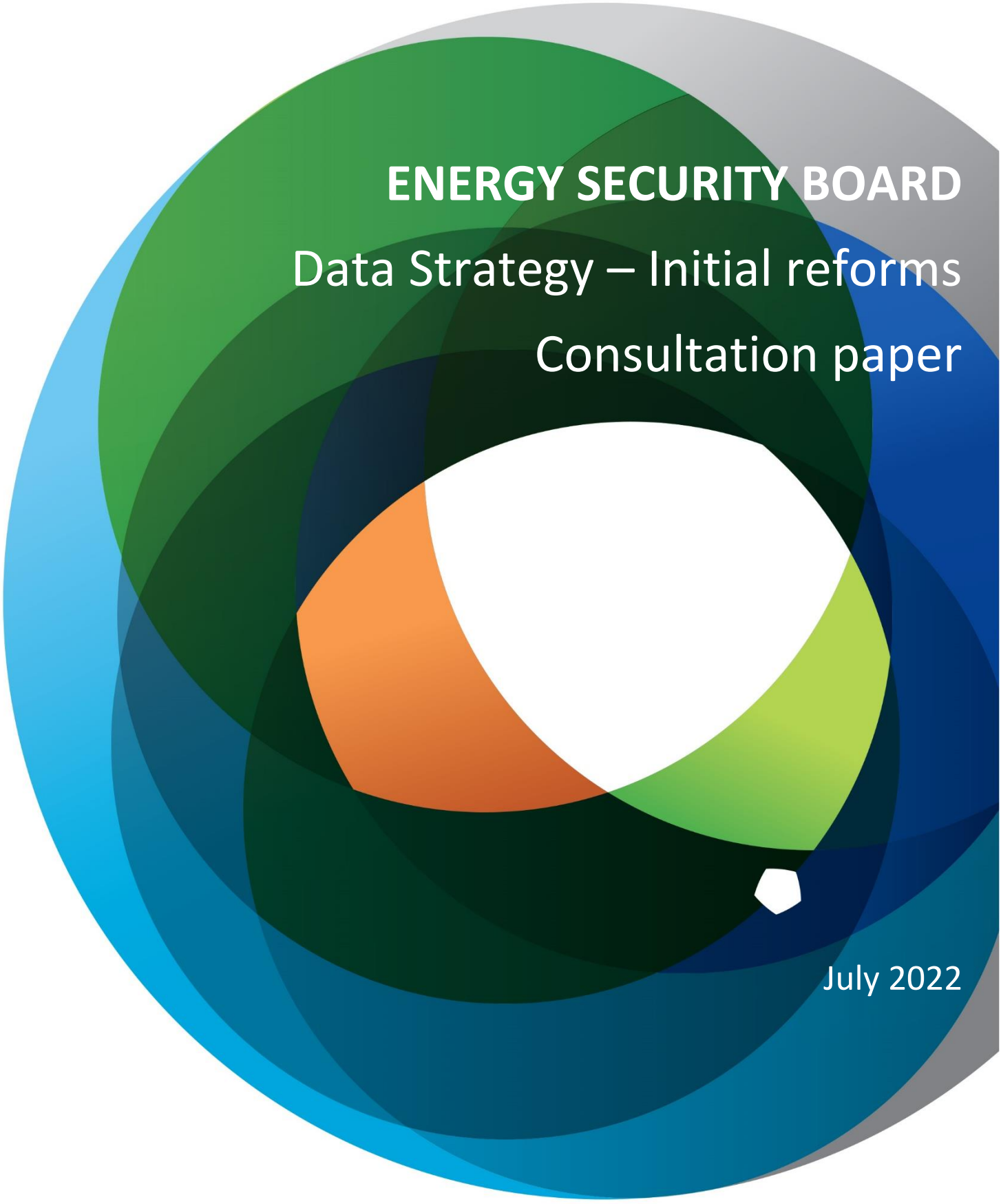
ENERGY SECURITY BOARD

Data Strategy – Initial reforms

Consultation paper



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List of abbreviations

ACCC	Australian Competition and Consumer Commission
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
CCA	Competition and Consumer Act (2010) (Cth)
CDR	Consumer Data Right
CSIRO	Commonwealth Scientific and Industrial Research Organisation
DAT Act	Data Availability and Transparency Act 2022
ESB	Energy Security Board
FOI	Freedom of Information
NE Regulations	National Electricity (South Australia) Regulations (SA)
NEL	National Electricity Law
NEM	National Energy Market
NER or “Rules”	National Electricity Rules
NGL	National Gas Law
NG Regulations	National Gas (South Australia) Regulations (SA)

Executive Summary

The Energy Security Board (ESB) is seeking input on a set of targeted, initial reforms designed to remove regulatory barriers and enable more effective access to existing data. These reforms represent delivery of the first phase of recommendations in the ESB Data Strategy[1] (Data Strategy), addressing a number of existing data access challenges, while engagement regarding the development of more enduring and fit for purpose energy data regulatory framework can commence with stakeholders. These initial reforms are intended to work together with wider measures being developed to facilitate greater data access needed to support policy makers, planners and research in the energy market transition.

The reforms recommended in this first stage build on an ESB-commissioned review of the existing data regulatory arrangements in the energy sector, which was led by King & Wood Mallesons (KWM) and Galexia (Legal Report).[2]

These initial reforms focus on permitting greater access to, and use of, data held by AEMO, in a secure way. Specifically, the ESB proposes to amend the NEL and the NGL to permit AEMO to disclose protected information:

(a) to "**Class A Bodies**", who have prescribed statutory functions either specific to the energy industry or where energy information would enhance the carrying out of its functions and where there is a high level of confidence in the recipient as to the security and protection of the data. Class A bodies proposed include: state energy departments, the Clean Energy Regulator, Australian Renewable Energy Agency, the Clean Energy Finance Corporation, the Australian Bureau of Statistics and Energy Consumers Australia.

(b) to "**Class B Bodies**", including universities and researchers, where additional security may be warranted, particularly when considering appropriate data projects and outputs of the data seeker (i.e. secondary disclosure).

A number of complimentary changes are also proposed, including:

- ability to amend the list of prescribed bodies by Ministerial Order (when agreed by all relevant Energy Ministers)
- arrangements for imposing conditions on data access and related enforcement
- a new statutory function for AEMO to disclose information, supporting coverage by arrangements such as immunity and cost recovery.
- clarification over AEMO's rights to use information they hold.

ESB is also considering supporting resources and processes needed to facilitate safe data sharing under these reforms as part of new Data Services capabilities. Options to develop these capabilities are currently being explored for a consultation paper soon.

The paper also provides a range of case studies to support considering of how proposed reforms will impact existing data sharing challenges. It proposes a range of questions for stakeholders and in some cases options on which views are requested.

Submissions on this paper are due by 19 August 2022. The ESB will hold a public webinar on 27 July 2022 to assist stakeholders with their submissions.

[1] Available at: https://www.energy.gov.au/government-priorities/energy-ministers/energy-ministers-publications/energy-security-board-data-strategy-submissions-consultation-paper-published (ESB Data Strategy - publish 201020).

[2] Available at: https://web.archive.org.au/awa/20210603131240mp_/https://energyministers.gov.au/sites/prod.energycouncil/files/publications/documents/ESB%20Data%20Strategy%20Preliminary%20legal%20report%20%2825%20August%202020%29.pdf

4 Introduction

The Energy Security Board is seeking input on its proposal to implement a series of targeted, initial reforms designed to remove regulatory barriers to enable more effective access to existing data.

