large sites.
        - **Assessment of innovative commercial offers, energy management, energy efficiency, and demand management services**. Barriers in accessing data is currently a handbrake on growth in many of these services, creating material costs for even an initial assessment of potential needed to interest the business. Flexible demand services are expected to become a growing and critical part of the energy sector as two-way markets value more flexible load to balance variable and distributed energy. Barriers to these markets need to be reduced. While some large users will have specialised metering and data services, for many businesses this remains a material barrier.
    - ESB understands where AEMO are already providing metering data for CDR small consumers, inclusion of large user meter data which they already maintain will not create significant additional costs in their systems.
    - Where medium-to-large users have standardised or generally available commercial arrangements these should also be covered to support greater transparency of

[2] A retail customer is in the NEM when there is a retailer that is financially responsible for the customer in the wholesale market, so customers that purchase from an embedded network are not eligible consumers, unless they have chosen to go 'on market' in the NEM.

commercial energy costs, which will support a range of comparison services and business-case estimates.

- Where users have specialised or unique arrangements, where coverage would impose inefficient costs or limited benefits, these should be exempt. For example:
  - Bilateral or unique contracts not readily or cost-effectively described in standard terms
  - Specialised contract arrangements based on data not covered or available in existing shared datasets, such as voltage, reactive power, or amps.
- Where non-standardised datasets are not available for a group of users, the ESB would support the unavailable datasets being exempt, rather than the consumer being excluded. This would mean that available datasets for the same group of users (e.g., large meter data already readily available via AEMO for most large consumers) would be covered.
- Similarly, there is value in building in flexibility for how these datasets may evolve over time. For example, if datasets become more standardised or available and remain valuable (e.g., if voltage from smart meters becomes a readily shared dataset) they should be covered.

Proposal 2: process for responding to correction requests for AEMO-held CDR data

The rules provide a process for the correction of AEMO-held CDR data that utilises existing data correction processes in the National Electricity Rules for NMI standing data and metering data and requires retailers to initiate correction of DER register data with the relevant distributor.

ESB supports – to the extent possible this and other effective existing energy processes should be leveraged, with duplication or inconsistencies avoided wherever possible. As the sector continues to transform rapidly this is driving change in data needs and updating of existing systems and processes. The risk of inconsistencies emerging and creating new costs or barriers should be limited wherever possible.

This same principle applies for other processes, such as ombudsmen arrangements and prescription in the Rules, discussed further below.

Proposal 3: staged application of rules to the energy sector

The rules provide a staged implementation of CDR obligations in the energy sector in two tranches.

ESB supports - implementation of the energy CDR as soon as possible.

Consumers would already benefit from CDR support in selecting new energy products and services available in the market today. Delay in CDR access creates material costs. For example: over 200,000 DER systems are currently installed annually, yet without access to consumer usage profiles it is difficult to optimise design choices like scale, west angle and whether a battery is cost-effective. CDR could support personalised tools and services which better inform consumers on likely outcomes as they design and assess these systems.

ESB broadly supports Treasury's proposed timeline as challenging but likely achievable. Meeting it requires support from the energy sector, including changes to regulations, and new systems in

AEMO, AER and retailers. ESB agrees the energy sector should prioritise this support to provide CDR services as soon as possible. AEMO and AER will provide advice on their requirements to meet the proposed timelines.

ESB supports Treasury's proposed coverage of all retailers. Smaller retailers often provide more innovative products and attract more mobile consumers who may be more likely to actively seek benefits from CDR. Care should be taken however to reduce barriers to smaller retailers and entrants. Shared service providers could reduce entry costs and support scale efficiencies. ESB agrees that the larger retailers moving first provides early coverage for many consumers. ESB notes that for some individual mid-scale retailers there could be a case to be included in the earlier tranche, for example in jurisdictions where the big three retailers are not dominant. However individual cases would need consideration.

Access to data across retailers

The ESB's principle concern in the shift to the peer-to-peer CDR model, is to ensure that consumers maintain access to their historic meter data when switching retailers. This information is critical to consumer benefits and competition in the future market. Treasury's exposure draft seeks to enable provision of historic data, if AEMO resolves supporting issues in meter standing data. However, the proposed drafting and policy intent may benefit from being clarified.

ESB has expanded on supporting arguments here as there remain alternate views which may be presented in consultation.

Ongoing access to meter data across retailers is critical for CDR benefits.

- A minimum of 12 months of usage data is critical for many priority CDR use cases – such as comparisons of personalised benefits from different retail plans, DER systems, efficiency options or new equipment. Strong seasonality of energy use due to space heating impacts[3] means any advice based on less than 12 months of data can be highly misleading and lead to poor outcomes.
- Without data across retailers, consumers who switch retailers will lose access to adequate advice on alternative services for 12 months. This creates friction on competition and disadvantages active consumers. As active consumers are the most likely users of CDR, this may have material impacts on CDR energy benefits overall.

