



Mr Richard Owens  
Acting Senior Director  
Australian Energy Market Commission  
PO Box A2449  
SYDNEY SOUTH NSW 1235

Dear Mr Owens

Officials from the Energy Market Reform Working Group (EMRWG) would like to take this opportunity to provide a submission to the Consumer access to information about their energy consumption rule change.

Note that Victoria has also provided its own submission to the consultation raising many of the same issues.

Officials continue to support the rule change as proposed, but would like to raise additional issues within scope that have emerged in more recent work, specifically around access to energy use data held by the Australian Energy Market Operator (AEMO).

The attached submission details these issues. If you would like to discuss any aspects of this submission, please contact Sarea Coates on (02) 6243 7275 or [sarea.coates@industry.gov.au](mailto:sarea.coates@industry.gov.au).

Sincerely

**Brendan Morling**  
Chair  
COAG Energy Council Energy Market Reform Working Group  
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## **Customer access to information about their energy consumption**

The Energy Market Reform Working Group (EMRWG)<sup>1</sup>, under the COAG Energy Council, welcomes the opportunity to respond to the Australian Energy Market Commission's (AEMC) consultation paper on the 'National Electricity Amendment (Customer access to information about their energy consumption) Rule 2014 and the National Energy Retail Amendment (Customer access to information about their energy consumption) Rule 2014'.

EMWRG is the original proponent of this rule change, which broadly implements AEMC recommendations from the Power of Choice Review, and continues to support it as proposed.

This paper, in response to the consultation document, raises additional issues within scope which have emerged in more recent work, specifically around access to energy use data held by AEMO.

### **Summary**

EMRWG continues to support the current Rule change proposal on Consumer access to energy use data, in its entirety.

EMRWG also requests that AEMC consider wider options to improve consumer (and their third party agents, with consent) access to energy use data, in particular through access to data held by AEMO.

Recent work to support competitive metering has considered open access interoperability and the development of shared market protocol arrangements, as well as support for third party service innovation.

In this work, it has become clear that there are benefits in a more coordinated streamlined approach to access to data. There are strong synergies and reduced duplication in allowing access to consumer energy use data through a common gateway and leveraging existing B2B arrangements supporting data already held centrally by AEMO.

Existing limits on access to centrally held data could:

1. disadvantage third parties and emerging service competition, by imposing coordination costs to access data across many retailers and distributors;
2. lead to duplicative expansion of many retailer and distributor data systems, creating additional real-time service costs on top of existing B2B arrangements, increasing costs ultimately for consumers;

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<sup>1</sup> Note that Victoria has provided its own submission to the consultation raising many of the same issues.

3. reduce access to complete historic datasets, as datasets are limited by changing competitive retail relationships;
4. be inconsistent with Australian Privacy Principles, by limiting consumers ability to access to their own data.

Providing the ability for AEMO to release energy use data (with consumer consent) does not pre-empt more detailed consideration of implementation arrangements and options, which will be undertaken in any case. Rather, it ensures that access to centrally held data is not excluded from implementation options considered because of limits of rules and potential delays imposed by seeking a future Rule change process. One of the issues to be considered in any future implementation arrangements is the nature of data held by AEMO. The data identifies the meter, but not the individual customer and consideration would need to be given to ensuring that data provided belonged to the customer seeking it (or providing consent for a third party seeking it on their behalf).

## **Background**

One of the clear goals of this Rule change, and the wider Power of Choice review, is to support consumer choice by improving not only direct consumer data access, but also access for third party service providers (with consent) to support innovation and competition in services.

A clear example of the challenge for any third party service providers in helping consumers get value from their energy data has been described in the submission provided by the Victorian Department of State Development, Business and Innovation (DSDBI), in regard to their “My Power Planner” online service. This service seeks to help consumers compare retail tariffs based on their own energy use patterns. As an example of the challenge of coordinating across many parties (even as a government) and the value of a single data format, this site currently accepts 7 different interval data formats. Yet many customers still confront challenges in both seeking data electronically from their retailer and ensuring it is in a compatible format. The Victorian submission states that “a consumer portal or hub based approach for delivering standard format interval data to consumers would ultimately increase the efficiency of, and improve outcomes for, data delivery relative to other approaches”<sup>2</sup>.