The proposed reforms are the first phase of recommendations set out in the 2021 ESB Data Strategy[3], as a critical enabler of ESB's Post 2025 Market Design, and supported by officials for implementation in November 2021. As part of the wider Data Strategy, these reforms aim to ensure that market planners, operators, policy makers, participants, service providers, consumers and researchers can access the data they need for effective decision making in a timely manner.[4]

As part of developing the Data Strategy, the ESB commissioned a review of the existing data regulatory arrangements in the energy sector, which was led by King & Wood Mallesons (**KWM**) and Galexia (**Legal Report**).[5] The Legal Report identified several issues that stakeholders are currently facing in collecting, using and sharing data held by energy market bodies. They include:

(c) duplication of collection (for example, energy market bodies undertaking separate consumer surveys to obtain similar data);

(d) use of undesirable workarounds (for example, energy market bodies scraping data from the Energy Made Easy website due to the AER's inability to share tariff data in a more useful form, despite the data being publicly available);

(e) lengthy and costly bilateral sharing arrangements (i.e. incurring significant costs on, and dedicating resources to, complex and lengthy contractual negotiations to document data sharing arrangements between energy market bodies);

(f) stalled or abandoned sharing negotiations (i.e. spending effort and resources on attempts to create workable sharing arrangements when ultimately, no data was able to be shared); and

(g) data gaps (i.e. useful data not currently being collected by energy market bodies. Usually, this is because the data was not previously available or needed, however, with new technologies and increased competition in an ever-more complex market, this data may now be needed for effective planning and operation. Capturing this data would require new areas of policy development and supporting legislation).

To address these issues, the Data Strategy and Legal Report proposed a reform pathway with two stages:

a) Initial incremental legislative improvements, implemented immediately, to remove key barriers in accessing existing data. This aims to unlock secure use of existing data for planning and technology trials needed to support the energy market transition and the Post-2025 market design.

b) A more significant overhaul of the energy data framework, supporting agreed new Energy Data Policy Principles, aligned with wider national data reforms and fit-for-purpose in a digitalised future. As major structural reform, this work will take longer to design, engage and align stakeholders.

This consultation paper progresses the **first stage** of proposed reforms: incremental legislative improvements. This initial package of reforms is focused on permitting greater access to, and use of, data

[3] Available at: https://www.energy.gov.au/government-priorities/energy-ministers/energy-ministers-publications/energy-security-board-data-strategy-submissions-consultation-paper-published (ESB Data Strategy - publish 201020).

[4] Further background material on the Data Strategy and related national reforms are set out in Appendix B.

[5] Available at: https://web.archive.org.au/awa/20210603131240mp_/https://energyministers.gov.au/sites/prod.energycouncil/files/publications/documents/ESB%20Data%20Strategy%20Preliminary%20legal%20report%20%2825%20August%202020%29.pdf

held by AEMO, in a secure way. References to data in this Consultation Paper refer to Protected Information as defined in the National Electricity Law (**NEL**) and the National Gas Law (**NGL**).

Scope and approach

The ESB has engaged KWM to develop detailed options to implement the proposed initial reforms. KWM has undertaken a range of workshops and bilateral engagement with stakeholders to further refine the proposals, and develop this consultation paper, working with ESB, as the next stage of engagement.

After further exploring the scope further through stakeholder consultation, these reforms focus on disclosure of protected information by AEMO. A small number of modest changes to the law (including regulations) would make it significantly easier for AEMO to securely and confidently share useful data with trusted bodies and provides the most immediate benefits for consumers in supporting planning and policy development in the market transition and Post-2025 market design.

These Initial Reforms will work together with wider measures being developed under the Data Strategy to facilitate greater data access needed by policy makers and research in the energy market transition. In particular, the ESB is developing and will soon consult on options to support new Data Services capability. These Data Services include consideration of supporting resources and processes needed to facilitate data sharing under these Initial Reforms.

5 Disclosure by AEMO

5.1 Introduction

This chapter outlines:

(a) the issue with the current regulatory framework governing disclosure of protected information by AEMO;

(b) the proposed reforms to the NEL and the NGL, which address some of the identified barriers to data sharing by AEMO in the current regulatory framework; and

(c) relevant case studies highlighting the problems with the current regulatory framework.

5.2 The Issue

The Legal Report summarised AEMO's current rights to share data with "core bodies" and "trusted bodies," which are limited and have at their foundation the presumption that information is protected and should not be shared.

The Legal Report also identified prohibitions on AEMO sharing data, which:

(a) makes unauthorised use of protected information if (and only if) it uses the information contrary to the Law, Rules or Regulations; and

(b) makes an unauthorised disclosure of protected information if the disclosure is not authorised under the Law, Rules or Regulations.[6]

This places a heavy onus on AEMO to identify an unqualified express right to use and share information.

Ultimately, the difficulties faced by AEMO in sharing information mean that valuable energy sector data is not used as effectively as it could be. Numerous stakeholder consultations were held in anticipation of the Legal Report and this consultation paper. Those consultations confirmed current concerns around the ambiguities relating to the sharing and using energy data.

5.3 This Proposal

The reforms to the *National Electricity (South Australia) Regulations* (SA) (**NE Regulations**) and the *National Gas (South Australia) Regulations* (SA) (**NG Regulations**) proposed below permit AEMO to disclose protected information:

(a) to "Class A Bodies", who have prescribed statutory functions either specific to the energy industry or where energy information would enhance the carrying out of its functions and where there is a high level of confidence in the recipient as to the security and protection of the data; and

(b) to "Class B Bodies", including universities and researchers, where additional security may be warranted, particularly when considering appropriate data projects and outputs of the data seeker (i.e. secondary disclosure).

The intent is that AEMO could share data with Class A Bodies where the disclosure of personal information is permitted under the Privacy Act and confidentiality is preserved. AEMO should not be required to impose conditions regarding data security on a Class A recipient. As described in the Legal Report, some obligations under the Privacy Act continue to apply in respect of personal information which has been disclosed.

[6] See section 54(2) and (3) of the NEL and section 91G(2) and (3) of the NGL.

Note that "Class A Bodies" and "Class B Bodies" is a shorthand categorisation adopted in this consultation paper to easily distinguish between categories of protected information recipients. Those terms may not necessarily be included in the NEL or the NGL.

The below sets out proposals to amend the NEL and NGL, primarily to address AEMO's ability to disclose protected information to Class A and Class B Bodies. Each proposal is set out below, along with an explanation, policy rationale and questions for consultation. Section 7 of this paper contains relevant case studies.

5.4 Definition of Class A Bodies

Amend the NE Regulations and the NG Regulations to include additional prescribed bodies for the purposes of s 54C(2) of the NEL (and s 91GC(2) of the NGL) as follows:

(a) a Department of State of a participating jurisdiction responsible for the administration of the application Act of the jurisdiction;

(b) Australian Bureau of Statistics;

(c) Clean Energy Regulator;

(d) Australian Renewable Energy Agency;

(e) Energy Consumers Australia; and

(f) Clean Energy Finance Corporation.

Note that we consider CSIRO should also be included in this list but have not included them here because there is an updated regulation already in train to add them as a prescribed body.

The entities already listed in s 54C(2) of the NEL and in s 91GC(2) of the NGL are also intended to be Class A Bodies, i.e.:

- ACCC;
- AER;
- AEMC;
- ESB;
- Economic Regulation Authority of Western Australia;
- a jurisdictional regulator;
- the energy ombudsman (if the information is reasonably required by an energy ombudsman to resolve a dispute between a Registered participant and a retail customer but the information is not end-use consumer information);
- a prescribed body; and
- any staff or consultant assisting a body mentioned above in performing its functions or exercising its powers.