This problem will grow in the ongoing market transition.

- As highlighted in ESB's Post-2025 Market Design, consumers will increasingly have access to multiple service providers who will all have potential interests in CDR data. For example: services associated with solar, batteries, virtual power plants, demand management or an electric vehicle (EV), as well as a retailer / aggregator.
- As innovation in the market evolves and these service providers grow, the role of retailers is changing. Access to meter data controlled and limited by a single retailer and not maintained across retailers may become an unacceptable barrier to supporting services across these multiple service providers.

[3] Local climate and length of day interact strongly with individual home efficiency and different space-heating technologies (electric, gas, central, portable etc) such that the seasonal usage profile can vary widely across between neighbours or identical homes in different areas.

- This may limit use of CDR, with providers seeking alternatives not controlled by another party. We already see similar issues with networks and DER service providers struggling to access or depend on data from retail-controlled metering and seeking alternatives which are more costly to consumers. This works against the goal of CDR becoming widely used, transparent and safe option for consumers which supports innovation in services and efficient outcomes.
- Similar problems will be encountered when CDR seeks to cover gas and are likely to occur in other sectors.

ESB recognises Treasury supports resolving this concern. The Rules exposure draft proposes to allow AEMO to provide historic meter data for the same consumer at the same premises. While this approach is broadly supported, the way this is applied in the drafting could be clarified to avoid uncertainty (which has also been raised by AEMO).

- In the exposure draft, when defining *required consumer data* for energy in Schedule 4, Treasury has introduced the concept of data which "relates to a time at which an account holder for the account was associated with the premises to which the request relates" (Schedule 4, 3.2 (1)(c)). This concept is repeated over several data-scope definitions.
- The same clause defines *required consumer data* to include "AEMO data in relation to any such account" (Schedule 4, 3.2 (1)(b) (iii)), rather than the "account holder and premises".
- The coverage of the two definitions has already caused debate amongst legal teams and could benefit from clarification. Similar drafting uncertainty in existing energy Rules has caused problems in implementation where stakeholders support different views.

To support the approach proposed in the exposure draft, changes also are required to existing standing data under the NER procedures to identify when the account holder for a premise changes.

- AEMO will need to implement these new procedures as a co-requisite for CDR implementation. ESB supports this approach, and understands AEMO does also, however it will be subject to a process with a range of stakeholder views.
- These supporting changes should be in place prior to development of systems for tranche 2, to reduce barriers/inefficiencies in implementation.
- Treasury clearly stating its policy intent in the exposure draft approach could support of this procedure change.

ESB does not support a range of alternatives approaches currently proposed by stakeholders which result in:

- Consumers losing access to their meter data when switching. This benefits only the primary retailer at the expense of the consumers and other service providers and create friction on competition.
- Increased consumer friction where consumers must respond to multiple retailer authorisation processes, with ADR's or AEMO coordinating requests to multiple retailers. This complicates development of ADR services and confuses consumers, likely reducing use of CDR.

Caution in prescriptive drafting

While the broad content of data requirements proposed in the Rules is supported (Schedule 4, 1.3), the ESB would raise caution where it comes to the proposed level of prescription, based on the expected rate of change in data needs and concerns raised in the ESB Data Strategy over prescriptive requirements in existing energy Rules.

The Explanatory Materials comment that the Rules define "a broad descriptor of the data set and specifying minimum inclusions of key data. This approach allows flexibility for further refinement and specification of data sets in the standards."

While the intent of the "minimum inclusions" may be flexibility, AEMO has identified that their level of detail may prove to be quite prescriptive in the face of changing energy data needs, for example: detailed descriptions of existing NMI standing data which is subject to change by procedures.

Recognising the intent maybe to increase certainty for CDR stakeholders, the Data Standards process may more appropriately provide the clarity and certainty required. ESB understands that AEMO has suggested that some of the prescription in the Rules could be alternatively provided as examples.

The ESB supports this concern over prescription Rules in the context of the expected rapid change in energy data systems over the next 5-10 years and the related findings of the ESB Data Strategy. The Data Strategy (and its supporting legal review by King & Wood Mallesons) identified a range of issues in current National Energy Rules and related regulation where prescriptive approaches have created unintended barriers to consumer benefits from data, usually due to becoming out-of-date or inconsistent with overlapping requirements in multiple layers of regulation.[4] These issues were also raised in work undertaken on streamlining wider energy Rules in response to issues raised by the Finkel Review.

Guidance on balancing a more principles-based approach with prescription in the National Energy Rules was included in the AEMC's Rule Drafting philosophy,[5] recognising that while prescription can provide important certainty, overly prescriptive approaches can be a handbrake on innovation and add to costs. This approach is also consistent with the Commonwealth best practice guidance on drafting.[6]

Given the CDR Data Standards and existing energy standards in the NER procedures will already need to be managed for consistency, additional prescription in the CDR Rules may prove an unnecessary layer in managing ongoing change.

