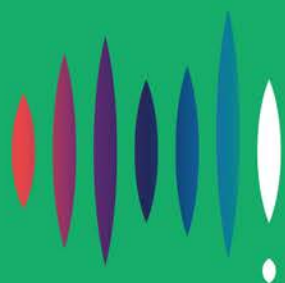
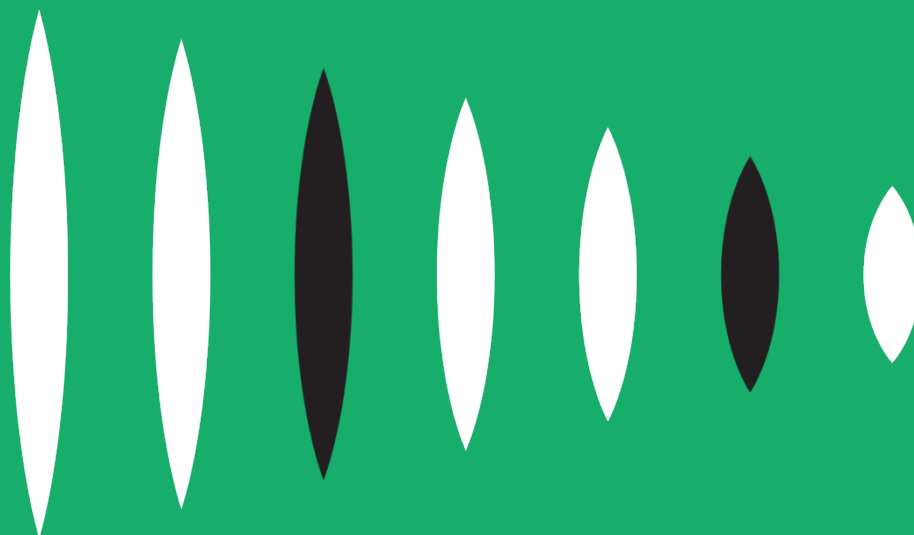


Electricity Meter Data Portability

Discussion Paper

July 2017



**ENERGY
CONSUMERS
AUSTRALIA**

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Version history

VERSION	DATE	COMMENTS
1	19 May 2017	
2	22 May 2017	Revised next steps and 'term sheet'
3	12 July 2017	Include privacy discussion
4	19 July 2017	Prepared for release

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Summary

A consumer's metering data can provide tools to facilitate market participation. Market participants, especially networks, can also benefit.

This paper outlines an industry led process to maximise the use electricity meter data.

A consumer's metering data can facilitate decision making and market participation in two areas; determining the bill impact of alternative offers and maximising the value of consumer investment in distributed energy resources.

The benefits flow to other market participants, especially networks. Tools to analyse pricing will facilitate consumer take-up of cost reflective prices. Optimised distributed energy resources (DER) responding to cost structures will contribute to peak demand reduction.

This paper outlines an industry led process to maximise the use electricity meter data by facilitating access by third parties authorised by customers.

The report of the Productivity Commission's (the PC) *Data Availability and Use* inquiry was tabled by the Treasurer in early May. A universal right for consumers for access to their data is a central recommendation of the report. The Government response to the report is expected by November 2017.

The report proposes that arrangements for access should be organized on an industry basis. Given the interest in electricity prices the Government will be looking to this industry (along with banking) as an early field of implementation.

The report by the Climate Change Authority and the Australian Energy Market Commission – *Towards the Next Generation: Delivering Affordable, Secure and Lower Emissions Power* – among its conclusions stated:

The Authority recommends that the Australian Energy Regulator work with key stakeholder groups like Energy Consumers Australia to improve the process for energy consumers to access their energy data and share it with service providers.

The Finkel Review has also identified the benefit of facilitating authorised third parties to use consumers meter data (Finkel, Moses, Munro, Effeney, & O'Kane, 2017). Recommendation 6.3 stated:



By mid-2020, the COAG Energy Council should facilitate measures to remove complexities and improve consumers' access to, and rights to share, their energy data.

Action by the electricity industry will not only respond to the recommendations of industry specific reviews, it will also allow Government to refer to the industry's initiatives in its response to the Productivity Commission report.

Background

Productivity Commission recommendations

The Productivity Commission's recommended Comprehensive Right for Consumers to their data would enable consumers to:

- share in perpetuity joint access to and use of their consumer data with the data holder
- receive a copy of their consumer data
- request edits or corrections to it for reasons of accuracy
- be informed of the trade or other disclosure of consumer data to third parties
- direct data holders to transfer data in machine-readable form, either to the individual or to a nominated third party.

The Productivity Commission expects participants in an industry to determine the scope of consumer data relevant to their industry. This should be in the form of a data-specification agreement. Data-specification agreements should also articulate: transfer mechanisms, and security of data, to ensure that data use is practical and robust to technology updates; and the requirements necessary to authenticate a consumer request prior to any transfer.

These agreements should be registered with the ACCC, which may offer interim approval where an agreement has been reached but other industry agreements have been prioritised for approval.

The Australian Government should provide for broad oversight and complaints handling functions relating to the use of the Comprehensive Right through the Australian Competition and Consumer Commission (ACCC).