Explanation:

Section 54C(2) of the NEL and section 91GC(2) of the NGL provide that the disclosure of protected information by AEMO to certain bodies, including the ACCC, AER, AEMC and ESB is authorised. However, this list of authorised recipients, as it currently stands, does not capture all relevant decision makers in the energy sector who may require access to types of protected information in order to effectively perform their statutory functions or duties.

By expanding the list of potential "Class A" recipients, we are authorising AEMO to disclose protected information to these additional bodies. At no point is AEMO *required* to share protected information. These bodies have been selected because they have prescribed statutory functions that are similar to AEMO's and there is a high level of confidence in the recipient as to the security and protection of the data being disclosed.

They may also be subject to limitations relating to on-disclosure.[7] In particular, Commonwealth public servants must comply with the APS Code of Conduct and have a duty not to disclose confidential information, except in the circumstances mentioned in regulation 2.1(5) of the *Public Service Regulations 1999*.[8] Similar obligations exist at the State level.[9]

Further, certain Class A Bodies have additional obligations to preserve the confidentiality of the information obtained from AEMO, even if no conditions are attached to the disclosure. For example, the legislation establishing the Clean Energy Regulator[10] contains provisions making it an offence for a person to use or disclose information obtained in their capacity as an official of the Regulator, except in limited circumstances. Similarly, the legislation establishing the Clean Energy Finance Corporation[11] permits information to be disclosed only in circumstances where doing so would assist the performance of the Corporation's investment function or assist specified recipients to perform or exercise their functions or powers.

Accordingly, the intent is that AEMO could share data with Class A Bodies where confidentiality of the information is otherwise preserved. Other principles relating to data security (e.g. appropriate data format, environment, intended use or outputs) should not be required.

The effect of the amendments is that AEMO may disclose personal information to Class A Bodies, i.e. it will be a disclosure "authorised by law" under Australian Privacy Principle (APP) 6. However, as described in the Legal Report, some obligations under the Privacy Act continue to apply to personal information which has been disclosed, such as the obligation in APP 11 to take reasonable steps to protect the security of personal information that an entity holds (noting, however, that AEMO holds limited personal information).

Policy Issues:

Expanded List of Class A Bodies

Although the proposal expands the list of authorised recipients by reference to specific bodies, there is also scope for a much wider 'catch-all' approach to be adopted. For example, Class A Bodies could also include the following:

(a) a body (whether incorporated or not) established or appointed for a public purpose by or under a law of a participating jurisdiction;

(b) a body established or appointed by the Governor-General, the Governor of a participating jurisdiction or a Minister of a participating jurisdiction, otherwise than by or under a law of the jurisdiction;

(c) the holder of an office established for public purposes by or under a law of a participating jurisdiction (including Ministers).

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[7] For example, the Clean Energy Regulator (**CER**) is bound by the secrecy provisions in Part 3 of the *Clean Energy Regulator Act 2011*. The AER also has limited rights to disclose confidential information (see s 28ZB NEL, s 329 NGL, s 214 NERL). Further, the secrecy offence in section 95ZP of the *Competition and Consumer Act 2010* makes it an offence for an ACCC entrusted person (such as a member or staff member of the ACCC) to disclose "protected information" unless the person is acting in the course of performing or exercising functions, powers or duties under or in relation to the Act. See further King & Wood Mallesons and Galexia, *ESB Data Strategy Preliminary Legal Report* (2020), available at: https://web.archive.org.au/awa/20210603131240mp_/https://energyministers.gov.au/sites/prod.energycouncil/files/publications/documents/ESB%20Data%20Strategy%20Preliminary%20legal%20report%20%2825%20August%202020%29.pdf (**Legal Report**).

[8] Breach of this duty is a criminal offence under s 122.4 of the *Criminal Code*.

[9] For example, paragraphs 6.2 and 6.3 of the Victorian Public Sector Commission's Code of Conduct provides that Victorian public sector employees with access to confidential information ensure it remains confidential, and will receive and manage information in such a manner that its confidentiality will be maintained. A contravention of the Code may constitute misconduct.

[10] *Clean Energy Regulator Act 2011* (Cth), s 43(1).

[11] *Clean Energy Finance Corporation Act 2012* (Cth), s 75(1).

This broader set of bodies is not proposed to be included at this stage as there is less confidence as to their need for energy related data and the regimes they have in place to protect such data. However, this may change subject to the outcome of further stakeholder consultation.

Whether there is a need to include Ministers in the list of Class A bodies may be impacted by what constraints that are proposed to be placed on Class A bodies (discussed further in the following sections of this consultation paper). If Class A bodies are allowed to make secondary disclosures of protected information (subject to their own obligations to protect the data but without disclosure constraints imposed on them by AEMO), then a wider group of persons may have access to protected information. For example, allowing some secondary disclosure could enable energy departments to share certain protected information with their Ministers or central agencies, to the extent that the disclosure is appropriate and remains protected. In this example, the energy department would be responsible for deciding whether onward disclosure is appropriate (rather than AEMO).

Existing Data Collection Powers

We recognise that some Class A Bodies listed above may already have powers to compel the disclosure of protected information from relevant persons. To the extent that a Class A Body is subject to an existing information-gathering / reporting regime, we envisage that the data sharing arrangements embodied by the proposed reforms would operate in addition to those regimes.

However, queries have been raised in preliminary stakeholder consultation regarding whether such entities should be entitled to rely on the proposed data sharing arrangements, particularly in circumstances where they can also exercise their existing powers.

The ESB's preliminary view is that existing powers of these bodies often have limitations affecting their utility and it is not efficient to have multiple bodies collecting the same data from relevant persons under different information-gathering powers. The changes also allow greater ability for Class A Bodies to use data for policy purposes.

Derivative / Value Added Works

In addition to "raw" protected information, it has been queried whether the proposal should also contemplate AEMO being able to disclose derivative works or value added works, noting that AEMO already has the ability to share deidentified / aggregated data and insights in sections 54F and 54FA of the NEL (and sections 91GF and 91GFA of the NGL).

The preliminary view is that such value added works or derivative works which contain protected information are still protected information and there is no need to expand the sections to deal with a gap between such derivative works and the other provisions providing for authorised disclosure. The definition of "protected information" in section 54 of the NEL (and section 91G of the NGL) does not make a distinction between "raw" protected information and derivative or value added works. In the absence of an express exclusion, the better view is that the scope of the definition of "protected information" under the NEL and the NGL also captures derivative or value added works. Therefore, our proposals would enable AEMO to share derivative or value added works, even if these works contain elements that may reveal the identities of persons to which the underlying "raw" protected information relates.

Freedom of Information

Some concerns were raised in preliminary stakeholder consultation that documents disclosed to Class A (and Class B) Bodies may be the subject of freedom of information (FOI) requests and therefore more readily

accessible by the public. Documents containing material obtained in confidence and 'commercially valuable material' are, however, generally exempt from FOI disclosure.[12]

Key Questions:

The ESB is interested in stakeholder views on the following issues:

1. **What is the appropriate scope for Class A Bodies?**
2. **Should Class A Bodies include entities that already have their own data collection powers?**
3. **Should Class A Bodies have a right to make subsequent disclosure?**
4. **Do you have any concerns with disclosure to Class A Bodies that have not been considered above?**

5.5 Definition of Class B Bodies

Add a new section 54C(2A) to the NEL and a new section 91GC(2A) to the NGL that provides that the disclosure of protected information to any of the following is authorised:

(a) Australian public universities and other higher education institutions, including research schools and researchers that are part of an Australian public university or other higher education institution; and

(b) a prescribed body,

that conducts (or proposes to conduct) research related to energy.