As part of the development of competitive metering, open access and interoperability of metering data and services were considered by the AEMC’s smart meter Open Access Review. In May 2014 the COAG Energy Council provided an initial response to these recommendations, including tasking AEMO to provide further advice on minimum functionality for smart meters by October 2014, and a shared market protocol for smart meter communications by February 2015. The Council also tasked officials to investigate and progress a package of “consumer decision and communication tools to support a

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<sup>2</sup> This is also consistent with recommended findings of the Commonwealth’s 2012 CEData Scoping Study (Sapere).

smooth transition to competitive metering as adopted”, which necessarily concerns sufficiency of access to data.

The “shared market protocol” expands on existing B2B arrangements and proposes a common gateway for access to market metering services, including by third party service providers. In this context, providing third parties (with consent) to historic data on energy use load profiles can be seen merely as another service. Any gateway for metering services will need to develop access arrangements for third party service providers, as well as arrangements for customer consent, managing consumer privacy and related security measures.

Providing “real time” access to data through such a gateway (such as is needed for online services) could be much more cost effective if linked to single central data source, in terms of reduced communications costs. Existing B2B arrangements already provide much of the relevant data to central AEMO systems (MSATS), reducing the need for upgrades to the systems of retailers and distributors to respond in “real time” and alternative multiple formats<sup>3</sup>.

In developing the terms of reference for AEMO to consider the shared market protocol, EMRWG has specifically put streamlining customer access to data in scope and requested that AEMO provide advice on:

“opportunities to leverage the shared market protocol to provide additional services in the energy market, such as streamlined access to energy data and usage profiles....[to]... inform development of tools to improve demand side participation in the electricity market, for example by improving access to energy data and usage profiles.”

Another supporting argument for access to centrally held data is the impact of retail competition in relation to the data held by individual retailers. Given the impact of seasonal temperatures, a minimum of 12 months is needed to estimate a customer’s load profile (although 2-3 years is preferable). However, competitive retail markets have relatively high annual switching rates (in 2013 Vic >30%, NSW > 25%, SA ~23% and Qld ~13%). Retailers will therefore in many cases be the relevant retailer for less than 12months of data for a given customer and may be unable to provide an adequate load profile, even where the customer has been at a single site/meter for many years. Without further data coordination, this may limit a switching customers’ ability to access their own historic data. These more active customers may also be more likely to seek data access.

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<sup>3</sup> As supported by ERAA’s submission: “An alternative approach that should be considered as part of this consultation phase is whether to allow authorised third parties that have obtained appropriate consent, access to NEM12 data through the Market Settlement and Transfer Solutions (MSATS) database, assuming an appropriate consumer consent framework is established. These duly authorised parties would then be able to access consumption data using existing B2B arrangements in the market, rather than requiring industry to change existing file formats to accommodate their business model.”

The *Privacy Act 1988* (Cth) (Privacy Act) and new Australian Privacy Principles (APP) also raise some questions worth considering on the basis of existing restrictions on data. Recent work on privacy and metering data has identified that there are many circumstances in which metering data may not be considered personal information and may not be covered under the Privacy Act. Whether or not meter data is personal information and covered under the Privacy Act is complex and varies by specific circumstance (see Attachment A for references).

Given the uncertainty, many distributors and retailers are cautious, stating they currently treat meter data as if it were personal information and handle it consistently with the obligations in the Privacy Act.

As a matter of policy, it is preferable that the rights and obligations with respect to the collection, use and disclosure of meter data should be consistent, without requiring a case by case assessment of the characteristics of the particular record. An approach to avoid uncertainty and unnecessary inquiries about the 'personal information' status of meter data all such data, including meter data held by AEMO, would be to treat meter data as if it were personal information; such that the treatment of that data under the national energy laws would be consistent with the rights and obligations arising under the APPs in the Privacy Act. This will ensure consistency in the treatment of meter data irrespective of whether it constitutes a record of personal information and is subject to regulation under the Privacy Act.

