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Submitted via email: info@esb.org.au.

19 August 2022

ESB's Data Strategy Initial Reforms Consultation Paper

The Australian Energy Council ('AEC') welcomes the opportunity to make a submission to the Energy Security Board's consultation on its *Data Strategy – Initial Reforms Consultation Paper* ('Consultation Paper').

The Australian Energy Council is the peak industry body for electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. AEC members generate and sell energy to over 10 million homes and businesses and are major investors in renewable energy generation. The AEC supports reaching net-zero by 2050 as well as a 55 per cent emissions reduction target by 2035 and is committed to delivering the energy transition for the benefit of consumers.

The ESB's Data Strategy is one of a suite of data related reforms currently underway in the energy sector. These reforms promise to provide a more data rich environment for policymakers, businesses, and consumers to enable them to make better decisions. Industry has supported the rollout of these reforms but has sought to emphasise along the way that any new datasets must be targeted, cost-effective, and delivered securely.

The AEC does not consider the reforms proposed here to have met these principles. It is not enough to say more information is needed to facilitate the energy transition. It must be supported by data gap analysis of why certain datasets are needed (including use cases), which bodies require access to that data (with there being clear criteria for nomination), whether other reforms will meet this data need (such as the Consumer Data Right), and what protections must exist to maintain the privacy and security of that data (in line with its sensitivity).

As it presently stands, there remain too many unknowns about the data access arrangements laid out in the Consultation Paper for the energy industry to provide unqualified support. While there might be a policy case for some Class A bodies receiving access to AEMO-held data, the AEC considers expansions beyond this require further consideration about costs and data security.

The AEC's submission lays out some principles that, in our view, should guide the rollout of the ESB's Data Strategy. It then responds specifically to the reforms in this Consultation Paper.

Principles to Guide ESB's Data Strategy

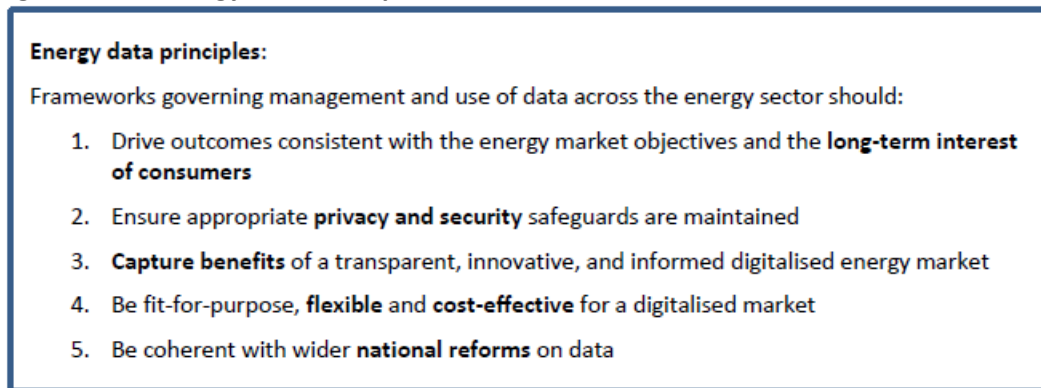
The AEC participated in the initial engagement of the Data Strategy back in October 2020. Our submission provided support for the development of a data strategy but raised concerns about the all-encompassing approach of the original Consultation Paper, which did not seem cost-efficient or targeted. The submission proposed some principles to guide the development of the ESB's Data Strategy that were consistent with Recommendation 7.14 of the Finkel Review and other best practice guides for regulatory reform:

- Principle 1: Clear Decision-Making Apparatus (data gap analysis be performed and involves stakeholder participation).
- Principle 2: Cost-Benefit Analysis (identifying the likely benefits and costs of the reforms).

- Principle 3: Representative Governance Structure (establishing a formal governance structure to guide the implementation of the Data Strategy).

The release of the Final Recommendations followed these principles in part, sharpening the focus of the Data Strategy to five priority data gaps, and setting up some immediate governance structures like a Data Leadership and Coordination Group (DataLAC) and a Data Reference Group. The ESB's Final Recommendations also laid out its own guiding principles for future data arrangements:

Figure 1: ESB Energy Data Principles



The AEC considers these principles to be a good starting point when assessing reforms to data access arrangements. Their value can be enhanced by developing indicators or checkpoints for how each principle is being tested. For example, Principles 3 and 4 can be tested through undertaking cost-benefit analysis of a potential reform, while Principle 2 can draw on whether a potential data recipient has existing legislative responsibilities for handling data, which should mitigate the level of risk.