The Office of the Australian Information Commissioner and industry ombudsmen should, in order to ensure a 'no wrong door' approach to handling consumer engagement, coordinate with the ACCC on the receipt and handling of consumer complaints on data access and use.

(The full recommendations of the Productivity Commission on the Comprehensive Right are included at Attachment A.)



Current position on electricity meter data

The right for consumers to access their meter data already exists. Rule 7.7(a)(7) in the National Electricity Rules provides a right for consumers to metering data held by their retailer or distribution network service provider (DNSP). The right extends to the authorised customer representative, though this defined term in the Rules only refers to a person authorised under this rule.

In providing data, retailers and DNSPs must use the metering data provision procedures made by AEMO (the Procedures) under rule 7.16. These two rules are included as Appendix B.

AEMO published the Metering Data Provision Procedure in September 2015.¹

The format of the data provided is the NEM12 format, which is a comma separated value file that can be loaded into a spreadsheet. Once loaded for each meter element there is a row for each day and a column for each half-hour interval. However, the format includes other rows with information about meter reading dates, power supply interruptions and other material.

For most consumers, the data is more useful in the hands of a third party who processes the file for the consumer.

Current arrangements for accessing data vary.

The five networks in Victoria and Ausgrid have all developed web based forms for customers to request their metering data². This may be the only consumer functionality or it may be part of a portal providing additional services.

Arrangements for third party access are more problematic. Most networks are requiring third parties to present a signed authorization from the consumer, even though the network would have no signature record to match it with.

Rule 7.7(a1)(3) places the onus on the DNSP to 'do whatever may be required...under any applicable privacy legislation.'

A retailer or a Distribution Network Service Provider is entitled to access or provide the relevant data referred to in paragraph (a) to a customer authorised representative, after having first done whatever may be required or otherwise necessary, where relevant, under any applicable privacy legislation (including if appropriate making relevant disclosures or obtaining relevant consents from retail customers).

¹ Available at

<https://www.aemo.com.au/media/Files/Electricity/Retail%20and%20Metering/2015/Metering%20Data%20Provision%20Procedures%20v1.0.pdf>

² All Victorian consumers have interval meters, and Ausgrid in NSW has a large number already installed (about 650,000).



The Procedures provide no additional guidance on meeting privacy obligations, and at 2.1(b) place the obligation on Retailers and DNSPs to meet those set by the Privacy Act.

It is the responsibility of retailers and DNSPs to determine what needs to be done to ensure their Privacy Act 1988 (Commonwealth) obligations have been met.

The Rules specified a maximum ten day turn around for metering data requests, and this was not reduced by the Procedures (though it could have been). Actual turnaround time is much faster but it is not known what actual targets networks have set for themselves.

The value of third party data access

There are three main reasons why a consumer could want to access their detailed data:

1. To understand how their consumption contributes to their current charges;
2. To assess what they would pay under an alternative supply agreement; or
3. To determine the consequences if they invest in distributed energy resources.

The current arrangements provide consumers with extensive data in a format not immediately easy for a consumer to use. Additional summary data required by the procedure is of limited use for the purposes above.

Aside from the Victorian AML rollout networks in other jurisdictions have selectively added interval meters. In NSW, a further spur was added by changes to the solar feed-in-tariff arrangements. With the introduction of metering contestability from 1 December 2017 the proportion of interval meters in premises will further increase.

The advent of networks charging retailers cost reflective network prices will potentially increase the interest of retailers in developing retail offers that reward customers for avoiding peak usage. For consumers to properly analyse these offers they, or an agent acting on their behalf (comparison site or new retailer) needs to access their historic meter data.

The ability for a consumer to easily arrange for a third party to access their metering data to provide a quote, a price comparison or advice on efficient use of DER will increase the benefit to consumers and networks of these arrangements.

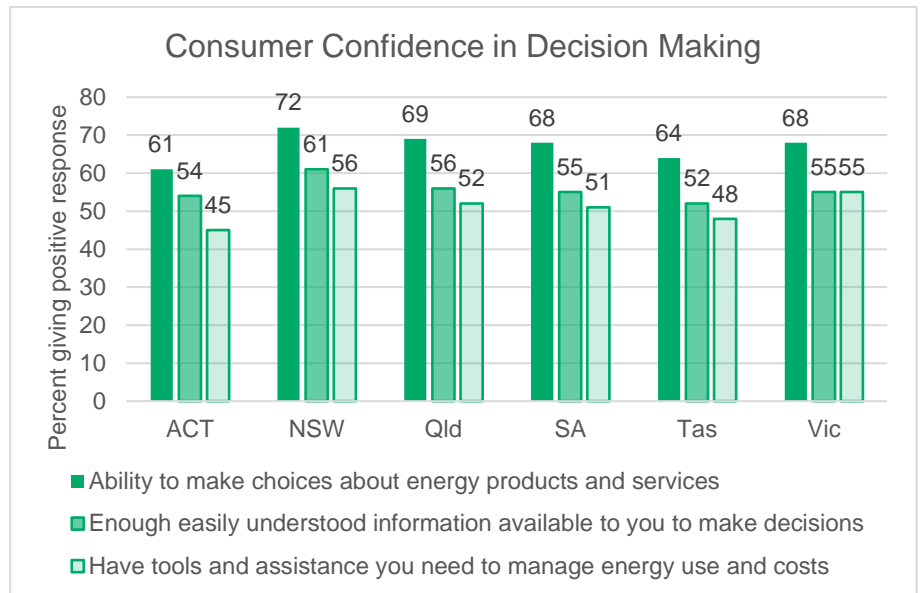
Victorian Energy Compare can receive a customer's data file to use it for a quote, but to date only two networks have a feature that arranges for that data to be transferred directly from the network to the comparison site. The AER's Energy Made Easy currently has no such ability; whether it should do so is being considered as part of the AER's review of functionality. The AER has no current plan to redevelop Energy Made Easy, though it is scoping how it could be developed.