Explanation:

The intent behind Class B Bodies is to have an additional category of recipients to whom AEMO may disclose protected information, where additional security may be warranted – particularly when considering appropriate data projects and outputs of the data seeker (i.e. secondary disclosure). By including these bodies as potential data recipients, this would facilitate disclosure by AEMO but on conditions that are appropriate and adapted to the purpose for which the data seeker requests data from AEMO.

For the purposes of new section 54C(2A) of the NEL and new section 91GC(2A) of the NGL, "Australian public universities" could be defined as a registered higher education provider:

(a) that, for the purposes of the *Tertiary Education Quality and Standards Agency Act 2011*, is registered in the "Australian University" provider category; and

(b) that is established by or under a law of the Commonwealth, a State or a Territory.

This definition is consistent with the definition adopted in the DAT Act.[13]

One option canvassed in stakeholder workshops was an alternative whereby *anyone* could request protected information from AEMO. In other words, there would be no list of particular Class B Bodies. However, this option was disregarded as likely to result in a significant administrative burden on AEMO to consider all data access requests it receives. The development of the new energy data framework will provide an opportunity to consider data access and sharing arrangements for other types of bodies, beyond the Class A Bodies and Class B Bodies discussed in this Consultation Paper.

[12] See, for example, s 45 of the *Freedom of Information Act 1982* (Cth). This contains an exemption for documents containing material obtained in confidence, where the person who provided the confidential information would be able to bring an action under the general law for breach of confidence to prevent disclosure, or to seek compensation for loss or damage arising from disclosure. The FOI Act also contains other conditional exemptions, such as for documents if their disclosure would reasonably be expected to affect certain operations of agencies (section 47E), or if disclosure would involve the unreasonable disclosure of personal information (section 47F).

[13] An alternative option is to identify universities by reference to table A providers within the meaning of the *Higher Education Support Act 2003* (HESA).

The definition of Class B Bodies is currently tied to the criterion that the relevant body conduct (or proposes to conduct) research related to "energy". Alternative qualifiers were discussed during stakeholder workshops, including "energy policy", "research related to the national electricity system", "energy use" and "energy transition". It was also proposed to omit this qualifier entirely.

Stakeholders noted that any definition should consider research areas which value energy data for purposes that may not be directly related to energy policy but are none-the-less consistent with public good outcomes and the long-term interest of consumers. Known examples observed include:

- research into building codes or equipment performance, where energy usage may be linked to considering energy efficiency;
- research into vulnerable consumers, where energy usage patterns might be linked to a range of well-being indicators or outcomes;
- research into disaster impacts or regional/sectoral growth, where energy usage may be considered as a proxy for economic activity.

Key Questions:

The ESB is interested in stakeholder views on the following issues:

5 **What is the appropriate scope for Class B Bodies?**

6 **Is it appropriate to require that Class B Bodies conduct (or propose to conduct) research related to "energy"?**

7 **When is it appropriate for AEMO to disclose data to Class B Bodies?**

5.6 Amendment by Ministerial Order

Add a new paragraph to section 54C of the NEL and section 91GC of the NGL to authorise disclosure of protected information to include any other body specified in an order made by the South Australian Minister (with the unanimous approval of Ministers of participating jurisdictions) and published in the South Australian Gazette.

Explanation:

This amendment would future-proof the Class A and Class B list of bodies, by enabling an efficient means of adding bodies without having to amend the NE Regulations or the NG Regulations. This mechanism mirrors the current mechanism of prescribing bodies in the Regulations but may place less of an administrative burden on South Australia.

Policy Issues:

During preliminary stakeholder consultation, it was noted that it might be more appropriate to *replace* the regulations making power to prescribe bodies with this Ministerial Order process, whereby the South Australian Minister is empowered to make orders specifying additional bodies as Class A Bodies and Class B Bodies for the purposes of section 54C of the NEL and section 91GC of the NGL. In other words, some stakeholders did not consider it necessary or appropriate to retain the regulations making power and also add an ability to authorise disclosure by Ministerial order.

Key Questions:

The ESB is interested in stakeholder views on the following issues:

8 Should the regulations making power to prescribe additional bodies as Class A Bodies and Class B Bodies be replaced with a Ministerial Order process?

5.7 Disclosure to Class A and Class B Bodies

This section describes three alternative options for the way in which conditions may be imposed on Class A and Class B Bodies when they receive protected information from AEMO. As described above, the intent is that AEMO will not impose conditions on Class A Bodies - but stakeholders recognised that it would be useful for conditions to be able to be imposed in exceptional circumstances.

The key difference between the three options below is in terms of who imposes conditions on data recipients and who enforces those conditions. In Option 1, that responsibility lies with AEMO. In Option 2, there are standard data transfer conditions enforced by a nominated data regulator. In Option 3, conditions are written into law. A breach of the conditions in Option 2 and Option 3 may attract a civil penalty.

5.7.1 Option 1: Disclosure to Class A and Class B Bodies

Amend section 54C of the NEL and section 91GC of the NGL to clarify that conditions that AEMO may impose on bodies listed in section 54C(2A) of the NEL and section 91GC(2A) of the NGL include that the authorised recipient:

(a) is only permitted to use the protected information for a prescribed purpose;

(b) is not authorised to make further use or further disclosure of that protected information (except in prescribed circumstances that are consistent with AEMO's own obligations, excluding further use or disclosure to other authorised recipients);

(c) must take all reasonable measures to protect the protected information from unauthorised use or disclosure;

(d) may, for some services, be required to pay AEMO's direct and reasonable costs incurred in providing the protected information; and

(e) similar to section 54H, the research be conducted in accordance with an approved research framework and criteria.

Amend section 54C(4) to add a new paragraph that provides that AEMO may require that a Class B Body submit certain information with its request for protected information, to enable AEMO to assess whether it is appropriate to disclose protected information, and what conditions (if any) should be imposed on the disclosure and use of that information.

Explanation:

Section 54C(4) of the NEL and section 91GC(4) of the NGL already provides that AEMO may impose conditions to be complied with in relation to protected information disclosed under s 54C(2) of the NEL or s 91GC(2) of the NGL. This reform clarifies the types of conditions that AEMO may impose. Although these sections encompass both Class A Bodies and Class B Bodies, as described above, the intent is that AEMO would exercise this discretion only in exceptional circumstances for Class A Bodies, given that such bodies can be trusted with the protection of the underlying information due to their status as government instrumentalities.

In relation to Class B Bodies, AEMO has the discretion to impose certain restrictions on disclosure and use of the data. This is in recognition of the fact that additional security may be warranted with respect to disclosures to Class B Bodies in order to safeguard the commercial value and sensitivity of the protected information being disclosed.

Before considering what conditions (if any) should be imposed on the disclosure and use of protected information, AEMO will first need to form a view on whether it is appropriate to disclose protected information. To this end, the proposed amendments also require the requesting Class B Body to provide certain supporting information to AEMO on request, to assist AEMO in deciding whether to disclose the protected information (noting, there is no positive obligation on AEMO to disclose protected information, regardless of whether a Class A Body or a Class B Body is making the request).

AEMO has queried whether it, as market operator, is the appropriate body to consider and evaluate the merit of research requests and noted that in order to disclose to Class B Bodies, it will require substantial administration support. Options to provide this support are being considered as part of a separate data services workstream. AEMO has indicated that it will not be in a position to assess data access requests and disclose protected information to Class B Bodies without that support.