[4] Discussed in the ESB Data Strategy consultation paper, Oct 2020 (p67) and supporting legal review undertaken by King&Wood Mallesons and Galexia https://energyministers.gov.au/publications/energy-security-board-data-strategy-submissions-consultation-paper-published.

[5] AEMC Rule Drafting Philosophy, Oct 2020 https://www.aemc.gov.au/news-centre/media-releases/aemc-releases-approach-drafting-energy-rules

[6] https://obpr.pmc.gov.au/resources/guidance-impact-analysis/regulatory-impact-analysis-guide-ministers-meetings-and-national

Attachment B

CDR for Large energy users – Use cases and contacts

Use case: usage data is a key input for NABERS commercial buildings assessments[7], which assess buildings based primarily on historic usage.

These assessments are widespread, frequent and costly, due to obligations to undertake them under the Commonwealth Commercial Building Disclosure (CBD) program, as well as jurisdictional purchasing policies also driving assessments.

Currently this data is most often entered manually, from printed bills, at great expense by commercial assessors. Ready digital data access would reduce the costs of assessments and likely allow for more detailed tools and analysis with greater access to time-of-use data.

There has been a range of recent policy work to expand these obligations, which include estimates of costs and benefits in reporting, which will be of use in developing use cases.

NABERs annual report[8] indicates around 2000 assessments are undertaken per year, with usage growing with expanding coverage. Work undertaken by the 2019 CBD review[9] (which covers around half of the NABERS assessments) estimated average NABERS assessment costs in the order of $3300 per assessment, with interviews with assessors suggesting the cost to source and integrate the energy use data is usually around $700 but for more complex sites can be around $1600. Draft estimates[10] of the overall CBD program (forward to 2030) suggested around $30mill in NABERS assessments against around $217.2mill in total net benefits for the program. The draft report also suggested that a further $61mill in benefits could be achieved by expanding to cover building tenancy, but this depended on streamlining arrangements for central building owners (or the assessor acting on their behalf) to have direct access to tenant metering data to complete the rating through the co-assess tool. Currently the challenge in accessing this data is seen as a key barrier.

Use case: Emissions reporting and assessments

All large energy users are mandated to report energy usage, by facility, annually to the Clean Energy Regulator (CER). This is the key reporting for all government emissions reduction programs (including current Safeguards and potential future emissions reductions mechanisms). These reporting mechanisms and related audits undertaken by the CER have many manual elements which can be costly and result in accuracy issues. Many of these users have a large number of sites and must coordinate reporting and monitoring across these sites (e.g., retail portfolios like Coles/Woolworths and property portfolios like Lendlease).

CDR would assist tools to access and report data more reliably and less manually, as well as to aggregate and organise usage information across sites. It would also support cost-effective ongoing monitoring of energy use and emissions against targets across the year, rather than annual reporting. As emissions reporting is likely to increase over coming years, ability to monitoring and report more frequently against targets is likely to also be valuable.

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[7] National Australian Building Energy Rating Scheme (NABERS)

[8] NABERS Annual Report 2019-2020 Life of Program Statistics

[9] https://www.cbd.gov.au/program/overview/cbd-2019-review

[10] The final review has not been published due to COVID delays. Only draft results are available and may be revised in the final.

CER is undertaking work on improving the reporting tools and providing more options for large users to link their accounting systems to automate reporting. Combined with more direct access for energy users to energy data through CDR, this could materially reduce compliance costs.

Use case: Energy management, audits, and efficiency assessments – critical to identify reduce costs in businesses and meet emissions targets.

Ready access to meter data would allow for earlier and cheaper identification of potential to find improvements, prior to more costly deeper dive investigations, reducing the burden to initiate energy investigations and likely increasing the ability for energy service providers to promote action.

Use case: Demand management services for large energy users – complex assessments of energy usage over time to assessing demand flexibility and business cases for demand management and integrating these assessments with wider options for commercial energy contracts. An ability to readily analyse time-of-use meter data will assist providers of demand management services to more quickly and easily assess potential opportunities and provide an initial business case to mid-large energy users, reducing the burden to engage with potential providers. CDR could also support integration with ongoing demand management tools to coordinate or monitoring responses to these services.

Growth in more flexible demand and DM services is a critical component of integration and balancing DER and reducing costs in the system. Service providers are expected to grow rapidly in this sector, particularly as storage plays a greater role in the system.

Use case: Advice on alternative energy contracts – ready access to time-of-use meter data will allow new service providers to offer more tailored services and large users to shop around, improving competition in the mid-large tier and reducing bills. The complexity in large-user contract arrangements means accurate assessment of impacts and be more costly. The contracts also can cover many sites so automated data can also support ready coordination of estimates across sites.