Data Portability Project

Energy Consumers Australia’s Energy Consumer Sentiment Survey reveals that consumers are more confident in their ability to make choices than they are in the availability of either the information or tools to inform those choices.

Figure 1: Consumer confidence in decision making
(Source: Energy Consumer Sentiment Survey Dec 2016)



Recognising that access to meter data by third parties can provide both the information and tools consumers need, Energy Consumers Australia has developed this Electricity Meter Data Portability Project (the Project).

The objective of the Project is:

That Distribution Network Service Providers (DNSPs) will build a process whereby third parties, acting on the explicit informed consent of customers, can be provided with NEM12 meter data that they already hold through a real-time transaction through the B2B platform.

Examples of third parties are comparison sites (especially government sites), energy service providers and competing retailers.

The project is limited to the DNSPs for the following reasons:

1. Networks already have an obligation to provide the data including to authorised customer representatives.
2. If the data is requested from retailers it might unwanted retention or other activity.



3. It is easy to identify from a consumer's location which DNSP has the data.
4. There are benefits to the networks in increasing the effectiveness of retail competition and the uptake of retail prices that reflect cost reflective network tariffs.

The proposal to implement Electricity Meter Data Portability (the Project) consists of the following elements:

1. The networks agree to implement a B2B transaction (over the AEMO e-hub) available to authorised customer representatives to make requests for detailed electricity meter data and to return the detailed metering data as a comma separated values file in near real time. This transaction will be created as a standardized B2B transaction of the IEC.
2. The networks will enter into a common contract that will specify the terms and conditions under which this transaction can be accessed. The terms of the contract will specify the procedures the authorised customer representatives is required to follow to obtain explicit informed consent of a consumer to their appointment. The contract will specify a compliance and audit procedure and the terms and conditions under which a party can be denied further access to the transaction.

The intention is that the Proposal can be realised without a change to the Rules or Procedures. Rule 7.7 entitles the consumer's authorised representative to access the data, The Proposal is framed to relate only to a request for detailed metering data as specified in part 3 of the Procedure.

The source of the data is the record of meter readings maintained by the network is part of billing retailers for network usage. It is not obtained directly from the meter and therefore other data that might be captured and retained by the meter is not available through this process. Networks will still obtain and retain this data once metering contestability commences in December 2017.

Consumer Protections

Threshold Privacy Review

While data portability has significant benefits for consumers, it also carries attendant risks. Facilitating the ability of third parties to access the meter data also increases the risk of the data being improperly obtained.

The definition of 'personal information' as been subject to recent judicial interpretation that might result in meter data not being covered by the



Australian privacy principles.³ Nevertheless, it is proposed that the data needs to be managed and handled as if the Privacy Act did apply.

In such cases the Office of the Information Commissioner recommends that a Privacy Impact Assessment be undertaken at least to the stage of a threshold review. (Office of the Australian Information Commissioner, 2014)

There are four major elements of the threshold review:

1. Brief description of the project
2. Consideration of whether the project involves the collection, storage, use or disclosure of personal information:
3. Whether, based on the threshold assessment, you will proceed to undertake a PIA
4. Details of the person or team responsible for completing the threshold assessment.

The following is detail of the extent to which the Project involves the collection, storage, use or disclosure of personal information (as prepared by the author of this paper, David Havyatt, Senior Economist, Energy Consumers Australia):

- brief description of the personal information (if any) that will be collected, used or disclosed (such as name, address, date of birth, health information and so on)

No additional personal information is created and no access right to personal information is created above that already existing in the National Electricity Rules.

The information that will be gathered in the first instance by an authorised third party is the name, address and NMI of the customer, and this will be provided by the customer together with an authorization to obtain meter data from the DNSP.

Based on the transaction initiated by the authorised third party, the DNSP will provide the third party with the requested data. The data will be provided in accordance with a form of contract between the authorised third party and the DNSP and use will be restricted to the purpose authorised by the customer.

A design element could include constraining the service offering a list of approved purposes rather than just any purpose agreed to by the consumer.

- the key privacy elements — for example:
 - the general purposes for which information will be collected, used and disclosed
 - any authority under which personal information is collected
 - the nature and sensitivity of the personal information.