Policy Issues:

Concerns have been raised about how non-compliance by a Class B Body of a condition imposed by AEMO should be addressed under the proposed reforms. Under this option and noting that AEMO retains the discretion to impose conditions on the use and disclosure of protected information and receives the benefit of such conditions, AEMO would be the entity responsible for enforcing against the offending recipient in circumstances of breach. This would need to be done by way of contract, i.e., imposing the conditions contractually in respect of the provision of data.

This may not be a desirable outcome, considering that AEMO does not traditionally carry out an enforcement function and does not currently possess appropriate resources to do so.

If Option 1 is followed, then it would be consistent for it to apply to Class A Bodies in those circumstances where conditions are imposed.

5.7.2 Option 2 – Standard data transfer conditions agreed with a nominated regulator

Amend section 54C of the NEL and section 91GC of the NGL to clarify that a designated regulator, in collaboration with the AEMO, agree on and impose standard data transfer conditions on certain disclosures of protected information to Class B Bodies pursuant to section 54C of the NEL and section 91GC of the NGL, where it is necessary and appropriate to do so. Amend section 54C of the NEL and section 91GC of the NGL to clarify that Class B Bodies who receive protected information must comply with any standard data transfer conditions. Any breach of these standard data transfer conditions will attract a civil penalty.

Explanation:

As an alternative to AEMO unilaterally imposing conditions on disclosures of protected information a third party could play a role as a nominated regulator for data sharing agreements. This regulator could, in collaboration with AEMO, agree and manage standard data transfer conditions that would apply to disclosures by AEMO to Class B Bodies. It is intended that these standard data transfer conditions would be imposed where it is necessary and appropriate to do so.

These provisions would not attach to disclosures to Class A Bodies. If AEMO did impose conditions on Class A Bodies (which would be expected to occur rarely), these would need to be enforced contractually by AEMO.

Policy Issues:

Compared to the approach above in Option 1, Option 2 would shift responsibility for enforcement of the conditions from AEMO to the nominated regulator. The requirement that the standard data transfer conditions be agreed by the regulator 'in collaboration' with AEMO also removes (in whole or in part) the discretion on AEMO to consider what controls are appropriate for data access requests received from Class

B Bodies and the corresponding obligation to monitor compliance with these controls (something which AEMO noted during stakeholder consultations as potentially becoming resource-intensive endeavours).

One issue to consider in this case is who would be nominated as proposed regulator. Given this may be a role which is not called upon regularly, it should be an existing body with related roles or experience in monitoring, investigating, and enforcing compliance with information obligations. There are a range of regulatory and compliance roles also being considered under related workstreams for new DER arrangements. Consideration of who would play this role would also have to consider related resourcing requirements.

This option also contemplates a civil penalty enforcement regime as the primary mechanism for passing liability from AEMO to Class B Bodies for any misuse of the protected information. The imposition of a civil penalties addresses the absence in the current regulatory framework of an express obligation on data recipients to comply with conditions made accordance with section 54C(4) of the NEL and section 91GC(4) of the NGL, and for consequences to apply in the event of non-compliance. Depending on the quantum of civil penalties prescribed for breach, having a civil penalty could also act as a strong deterrent against non-compliance by Class B Bodies. The ESB anticipate that the legislation would specify a maximum civil penalty (commensurate with similar offenses in analogous contexts[14]) and the penalty for breach could be adjusted based on the severity of the breach.

5.7.3 Option 3 – Conditions on use and disclosure of the protected information are written into law

Add a new section 54C(4A) of the NEL and a new section 91GC(4A) of the NGL, which specifies certain conditions that are imposed on Class B Bodies when they receive protected information from AEMO. Those conditions might include that:

(a) the authorised recipient must only use protected information for permitted purposes;

(b) the authorised recipient must take all reasonable steps to protect the protected information; and

(c) the authorised recipient may allow third parties to access the protected information for the permitted purposes, but must ensure that the recipient retain control and possession of the information. However, authorised recipients may disclose insights or analysis of the information provided that this does not have the effect of disclosing the protected information (in whole or in part).

Add a new section in the NEL and the NGL which provides that a breach of the conditions will attract a civil penalty.

Explanation:

Instead of Option 1 and Option 2, conditions governing the use and disclosure of protected information could be written into the NEL and NGL as part of these proposed reforms. These conditions would apply to any disclosure by AEMO to a Class B Body.

Policy Issues:

This option would avoid the need for a nominated regulator to agree standard data transfer conditions with AEMO, as the applicable conditions would already be reflected in the NEL and the NGL. It would provide greater transparency to potential recipients of protected information and is likely to a simpler option than Option 1 or Option 2.

[14] For example, civil penalty provisions in the *Data Availability and Transparency Act 2022* (Cth) generally attract a penalty of 300 penalty units or 600 penalty units for a serious contravention (having regard to the sensitivity of the data, the consequences of the contravention and the level of care taken by the contravening entity). *Note that "penalty units" are currently $222 but adjusted and indexed (300 penalty units is $66,600 and 600 penalty units is $133,200). AEMC has a decision matrix and concept table for determining which tier of penalty should apply (https://www.aemc.gov.au/regulation/energy-rules/civil-penalty-tools)*

Similar to the approach in Option 2, this option also imposes civil penalties for non-compliance, for the same reasons set out above. From an enforcement perspective, the fact that the conditions are clearly set out in the NEL and the NGL may mean that monitoring and reporting on compliance is simpler than the scenarios where AEMO imposes its own conditions or agrees to standard conditions in collaboration with a nominated regulator.

If conditions are written into law, it may be appropriate for AEMO or another body to produce guidelines for Class B Bodies to assist them in understanding their rights and obligations in respect of the protected information.

These provisions would not attach to disclosures to Class A Bodies. If AEMO did impose conditions on Class A Bodies (which would be expected to occur rarely), these would need to be enforced contractually by AEMO (or its delegate or representative). The ESB anticipate that the legislation would specify an appropriate civil penalty (commensurate with similar offenses in analogous contexts).

Key Questions:

The ESB is interested in your views on the following issues:

9 Which disclosure option, if any, has the most merit? In particular:

- **(a) Who should be responsible for setting the conditions on disclosure?**
- **(b) What should those conditions be?**
- **(c) Who should be responsible for enforcement of those conditions?**
- **(d) If a regulator is required for monitoring data sharing agreements, what existing body could or should play this role?**
- **(e) What are the appropriate consequences for non-compliance with those conditions? What amount is appropriate for a civil penalty?**
- **(f) Should Option 2 or Option 3 also apply to Class A Bodies?**
- **(g) Are there any related considerations in resourcing these activities, where the development and enforcement of data transfer conditions would require an expansion of a nominated regulators and/or AEMO's functions?**

5.8 Liability

Add a new subsection to section 54C of the NEL and section 91GC of the NGL to clarify that any authorised Class A or Class B recipient is responsible for their own and any further use or disclosure of protected information.

Explanation:

Given the potential commercial sensitivity of some protected information, AEMO has indicated that it is essential that industry is aware and supportive of:

(a) what disclosures AEMO is authorised to make, and of what types of protected information;

(b) the uses that are authorised following AEMO's disclosure; and

(c) remedies available to the owner of the protected information in the event of a breach,

AEMO has also indicated that industry concerns about the preservation of confidential and commercially sensitive information may lead to the withholding of confidential information that AEMO requires to perform its statutory functions, detrimentally impacting on AEMO's ability to perform its statutory functions.

AEMO also said that, as a not-for-profit market operator that operates on a cost recovery basis from fees received from market participants, AEMO's authorisation to disclose protected information to additional bodies should be on the basis that:

(a) AEMO, in making the disclosure to an authorised recipient, is not negligent or acting in bad faith (thus ensuring such acts fall within the existing statutory liability regime in the NEL and NER); and

(b) AEMO is not liable for the authorised recipient's subsequent use or disclosure, which must itself be clearly regulated or signposted in the NEL.