Process of Data Strategy Implementation

Outside of establishing clear guidance principles, the AEC queries whether the process of data reform should begin with expanding data access arrangements. It would seem preferable to tidy up the existing framework through removing duplicate, inefficient or obsolete obligations, before any expansion. This would make the overall process of reform simpler (there are less regulations to manage), more transparent (it is clearer where existing data obligations are serving their purpose), and less costly.

It is also helpful to drive better coordination across data reform projects, as reflected in Principle 5, and recognised by the ESB: 'streamlining how [coordination] is done, rather than driving new capabilities as needed for each reform, minimises the costs associated with growing these new capabilities'.¹ In the context here, these Initial Reforms have crossover with the Consumer Data Right, yet each seem to be progressing separately and without consideration of the other.

Finally, starting this project by refining the existing data framework seems logical if the ESB is working on the assumption that the existing framework is not fit-for-purpose. The data expansions being considered involve data that is commercially sensitive to industry and private to consumers. It is important the regulatory framework is designed to protect and secure such data. The stated approach in this paper to introduce new datasets while commencing engagement on a 'more enduring and fit for purpose energy data regulatory framework' will create confusion.

¹ ESB, 'ESB Data Strategy Final Recommendations', July 2021, page 15, <https://esb-post2025-market-design.aemc.gov.au/32572/1630275857-esb-data-strategy-july-2021.pdf>.

Industry Participation and Input

Many of the targeted reforms in the ESB's Data Strategy involve data that retailers hold (and likely produced on their own volition). Retailers have intimate knowledge of this data and it is important this knowledge is leveraged. Currently, industry input has been limited to the public consultations held after the policy direction of the Data Strategy project has been established. This makes it difficult for industry to contribute its full knowledge, especially in circumstances where the knowledge may be commercially sensitive, as it is here.

In this context, AEMO has indicated it is 'essential that industry is aware and supportive of' these reforms and that 'industry concerns' may jeopardise its success. It would have been better for these concerns to be worked through first with industry before opening these reforms to public consultation. Retailers face a reputational risk if data is not properly managed as customers are more likely to link any breach back to their retailer, not AEMO or any subsequent data recipient.

Issues in Initial Reforms Consultation Paper

Class A and Class B Bodies

Consistent with the above, the AEC considers there must be qualifications on who can access AEMO-held data. A body should only receive access to protected information held by AEMO if it is needed to improve the regulatory administration of the energy sector and they have appropriate privacy and security safeguards in place. Government bodies are likely to meet this standard since they have specific legislative roles and/or responsibilities relating to data use and security. However, some of the listed Class A bodies have less sophisticated security arrangements and so additional protections may be required.

The AEC is less comfortable with the inclusion of Class B bodies. These bodies are external to the administration of the energy sector and do not reliably have control arrangements in place to maintain the privacy and security of data they receive. The administrative burden on AEMO, or a party supporting AEMO, to test the credentials of each request is substantial and even then, can only place constraints on the data to mitigate the impact of a breach. This is different to having legal requirements (and proper, internal systems in place to meet those requirements) to prevent a breach.

In addition to these security risks, the provision of data to Class B Bodies appears to impose a large cost burden. AEMO has stated it will require 'substantial administration support' to consider and evaluate the merit of research requests. No quantifiable figure is provided but given AEMO will need to create and maintain new systems, and its own statement it cannot perform the task without additional support, the costs are presumably large.

The AEC considers the substantial costs and security concerns to outweigh the potential benefits of including Class B bodies in the initial stage of implementation. It would appear simpler at this early stage for Class B bodies to access data through a Class A principal who is subject to legal responsibilities.

With respect to the inclusion of future bodies, this should be prescribed in legislation rather than through ministerial order. While this will add a layer of administrative complexity, it is necessary to ensure any body passes the relevant risk assessment and has appropriate privacy and security safeguards in place.

Enforcement and Liability Arrangements

The challenges in developing a simple and effective liability framework for the mishandling of this data echoes the process concerns raised earlier. The solution to this problem arguably lies in streamlining

and refining the energy data regulatory framework as a first step. This notwithstanding, the AEC agrees that AEMO should not have an enforcement role as this goes beyond its functions as the market operator.

An existing regulator would be desirable to the creation of a new regulator and so it appears appropriate for either the Australian Energy Regulator (AER) or Australian Competition and Consumer Commission (ACCC) to be responsible. Since the ACCC has responsibilities for monitoring and compliance over the Consumer Data Right, it may be better suited to leverage this knowledge and resources for the data sharing arrangements proposed here.

Any questions about this submission should be addressed to Rhys Thomas, by email Rhys.Thomas@energycouncil.com.au or mobile on 0450 150 794.

Yours sincerely,

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