³ See for a discussion

<https://www.claytonutz.com/knowledge/2017/february/what-about-me-the-full-federal-court-says-personal-information-must-be-about-an-individual>



The purpose of the information disclosed (i.e. data transferred) to the authorised third party is to enable that party to provide a service to the customer based on the data, such as a price comparison service or estimate of usage saving from investment in distributed energy resources.

The information is transferred on the authority of the customer which will be given in the form of an 'explicit informed consent' and retained by the authorised third party.⁴

The information transferred is historic meter data which could already be obtained using less secure mechanisms than proposed here. The data is unlikely to be sensitive. It contains no additional identifying information (for identity theft). The historic data is of limited use in identifying movement patterns (for people seeking to harm individuals or access the property); analysis may identify patterns of occupancy, but it would be an unreliable predictor.

- if the project is going to modify an existing program, a description of the changes, if any, to the way personal information will be handled
- the views of any stakeholders about the impact of the project on information privacy

To the extent the project modifies the existing third party provision arrangements it strengthens consumer protections by providing a standard, auditable process and a contractual relationship between the authorised third party and the DNSP.

This relationship will facilitate dispute resolution, compliance and enforcement.

- if the project does not involve any changes to personal information handling practices, a description of how privacy risks involved in these practices have been assessed and are being managed.

DNSPs are all covered by the Privacy Act and are assumed to be complying with their obligations.

Based on the threshold review it does not appear that a full Privacy Impact Assessment is required.

The threshold review has been based on the comparison of the proposed process for disclosure with the process already adopted by DNSPs. Network businesses in discussion have expressed concern about their privacy exposure under their existing process, so some additional consideration of the issue of disclosure is provided below.

⁴ 'Explicit informed consent' is a term used in many sectors that entails the consumer being asked a direct question about whether they are authorising a certain thing to be done and the answer recorded in such a way that it can be provided as evidence in case of dispute or be audited for compliance. Collection methods typically include voice recording, web log of screen responses, or correspondence including e-mail.



Australian Privacy Principle 6 covers the use or disclosure of personal information for a secondary purpose.

6.1 If an APP entity holds personal information about an individual that was collected for a particular purpose (the *primary purpose*), the entity must not use or disclose the information for another purpose (the *secondary purpose*) unless:

- (a) the individual has consented to the use or disclosure of the information; or
- (b) subclause 6.2 or 6.3 applies in relation to the use or disclosure of the information.

The Guidelines issued by the Office of the Australian Information Commissioner (OAIC)⁵ in Chapter B outline how express consent may be obtained:

B.35 Consent means 'express consent or implied consent' (s 6(1)). The four key elements of consent are:

- *the individual is adequately informed before giving consent*
- *the individual gives consent voluntarily*
- *the consent is current and specific, and*
- *the individual has the capacity to understand and communicate their consent.*

B.36 Express consent is given explicitly, either orally or in writing. This could include a handwritten signature, an oral statement, or use of an electronic medium or voice signature to signify agreement.

B.42 An APP entity should as far as practicable implement procedures and systems to obtain and record consent. This may resolve any doubt about whether consent was given (either on the basis of express or implied consent).

A process that captures the informed consent of the consumer is sufficient to allow the entity to disclose the personal information. The DNSP is capable of utilizing the third party as its agent in obtaining that consent.

In its submission to the PC inquiry the OAIC⁶ wrote:

I note the concern expressed by the Murray Report and set out in the Issues Paper that in many cases consumers are unable to authorise trusted third parties to access their personal information directly from their service provider. I wish to address the misconception that the Privacy Act restricts consumers from entering into this type of arrangement.

⁵ See https://www.oaic.gov.au/resources/agencies-and-organisations/app-guidelines/APP_guidelines_complete_version_1_April_2015.pdf

⁶ <https://www.oaic.gov.au/engage-with-us/submissions/data-availability-and-use-submission-to-productivity-commission-issues-paper>



The Privacy Act does not prevent an individual from authorising a third party to access their personal information on their behalf...the requirements imposed by the Privacy Act include that where a request for access to personal information under APP 12 is not made by the individual to whom the personal information relates, an APP entity must satisfy itself that the request is made by a person who is authorised to make the request on their behalf...

Broadly speaking, I am supportive of initiatives that empower individuals to use the information that entities hold about them for their own benefit. However, I am mindful that such services may involve the handling of large amounts of personal information and therefore carry significant privacy risks. For example, the sharing of energy consumption data that includes personal information, like the sharing of any data set, may carry privacy risks. However, those privacy risks may increase significantly if this personal information is ultimately combined with data from other sources, such as banking transaction data.

The merging of such data will create a much more detailed, richer picture of the consumer, inherently increasing the risk of harm to the affected person should the information be accessed or handled improperly (as the data will reveal more information about the person — as it is intended to). While this may be beneficial for the individual (as well as a number of organisations, and potentially governments), caution should therefore be exercised when opening up access to personal information, particularly where there are few or inadequate safeguards in place to ensure that consumers retain control over the use of their personal information. Safeguards should also be in place to ensure that the data will be used fairly, and that the data will not be used in a way that erodes consumer trust and confidence.