Accordingly, this proposal is designed to clarify that the Class A or Class B recipient is responsible for their own and any further use or disclosure of protected information. The proposal at section 5.9 contains a corresponding AEMO immunity consistent with a Class B recipient's obligations and responsibilities.

Policy Issues:

It naturally follows from Option 2 and Option 3 above that AEMO should not be held liable with respect to onward disclosure and use of protected information by Class B Bodies. That is because the conditions imposed on the Class B Bodies are standard conditions, or are conditions written into law. If AEMO provides protected information to a recipient on certain 'standard' conditions, and the Class B Body breaches those conditions, then liability for the misuse of the protected information should fall on the Class B Body (and will do so by virtue of the civil penalty enforcement regime). However, if AEMO imposes its own conditions with respect to the protected information, then there is a stronger case that AEMO should be held responsible to the extent that it fails to enforce those conditions as against the Class B Body.

Key Questions:

The ESB is interested in your views on the following issues:

10 Is it necessary and appropriate to clarify that authorised Class A and Class B recipients are responsible and liable for their own and any further use or disclosure of protected information?

5.9 Immunity and Costs

Amend section 49 of the NEL and section 91A of the NGL to include a new statutory function for AEMO, being "to disclose information in accordance with this Law or the Rules."

Explanation

The purpose of expanding AEMO's statutory functions are twofold:

(a) so the immunity in section 119(1) of the NEL and section 91K of the NGL extends to AEMO's authorised disclosure of protected information; and

(b) so AEMO can charge for, and recover fees and charges for, the costs of that disclosure.

Immunity

Section 119(1) of the NEL and section 91K of the NGL each provide that AEMO or an officer or employee of AEMO does not incur any civil monetary liability for an act or omission in the performance or exercise, or purported performance or exercise, of a function or power of AEMO under the NEL/NGL or the rules unless the act or omission is done or made in bad faith or through negligence.

The shift of liability from AEMO to recipients is consistent with the principle gaining traction internationally that data is received and held by government entities and other recipients as custodians, and that the use of

public data comes with a commensurate responsibility to act in the public interest (noting that protected information is not public in the sense of being publicly available).[15] Where data is shared between government entities and with entities trusted by the government, it makes sense that the recipient entities have responsibility for the data's protection. Accordingly, it is appropriate that this immunity extends to AEMO's disclosure of protected information – particularly to Class A Bodies.

Further, without immunity for disclosure to Class B Bodies, AEMO will have little to no incentive to disclose given the risk involved to it as an organisation and its members.

Cost Recovery

Section 52 of the NEL and section 91E of the NGL each provide that AEMO can charge for and recover fees and charges for the costs of providing the "service." "Service" includes the performance of statutory functions.

By expanding AEMO's statutory functions to include disclosing data, AEMO can recover its costs via fees and charges (including compliance activities). When paired with the ability to charge Class A or B bodies as a condition of disclosure (dependent on the type of data service requested -see Option 1 above), this will provide flexibility in how AEMO recovers the costs of providing access to data, making data sharing feasible and sustainable.

In other words, where appropriate the costs of disclosure for standard data transfers may form part of AEMO's business-as-usual costs recovered through participant fees (such as support for public dashboards or services valued by market participants), subject to AEMO's current processes and limitations for setting fees, including public consultation.

Other costs may be appropriately recovered from parties seeking access to the data on a cost-for-service basis. Governments may also choose for some services to be directly funded, for example services of benefit to policy departments or services supporting a range of public-good research. Further work is underway considering different models for how data services might be delivered, including cost recovery arrangements.

Policy Issues:

It was highlighted during stakeholder workshops that the proposal currently does not contemplate the enforcement of data disclosure conditions as part of AEMO's statutory functions. If AEMO's statutory functions were expanded to include enforcement, then this would allow AEMO to recover its enforcement costs in circumstances where a Class A or Class B Body fails to comply with a condition that AEMO imposes on it (noting, if a failure to comply with a condition is made into a civil penalty provision, then this will not be necessary – see above Option 2 and 3).

Key Questions:

The ESB is interested in your views on the following issues:

11 Is it necessary and appropriate to expand AEMO's statutory functions to include disclosure of information in accordance with the law and rules and/or enforcement of conditions imposed in accordance with section 54C(4) of the NEL and section 91GC(4) of the NGL?

[15] For example, one of the objects of the *Data Availability and Transparency Act 2022* (Cth) is to "serve the public interest by promoting the better availability of public sector data". The requirement to "serve the public interest" also appears in the context of one of the specified 'data sharing principles' governing the sharing of public sector data by Commonwealth bodies under the Act.

5.10 Clarification on AEMO's ability to impose conditions

Insert "Subject to subsection (4)" at the beginning of s 54C(3) and s 54C(5) of the NEL and s 91GC(3) and s 91GC(5) of the NGL.

Explanation:

Although this is likely implicit in s 53C of the NEL and s 91GC of the NGL, stakeholder consultations indicated that it would be useful to clarify that a person's ability to use protected information that it has received (subsection (3)) and the disclosure authorisation to officers and employees (subsection (5)) is subject to AEMO's ability to impose conditions.

6 Other Amendments

The stakeholder consultations held in anticipation of the Legal Report and this consultation paper also identified a number of other amendments that could usefully be made as an interim measure to facilitate data sharing. The following amendments are proposed.

6.1 AEMO's Right to Use Information

NEL	NGL
Amend s 53D of the NEL as follows: **53D—Use of information** (1) ~~Subject to this Law, the Rules and the Regulations,~~ AEMO may use information obtained by market information instruments or in any other way for any purpose connected with the exercise of any of its statutory functions. (2) Nothing in this Law, the Rules or the Regulations restricts the operation of subsection (1).	Amend s 91FD of the NGL as follows: **91FD—Use of information** (1) ~~Subject to this Law, the Rules and the Regulations,~~ AEMO may use information obtained by market information instruments or in any other way for any purpose connected with the exercise of any of its statutory functions. (2) Nothing in this Law, the Rules or the Regulations restricts the operation of subsection (1).
Amend the note in section 54(2) of the NEL as follows: Section 53D(1) authorises AEMO ~~(subject to the Law, the Rules and the Regulations)~~ to use information (whether obtained by market information instrument or in any other way) for any purpose connected with the exercise of any of its statutory functions.	Amend the note in section 54(2) of the NEL as follows: Section 91FD authorises AEMO ~~(subject to the Law, the Rules, the Procedures and the Regulations)~~ to use information (whether obtained by market information instrument or in any other way) for any purpose connected with the exercise of any of its statutory functions.
Amend the note in clause 3.7E(e) the National Electricity Rules (NER) as follows: Under section 53D(1) of the NEL, AEMO may use information it collects under the Rules for any purpose connected with its statutory functions ~~unless otherwise specified in the NEL, these Rules or the Regulations made under the NEL~~.	

Explanation:

The effect of making AEMO's right to use information subject to the NEL, the NGL and the rules and regulations relating to each of them is that those instruments can potentially be interpreted as limiting AEMO's right to use information in the performance of its statutory functions. Stakeholder consultations have indicated that it is often unclear whether particular rules specifying a purpose for collection or use may implicitly override AEMO's right to use information. For example, it is sometimes unclear whether a rule that provides that information can be used for a particular purpose implicitly prevents AEMO from using that information for other purposes. Stakeholders also explained that, as a general principle, AEMO should be able to use information for all statutory purposes and use restrictions should only be used if they won't adversely affect other AEMO functions, and/or require duplicate data collections to meet these functions.