On this basis, it should be clear under the national [electricity] rules that consumers have the right to access their own data on request, similar to the approach to accessing personal information on request under APP 12 in the Privacy Act. However, currently the rule are not clear as to whether consumers have the capacity to do so, given the restrictions imposed by the NER on MSATS. The NER provisions concerning access to meter data should therefore be revised to ensure that the relevant rights and obligations for access to any record of meter data are consistent with the rights and obligations that would arise under the Privacy Act if that information were personal information. In this way the rights and obligations to access information will be uniform, irrespective of whether a record is in fact 'personal information' for the purposes of the Privacy Act.

## ATTACHMENT A: Privacy considerations for metering data

In 2013, EMRWG engaged Seed Advisory to report on Privacy for the National Smart Metering Program and has publicly released its final report.<sup>4</sup> The Seed Advisory Report notes that meter data may not constitute ‘personal information’ for the purposes of the Privacy Act in many circumstances, as it may not be information about ‘an identified individual, or an individual who is reasonably identifiable’.<sup>5</sup> An individual is ‘reasonably identifiable’ when the individual can be identified from information in the possession of an agency or organisation or from that information and other information the agency or organisation may access without unreasonable cost or difficulty.<sup>6</sup>

In particular, the Seed Advisory Report indicates that ‘in the absence of other information identifying the customer, meter data could fail the test for personal information, as, at worst where accompanied by the National Meter Identifies (NMI) the meter data could identify the area where a customer lives, but not, for example, the customer’s name or address’.<sup>7</sup> Further, interval meter data not bundled with an address, or without an address but with a NMI in circumstances where a NMI is not a sufficient identifier of the customer’s address, may not be personal information.<sup>8</sup> That is, without other information identifying the customer, meter data is unlikely to be personal information. Even if meter data is associated with customer information such as an address, it may still fail the test for personal information, as meter data typically cannot be mapped to a particular person, but is associated with the premises.<sup>9</sup>

For these reasons, it is not clear whether meter data held by AEMO, such as may form part of its MSATS system, constitutes ‘personal information’ for the purposes of the Privacy Act. AEMO’s MSATS system contains customer addresses (for example, to identify the location of a meter), but AEMO is not otherwise in the possession of identifying information such as customer names. Accordingly, there appears to be a real question about whether MSATS system data (including meter data) held by AEMO would pass the test of personal information. In the event that this data is not personal information, it would not be protected under the Privacy Act and the APPs would not apply to it.<sup>10</sup> In any event, the collection, use and disclosure of information would fall to

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<sup>4</sup> Seed Advisory, *Privacy for the National Smart Metering Program – Final Report for the Energy Market Reform Working Group*, 2 August 2013 (the Seed Advisory Report), available at: <http://www.scer.gov.au/files/2013/08/Final-Advice-Privacy-for-National-Smart-Metering-Program.pdf>

<sup>5</sup> See the definition of ‘personal information’ in s 6 of the Privacy Act.

<sup>6</sup> Seed Advisory Report at p 25. See also the *Australian Privacy Principles Guidelines*, published by the Australian Government’s Office of the Australian Information Commissioner as at 1 March 2014, available at: <http://www.oaic.gov.au/privacy/applying-privacy-law/app-guidelines/>.

<sup>7</sup> Seed Advisory Report at p 13.

<sup>8</sup> Seed Advisory Report at p 28, fn 21.

<sup>9</sup> Seed Advisory Report at p 74, fn 69.

<sup>10</sup> Seed Advisory Report also notes that it does not appear that meter data would come within the definition of ‘sensitive information’ for the purposes of the Privacy Act, see at p 13, fn 13.

be determined under the national energy legislation (and other state legislation, if applicable).

Even if metering data held by AEMO or others does constitute a record of personal information in some circumstances, this will not be the case in relation to every record of metering data. For example, metering data that relates to a business premises will clearly not constitute personal information and will not be covered by the Privacy Act.