The framework for providing access should also ensure that consumers are adequately protected from the risk of fraud, unauthorised access or theft. With that in mind, I welcome the emphasis that the Issues Paper places on the need to consider privacy risks and appropriate privacy protections. I suggest that entities seeking to establish these types of schemes consider whether it may be appropriate to develop an APP Code, or to look at other regulation in this area, which could apply to any potential access scheme.

The position of the OAIC is that privacy considerations depend very much on the context. If the secondary uses authorised are carefully described to restrict the combination of data and there are appropriate administrative arrangements in place, then the privacy issues are mitigated.

Energy Consumers Australia has considered the risks to consumers of incorrect disclosure (see below) and has formed the initial view that there are no reasons why networks should resist facilitating third party access to data.



If networks feel there is value in having additional comfort that they are protected from action, then the networks could jointly develop an APP Code for registration with the OAIC.

It is worth noting that under subclause 6.2(b) of the APP 'the use or disclosure of the information is required or authorised by or under an Australian law or a court/tribunal order' is another basis that can authorise the disclosure. The wording of Rule 7.7(a1)(3) unfortunately means that the rule does not constitute an authorised disclosure under law.

Discussions with consumer advocates

Discussions with consumer advocates on privacy issues revealed initial concern about unauthorized release in cases such as domestic violence or other family matters. Utility data is often sought as a way to confirm the address or location of parties in these matters. There are two reasons why the current project should not create additional risks. The first is that before any meter data can be provided the customer needs to provide an address and an NMI. The NMI is available on the bill or sometimes on a meter box, so the inquirer has to first have that data. But nowhere in the process is this data matched with the electricity customer's name. The meter data query can't be used to identify an address. The second is that the current project is tightening the processes for third party authorization.

A second concern is that the data could provide details of household occupation, to identify when people are at home. Because of things like stand-by power and fridges meters don't stop when there is no one at home. At night, it is easier to observe if lights are on. Additionally, it is only historic data that is available – you can't obtain a meter reading for the last half hour through this process.

Consumer advocates identified simple dispute resolution as an important feature to have confidence in the process. Under the proposal, it is the DNSP who is providing the data under the terms of the common contract. DNSPs are all members of the relevant Ombudsman scheme, and so complaints about the data release can be made to the Ombudsman. The Energy Ombudsman schemes in NSW, Victoria, Queensland, South Australia and Western Australia are recognised External Dispute Resolution schemes under the Privacy Act.⁷ To ensure networks don't bear a financial cost for the behaviour of third parties it is suggested the common contract could specify an obligation for the relevant third party to compensate the DNSP for complaint costs (unless there was a release created by failure of the DNSP). Consumers could also go directly to the Office of the Australian Information Commissioner with a complaint.

Consumer advocates were also concerned about compliance in general, but were supportive of an arrangement based around self-attestation backed by some sample auditing of third parties especially in relation to record keeping of explicit informed consent and ongoing information management.

⁷ See <https://www.oaic.gov.au/privacy-law/privacy-registers/recognised-edr-schemes>



One group of consumer advocates suggested that to ensure that cases of unauthorized transfer are detected that the DNSP could send a letter to the “electricity account holder” at the address to advise that the meter data had been provided and to whom. This would be an effective detection and protection tool, but may also incur additional cost.

Energy Consumers Australia is interested in views on whether the mechanisms above are sufficient or excessive. We are particularly interested to understand the cost and benefits of the DNSP letter. A possibility is that this could be undertaken on a sampling basis with the sample size decreasing the longer a third party has been a successful system user.

Project Implementation

Energy Consumers Australia has already convened an informal group of representatives with an interest in the topic. It is proposed that this group be augmented to include additional interested parties and convene a Reference Group for the Proposal.

Initial consultations

Attachment C lists the consultations on the Project held to date.

Authorisation

The agreement to be reached between the parties may constitute an agreement that requires authorization by the ACCC. Energy Consumers Australia will establish if this is the case, and if so, will make the arrangements to apply for the authorization.

Transaction

The standardized B2B transaction will be proposed to the IEC by the Reference Group. The IEC has indicated that it does not intend to commence work on additional B2B transactions till after the 1 December 2017 implementation of metering contestability.

The sooner the request can be raised the sooner there will be an opportunity to assess what the barriers to IT build might be. Energy Consumers Australia is aware of network concern that IT investment might not be recognised as allowable expenditure in revenue determinations and will work with networks and the AER to provide as much security as possible.

Common Contract

The creation of a common process between two groups of industry participants is often described as a ‘code.’ However, as there is no code-making framework the necessary documentation is being described here as a ‘common contract.’ In legal form it is envisioned as a standing offer made by the DNSPs to provide access to the standard B2B transaction and to accept the offer the third party commits to following certain procedures.

The critical issue with the ‘common contract’ is that the DNSPs are satisfied that the relevant procedure will fulfill their privacy requirements. It is expected that modelling the procedure on the explicit informed consent procedures used to authorise transfers will be appropriate. Once drafted the



provisions will be discussed with the Office of the Australian Information Commissioner (the process used for telecommunications industry codes).