AEMO's right to use information will not be unfettered in light of this amendment. AEMO can still only use information in a way connected with the exercise of its statutory functions. Section 54(2) of the NEL and section 91G(2) of the NGL also provide that AEMO makes unauthorised use of protected information if (and only if) it uses the information contrary to the NEL (or the NGL), the Rules or the Regulations. Further, privacy law will still operate to restrict the use of personal information, such as APP 6, which provides that APP entities an only use or disclose personal information for a purpose for which it was collected, or for a secondary purpose if an exception applies.

6.2 Typographical Error

Amend the note in s 28W of the NEL. It currently refers to section 29 of the NEL but should refer to section 18.

Explanation:

This amendment fixes a typographical error in the NEL.

Key Questions:

The ESB is interested in stakeholder views on the following issues:

12 Are there any other improvements on the status quo that we should be considering? (Noting that wider concerns could also be considers as part of more in depth design of the new fit-for-purpose regime)

13 The current intention is to only amend AEMO's data provisions. We are not amending AEMC's or AER's data related provisions, as they involve legislation outside the national energy regime. Is this narrow approach appropriate?

7 Case Studies

The following sections consider the impact of the proposed reforms on existing cases, to test whether expected outcomes will be met.

7.1 Facilitating access to protected information from AEMO

ISSUE: WILL THE PROPOSED REFORMS FACILITATE GREATER ACCESS TO PROTECTED INFORMATION FROM AEMO? WILL THEY INCREASE CERTAINTY AND EFFICIENCY? WHAT SUPPORTING ARRANGEMENTS MAY BE REQUIRED?

Context: AEMO already receives requests to provide data to many types of research projects. For some of these projects AEMO has successfully provided data or related analytics, but for others it was not possible or appropriate. Sometimes AEMO has been a partner to the research project or has initiated the data sharing.

To date, many of these processes have been time consuming for AEMO and parties requesting data, even where sharing the data was ultimately not possible. Negotiating custom or unique data sharing arrangements with different types of parties has often proven complex, with constraints around risks and liability. This has created inefficiencies and uncertainty for AEMO and data requesters.

The reforms proposed in this Consultation Paper are intended to expand data access where appropriate. They are also intended to streamline and standardise data access arrangements, to increase certainty and efficiencies in data access for all parties.

7.1.0 Case study: Data Services to a State Government department

In a case study provided by AEMO, a State Government department responsible for the energy portfolio regularly looks to assess the impact of energy initiatives designed to improve consumer outcomes. To provide a robust quantitative assessment of the impact of initiatives related to solar, batteries or energy efficiency, programs are increasingly looking to access energy consumption data for consumer and business participants in the program.

The department requested access to electricity meter data from AEMO to complete the assessment. However, as the data was protected information, AEMO was not permitted to disclose the data under current NEL/NER arrangements.

The department and AEMO were able to work together under a commercial arrangement where AEMO staff performed the required analysis with a set of sites provided by the department. The department and AEMO had to negotiate a bespoke commercial arrangement which took some time. Additionally, due to a range of AEMO commitments requiring the relevant expertise and resources, the department needed to delay its assessments until AEMO resources were available.

Once the work began AEMO was able to provide a range of the services needed. However, at times AEMO was unable to provide the granularity of results requested as de-identification was unable to be preserved due to small sample sizes. This limited the analysis and related insights.

With reforms

It is intended that the proposals in this Consultation Paper would allow AEMO to disclose electricity meter data to the State Government department as a Class A body. As a Class A body, AEMO could disclose the whole dataset to the department for them to conduct the analysis in a protected environment. The Class A body would be responsible for ensuring they have the expertise and capabilities to securely manage the data. Alternatively, the reforms would allow the department to receive the detailed AEMO analysis for each site.

In this scenario reforms could reduce delays and allow the state government to broaden its analytics and understanding of the impact of its programs, improving outcomes for consumers and tax payers.

Resourcing may remain a key constraint however, as it's likely that many State Governments may not have the capabilities required for this analysis internally. Similarly, if AEMO was to continue to undertake the analysis and provide more granular results as a service, it does not currently have the capacity to upscale these services to meet what might become growing needs from wider policy departments. This is one of the reasons that it remains important that AEMO has the ability but not the obligation to share data, to avoid AEMO resources being diverted inappropriately. These resourcing implications are being considered more broadly as part of the Data Strategy, through the Data Services workstream currently underway. This is considering governance models for supporting a range of potential needs in the sector, from curating datasets from a range of parties and facilitating secure access to meeting wider published data needs and tailored analytics services.

7.1.1 Case study: National Energy Analytics Research program (NEAR)

The National Energy Analytics Research program (NEAR), a $20 million 6-year program, came about in large part because the Commonwealth energy department faced hurdles in accessing meter and related data to support policy analysis. The Commonwealth sought a joint-partnership arrangement with AEMO and CSIRO to facilitate energy data research that could support a wide range of needs, including AEMO's needs such as improved forecasting and the Department's needs in policy analysis. The CSIRO was involved with the intention of ensuring that a trusted partner managed the data securely and provided advanced data science skills. An additional clear goal was for NEAR to facilitate access to data for a wide range of other researchers, through developing a range of de-identification methods.

Stakeholders considered previous hurdles to data access could be resolved through a joint-partnership arrangement. NEAR has resolved many data hurdles and undertaken a wide range of the intended research, but also faced substantive challenges. Negotiations on the partnership arrangements and on data access were complex, with uncertainties around AEMO's ability to share data and related liabilities a material concern. CSIRO did not gain access to AEMO meter data until around year 3-4 of the program. Data access, now provided, is supported by NEAR funded employee within AEMO, who manages a secure data environment for CSIRO to access remotely. CSIRO effectively works on the data within AEMO's systems.

The delay in access to data delayed much of the intended research and reduced the potential benefits of the research funding. It also limited NEAR's intended role in facilitating data access to wider users, which could have significantly multiplied the benefits of the program.

It has also not resolved many data access concerns. For example, another State government recently worked with NEAR to analyse the impacts of some of their programs, to avoid challenges they had faced requesting analysis from AEMO directly. However, difficulties were experienced with data sharing agreements and providing some of their own data to CSIRO in a way that would enable it to be linked. The ABS has also faced difficulties working through NEAR, as data linking still needs to be done within AEMO's system (meaning the ABS could not share their related data for linking). Wider research programs still need to request CSIRO to conduct analysis for them, which frequently does not meet their needs. NEAR also has limited resources with projects competing for priorities. Forward arrangements for NEAR, beyond current funding, are still being considered.

With reforms

With the reforms NEAR may have had an entirely different model, with policy Departments able to access data directly and work with a wide range of research institutes. A significant amount of the NEAR funding could have been channelled into research earlier rather than resolving complex legal arrangements to provide data access. As a proposed Class A body,[16] CSIRO will in the future be able to negotiate more direct access to AEMO data, without some of the limitations faced in the secure shared analytic environment.

[16] Note CSIRO was agreed as a prescribed body through an earlier consultation process.

Providing more direct access to NEAR's internal researchers would unlock some constraints on analysis, such as research into better linking methods. This could have also supported greater outcomes from the program.

It is important to note that CSIRO's advanced data capabilities could not have been supported directly by policy departments, which would have excluded many of the advanced research outcomes achieved by NEAR. For example, NEAR has used machine learning on meter data to identify uptake of new technologies and different clusters of user characteristics. Through the relationship formed in the joint partnership they also worked closely with AEMO researching forecasting methodologies.