The second issue with the common contract will be establishing a compliance framework. Most importantly there needs to be a process whereby third parties are audited for compliance and a process whereby a person can be authorised to remove an offending party from the contract.

Attachment D details the outline of the 'common contract' as the list of items (a term sheet) for it.

Consultation

Energy Consumers Australia is using this Discussion Paper as the framework for identifying any other issues in relation to implementing the Project. Energy Consumers Australia will convene workshops with networks, additional consumer advocates and ant other interested parties.

We are particularly interested in the following questions:

1. Do the proposals provide sufficient privacy protection for consumers? Should the process require the DNSP to send correspondence to "The Electricity Account Holder" to the service address (or electronically if there is an email address or mobile number available) advising that it had received and acted on a third party authorization?
2. What are the total costs of establishing and operating the service and how should they be recovered?
3. Should the formation of 'explicit informed consent' be supported by standardizing the format of a web-form authorization (a Green Button)?
4. Do the proposals afford sufficient protection to the DNSPs? If not, should the DNSPs develop an APP Code for registration with the OAIC?
5. Should there be any specific restrictions on the third parties that can access the service? In particular, should access to commercial comparator websites be restricted to those who are signatories to the Energy Comparator Code of Conduct developed by CUAC?⁸
6. Should the service be restricted to a set of agreed approved purposes as an additional consumer protection?

Written comments should be addressed to David Havyatt, Senior Economist at david.havyatt@energyconsumersaustralia.com.au. Queries should be addressed to him by e-mail or on 02 9220 5508.

⁸ <https://www.cuac.org.au/consumer-and-community-resources/energy-comparator-code-of-conduct>



Attachment A

A Comprehensive Right for Consumers

Recommendations by the Productivity Commission for a comprehensive right for consumers to their energy data.

RECOMMENDATION 5.1

Consumer data must be provided on request to consumers or directly to a designated third party in order to exercise a number of rights, summarised as the Comprehensive Right to access and use digital data. This Comprehensive Right would enable consumers to:

- share in perpetuity joint access to and use of their consumer data with the data holder
- receive a copy of their consumer data
- request edits or corrections to it for reasons of accuracy
- be informed of the trade or other disclosure of consumer data to third parties
- direct data holders to transfer data in machine-readable form, either to the individual or to a nominated third party.

Where a transfer is requested outside of an industry (such as from a medical service provider to an insurance provider) and the agreed scope of consumer data is different in the source industry and the destination industry, the scope that applies would be that of the data sender.

RECOMMENDATION 5.2

The Australian Government should introduce an outcome-based definition of consumer data that is, as an overarching objective, data that is sufficient to enable the provision of a competing or complementary service or product for a consumer.

In the relevant service or product context, consumer data is digital data, provided in machine-readable format, that is:

- held by a product or service provider, and
- identified with a consumer, and
- associated with a product or service provided to that consumer.

Participants in an industry should determine the scope of consumer data relevant to their industry (where an industry in this context would be determined by a broad description of the service). This should be in the form of a data-specification agreement.



Data-specification agreements should also articulate: transfer mechanisms, and security of data, to ensure that data use is practical and robust to technology updates; and the requirements necessary to authenticate a consumer request prior to any transfer.

These agreements should be registered with the ACCC, which may offer interim approval where an agreement has been reached but other industry agreements have been prioritised for approval.

In the absence of such agreement, consumer data must be in machine-readable form and include all of:

- personal information, as defined in the Privacy Act 1988 (Cth), that is in digital form
- information posted online by the consumer
- data created from consumers' online transactions, Internet-connected activity, or digital devices
- data purchased or obtained from a third party that is about the identified consumer
- other data associated with transactions or activity that is relevant to the transfer of data to a nominated third party.

Data that is solely imputed by a data holder to be about a consumer may only be included with industry-negotiated agreement. Data that is collected for security purposes or is subject to intellectual property rights would be excluded from consumer data.

A consumer for the purposes of consumer data should include a natural person and an ABN holder with a turnover of less than \$3m pa in the most recent financial year.

Data that is not able to be re-identified to a consumer in the normal course of business within a data holder should not be considered consumer data.

The definition should be included in a new Act for data sharing and release (Recommendation 8.1). Given the need for consumer data to have broad applicability, the outer boundary definition and reference to ACCC registered industry-specific definitions should also be included within the Acts Interpretation Act 1901 (Cth). Consequential amendments to other legislation in the future would ensure harmonisation across federal laws.

RECOMMENDATION 5.3

All holders of consumer data should include in their privacy policies, terms and conditions, or on their websites a list of parties to whom consumer data has been traded or otherwise disclosed over the past 12 months.

On the windup of an entity that holds consumer data, consumers should be informed if data to which they hold a joint right has been traded or transferred to another entity. For businesses entering formal insolvency processes, insolvency practitioners should ensure consumers have been informed. For businesses closing but not in insolvency proceedings, the



entity acquiring consumer data should inform consumers of this fact and give them the opportunity for data collection to cease.

RECOMMENDATION 5.4

The Australian Government should provide for broad oversight and complaints handling functions relating to the use of the Comprehensive Right. Accordingly, the Australian Competition and Consumer Commission (ACCC) should be resourced to undertake the following additional responsibilities:

- approving and registering industry data-specification agreements and standards
- handling complaints in relation to a data holder's failure to meet the terms of the Comprehensive Right, including in regard to the scope of consumer data
- educating consumers (in conjunction with State And Territory fair trading offices) on their rights and responsibilities under the Comprehensive Right
- assessing the validity, when requested or at their discretion, of charges levied by data holders for application of the Comprehensive Right.

The Office of the Australian Information Commissioner and industry ombudsmen should, in order to ensure a 'no wrong door' approach to handling consumer engagement, coordinate with the ACCC on the receipt and handling of consumer complaints on data access and use.

Attachment B

Extracts from the National Electricity Rules

7.7 Entitlement to metering data and access to metering installation

(a) The only persons entitled to access *energy data* or to receive *metering data*, *NMI Standing Data*, *settlements ready data* or data from the *metering register* for a *metering installation* are:

- (1) *Registered Participants* with a financial interest in the *metering installation* or the *energy* measured by that *metering installation*;
- (2) *Metering Providers* who have an agreement to service the *metering installation*, in which case the entitlement to access is restricted to allow authorised work only;
- (3) *financially responsible Market Participants* in accordance with the meter churn procedures developed under clause 7.3.4(j);
- (4) the *Network Service Provider* or providers associated with the *connection point*;
- (5) AEMO and its authorised agents;
- (6) an Ombudsman in accordance with paragraphs (d), (e) and (f);
- (7) a:
 - (i) *retail customer* of:
 - (A) a *retailer*; or
 - (B) a *Distribution Network Service Provider*; or
 - (ii) *customer authorised representative*, upon request by that *retail customer* its *customer authorised representative* to the *retailer* or *Distribution Network Service Provider* in relation to that *retail customer's metering installation*;
- (8) the *AER* or *Jurisdictional Regulators* upon request to AEMO; and
- (9) *Metering Data Providers* who have been engaged to provide *metering data services* for that *metering installation* or in accordance with clause 7.14.1A(c)(6).

(a1) Without limiting paragraph (a) a:

- (1) *retailer* is entitled to access or receive *NMI Standing Data*;
 - (2) *customer authorised representative* is entitled to access or receive the relevant data referred to in paragraph (a); and
 - (3) *retailer* or a *Distribution Network Service Provider* is entitled to access or provide the relevant data referred to in paragraph (a) to a *customer authorised representative*, after having first done whatever may be required or otherwise necessary, where relevant, under any applicable privacy legislation (including if appropriate making relevant disclosures or obtaining relevant consents from retail customers).
- (b) Electronic access to energy data recorded by a metering installation by persons referred to in paragraph (a) must only be provided where passwords in accordance with clause 7.8.2 are allocated, otherwise access shall be to metering data from the metering data services database or the metering database.

Note

This rule is classified as a civil penalty provision under the National Electricity (South Australia) Regulations.

- (c) The responsible person or AEMO (as the case may be) who is responsible for the provision of metering data services must ensure that access is provided to metering data from the metering data services database to persons eligible to receive metering data in accordance with paragraph (a).
- (c1) The responsible person must ensure that access to energy data from the metering installation by persons referred to in paragraph (a) is scheduled appropriately to ensure that congestion does not occur.
- (d) Despite anything to the contrary in this Rule, AEMO may provide an energy ombudsman with metering data relating to a Registered Participant from a metering installation, the metering database, or the metering register if the ombudsman has received a complaint to which the data is relevant from a retail customer of the Registered Participant.
- (e) AEMO must notify the relevant Registered Participant of any information requested by an Ombudsman under rule 7.7(d) and, if it is requested by that Registered Participant, supply the Registered Participant with a copy of any information provided to the Ombudsman.
- (f) AEMO must, acting jointly with industry Ombudsmen, develop procedures for the efficient management of timely access to data by Ombudsmen in consultation with Registered Participants in accordance with the Rules consultation procedures.
- (g) The Metering Provider must provide electronic access to the metering installation in accordance with the requirements of paragraph (b) and electronic or physical access, as the case may be, to the metering installation to facilitate the requirements of rule 7.12(f).

7.16 Metering data provision to retail customers

- (a) AEMO must establish, maintain and *publish* the *metering data provision procedures* in accordance with this rule 7.16, Chapter 7, and otherwise in accordance with the *Rules*.
- (b) The objective of the *metering data provision procedures* is to establish the minimum requirements for the manner and form in which *metering data* should be provided to a *retail customer* (or its *customer authorised representative*) in response to a request for such data from the *retail customer* or *customer authorised representative*.
- (c) The *metering data provision procedures* must:
- (1) specify the manner and form in which *retail customers' metering data* must be provided, including a:
 - (i) detailed data format; and
 - (ii) summary data format;
 - (2) for *retail customers* for whom *interval metering data* is available, specify the summary data format, which, at a minimum should include the *retail customer's*:
 - (i) nature and extent of energy usage for daily time periods;

- (ii) usage or *load* profile over a specified period; and
 - (iii) a diagrammatic representation of the information referred to in subparagraph (i);
- (3) for *retail customers* for whom *accumulated metering data* is available, specify a summary data format;
- (4) include timeframes in which a *retailer* or a *Distribution Network Service Provider* must, using reasonable endeavours, respond to requests made under rule 7.7(a)(7). The timeframe to be included must:
- (i) be no more than 10 business days, except where requests are made under rule 7.7(a)(7) by a *customer authorised representative* in relation to more than one *retail customer* of either the *retailer* or *Distribution Network Service Provider* to whom the request is made; and
 - (ii) take account of procedures in place relating to the validation of *metering data*; and
- (5) specify a minimum method of delivery for the requested *metering data*.
- (d) *Retailers* and *Distribution Network Service Providers* must comply with the *metering data provision procedures* when responding to requests under rule 7.7(a)(7).

Attachment C

Consultation to date

Meeting 20 March

Name	
David Havyatt	ECA
Peter Cole	ENA
Brendan Crown	ENA
Sarah Connolly	Ausnet
Benjy Lee (thirty minutes)	Jemena
Verity Watson	UE
Justin Betlehem	Ausnet
Emma Youill	Ausnet
Wayne Turner	Ausgrid
Paul Vittles	Ausgrid
Carroll, Sean	Powercor

Meeting agreed to the concept in principle. Each network described their current portal functionality. It identified a number of barriers to be addressed:

1. System cost
2. Timing
3. Privacy compliance and protection
4. Explicit Informed Consent procedures, compliance and monitoring

AER 22 March – Sarah Proudfoot, Imogen Hartcher-O’Brien

AER was required to build Energy Made Easy under NERL, is reviewing Energy Made Easy but doesn’t have a budget to revise it.

AER recommended we talk to David Jones at ACCC re authorisation. Also, that we might look at the ‘door-knocking code’ run by Energy Assurance Limited – ERAA fixed their misspelling problem themselves CEO Anne Whitehouse. (Now Sales Assured <http://www.salesassured.com.au/> and <http://www.medianet.com.au/releases/release-details/?id=808227> NOTE: the ACCC authorisation for Energy Assured has been revoked, it appears because of the change to Sales Assured). Shirli Kirschner operates the Wholesale Market Disputes framework

AER would not volunteer to play any role in compliance with a voluntary code. Reporting on breaches of EIC in retail churn is by self-reporting.

CEC 23 March – Darren Gladman, Anna Sexton

Generally supportive, experience of Code administration

DELWP 20 April – Amanda Sheehan, Matt Jones

Keen to assist, would like the Proposal. Meanwhile will continue trying to improve Victorian outcomes.

PM&C 18 May – Simon Quarrell and others

Discuss the Government response to the PC report

Discussion with consumer advocates on privacy

- Erin Turner, CHOICE, 2 June
- Carly Hyde, QCOSS and other Qld advocates, 7 June
- Gerard Brody, CALC, 16 June
- Lauren Solomon, CPRC, 16 June

Attachment D

Requirements for ‘common contract’

Outline of common contract

The following items need to be addressed in the common contract.

1. Details of the DNSPs making the offer.
2. Details of the offer “to provide third parties with access to meter data in accordance with the NER through the XYZ standardized B2B transaction.”
3. Description of how the third party can accept the offer – to sign the agreement and to register that signing with the Administrator (a function to be defined)
4. Commitments made by third party in accepting the offer:
 - a. To follow an ‘explicit informed consent’ process modelled on that used for retail churn including the requirement to maintain records.
 - b. To warrant that information obtained will be used only for the purpose authorised by the customer. Such ‘purpose’ to be the purpose that is apparent to the customer (i.e. if third party is selling solar panels, then data is only for dimensioning the solar panels and can’t be used for anything else even if the consent text is written to include some other specific or general purpose.) except that ‘de-identified’ data can be retained for the purposes of analysis. De-identified data would retain no explicit customer or address details but might retain a higher level area identifier such as postcode.
 - c. To indemnify the DNSP for any consequences of the third party improperly obtaining or using the information.
5. A compliance regime that must be instituted by the third party. The compliance regime should be no more onerous than that applying in other areas, and should be based on a controlled self-assessment process (that is a statement of compliance) made by the CEO. (See Communications Compliance and AER retail churn as case studies). Statements of compliance need to be sent to the Administrator.
6. A consumer complaints mechanism to investigate cases of claimed unauthorised release. As the data release subject of the complaint is made by the DNSP, Ombudsman schemes already have jurisdiction. The common contract should however include a provision and mechanism for the DNSP to recover the dispute costs from third parties (unless the release was an error by the DNSP).
7. An enforcement mechanism which covers the process that follows a breach or breaches to have a third party’s use of the transaction

revoked. The mechanism can be exercised by the Administrator, but also needs a Dispute process for appeal.

Issues arising from the outline

1. Determine if there are matters missing.
2. Get the document drafted in more detail.
3. Selection of 'Administrator' – ideally a body that already exists and performs similar functions.
4. Discuss complaints options with ANZEWON.

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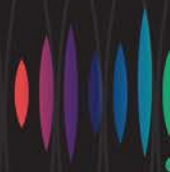
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