Moving forward, while reforms will broaden access to data by researchers, resources to facilitate access and support analytics will still be needed if outcomes are to be achieved. NEAR also demonstrated that there is a difference between targeted analytics and an in-depth research programs seeking to build new capability.

7.1.2 Case study: Requests for protected information that AEMO is unable to support – Government programs

AEMO has received a large number of requests from government bodies for protected information or related services, which it is unable to support.

Many of these requests have been related to assessing programs where individual-site energy data needed to be linked to assess impacts. AEMO cannot currently release this level of protected data, even with supporting arrangements in place. The most-often successful solution to this is for the government department to provide the data to AEMO and for AEMO to undertake the linking and relevant analytics in a protected environment, as a service (as in the state government case above).

However, often the government data relating to the program being may also be protected, have sensitivities or limited consents, limiting the ability or willingness for the government body to provide the data to AEMO for linking. Examples have included: state vulnerable consumer programs and ABS surveys.

With reforms

Where state government energy bodies are Class A bodies with appropriate protections already in place, AEMO will be able to share granular data with state departments for analysis in a protected environment. This solution may open many opportunities to better understand the impacts of programs and improve policy development.

Facilitating additional data sharing is not expected to resolve all issues that energy bodies, governments, and other stakeholders face when it comes to data sharing. In particular, resourcing constraints may impact the ability for stakeholders to make use of the data sharing regime. AEMO will need the resources to facilitate the identification, appropriate management and transfer of data in a protected way – particular if broader access rights increase the demand for these services. Current resources for these activities are already constrained, with data service requests often awaiting resources or prioritisation. Further, the size and scale of the datasets can make sharing of granular data difficult. State agencies will also need to be able to access the skills and systems to undertake the analysis in a protected environment. The ESB notes that a separate Data Strategy workstream on Data Services is currently considering options to resolve these constraints.

7.1.3 Case study: Requests for protected data AEMO is unable to support – de-identified research data

AEMO currently receives requests from universities and related researchers for access to de-identified individual site energy data for research. Research in this space is growing due to the need to understand and plan for changing energy services, technologies, and consumer behaviours in the energy transition.

AEMO is currently not able to provide de-identified granular data due limits in their ability to confidently de-identify the data. The level of detail in individual energy use data makes it unique, like a finger-print. This means there is a possibility it could be re-identified through matching, if a large set of meter data was

available. For example, if AEMO released a de-identified survey with linked usage data, parties with access to large sets of meter data (such as retailers, network or meter providers) could seek to match the usage data and re-identify the survey information.

In some cases, AEMO has discussed options with researches, such as using a protected data room model (as was used with NEAR). However, the size of the data sets often means that setting up a data room is a material investment and generally these parties are not funded to support that exercise.

With reforms

Under the reforms, many of these currently un-met requests may be able to be supported, to the extent that researchers fall within the definition of a Class B body and can comply with conditions of disclosure. Unlike Class A bodies, AEMO is likely to apply a range of constraints on these parties to ensure data remains protected, including limiting the purpose for which the data may be used, how the data is accessed, and whether the data can be disclosed to other persons.

Even within these constraints, the right to share this data with wider researchers with advanced data science, and energy expertise could open up extensive opportunities to increase research impact in the energy sector, promoting greater innovation, more informed policy and planning, and improved consumer outcomes.

However, as with the government bodies above, many of these opportunities will also be constrained by the resourcing required (for AEMO and Class B bodies) to facilitate protected access and undertake analytics (discussed above).

Note that options exist within Data Services to support technical means of better protecting the data, such as new de-identification methods or protected data labs. It is likely that AEMO would seek to use these arrangements to ensure the confidentiality and security of protected information that is disclosed to Class B bodies.

7.2 Access where there are existing rights

Issue: Some Class A bodies already have rights to access AEMO data. Will they still benefit from being a prescribed Class A body?

Context: As described in the Consultation Paper, some Class A bodies may already have powers to compel the disclosure of protected information from AEMO or other persons.[17] The rights set out in this Consultation Paper for Class A bodies to access AEMO data are intended to operate in addition to those existing powers. Preliminary stakeholder consultations considered whether those existing powers are adequate.

7.2.1 Case Study: Australian Bureau of Statistics

The ABS is Australia's national statistical agency (Australian Bureau of Statistics Act 1975), and has the authority to collect, use and release statistical and related information (Census and Statistics Act 1905 (Cth)).

The ABS collects a range of survey, administrative and transactional data to support the production of official statistics for Australia. The ABS has strict standards and legislative obligations to protect and maintain the confidentiality of information collected, including personal information.

ABS has sought access to energy data several times in the past to support national surveys, for example the 2012 Household Energy Consumption Survey, which was undertaken to support climate policy.

Since AEMO only had a sub-set of meter data at the time, ABS worked directly with energy network providers to obtain data. Coordinating input from many different energy network providers proved costly, logistically complex and time consuming, creating a high burden on these providers. It also highlights some of the

[17] See Consultation Paper, section [2.4].

challenges with uncertainty in the current framework, as different energy network providers require different conditions to release the data.

More recently the ABS has worked with AEMO to explore whether they could access similar data more efficiently from one source, saving costs for the energy network providers. However, this alternative approach raised issues and uncertainty over AEMO's ability to disclose the data.

This provides an example of when existing powers can be unwieldly. The ABS data gathering powers can allow it to require data directly from energy network providers or AEMO. Under the Census and Statistics Act 1905 (Cth), the Australian Statistician (who is the accountable authority of the ABS) may collect statistical information necessary for the purposes of compilation and analysis of statistics[18]. The Australian Statistician seeks the willing cooperation of data providers, but may also do this by issuing a formal notice of direction requiring specified persons – including AEMO – to provide the information required on a form[19]. This statutory authority to require information to be provided by issuing a formal notice of direction can be applied to override AEMO's NER/NEL obligations. However, to the extent that the ABS requires information to be provided on a compulsory basis, the proposal for the collection of information for statistical purposes must first be laid before both Houses of Parliament prior to its implementation [20] .

ABS statutory authority to issue a notice of direction has been used in the past with a few energy network providers, who raised varied issues relating to their ability to release the data, and where the data was required for a national survey. However, it was not considered ideal to require the data from AEMO unless there were no other alternatives, and at this time AEMO did not have a full data set (as it does now).

With Reforms

Under the proposed reforms, AEMO would be able to share data directly with the ABS as a Class A body. The ABS has robust legal frameworks, infrastructure, and processes in place to protect data and has capabilities to manage and analyse such data. ABS and AEMO both have experience with sharing data through protected analytic environments.

Pathways for progressing shared analytics with the ABS may prove beneficial for the energy sector, as well as supporting national statistical capabilities. For example, research into better understanding changing energy patterns and usage, across residential and business sectors, to improve forecasting as we face rapid change.

7.2.2 Case study: AER Electricity Consumer Benchmarks

The National Energy Retail Rules (Retail Rules) have required that retailers provide electricity consumption benchmarks on a residential customer's bill[21]. Under Rule 169 of the Retail Rules the AER is currently required to update the electricity consumption benchmarks at least every three years[22], for which they undertake a survey of energy consumers linked to meter data.

While designed for a specific task, the coverage and regularity of the benchmarking survey has in recent years made it one of the most consistent and useful sources of consumer data available and has been frequently

[18] Census and Statistics Act 1905, s 9.

[19] Census and Statistics Act 1905 (Cth), s 10

[20] Australian Bureau of Statistics Act 1975 (Cth), s 6(3).

[21] There have been recent revisions under the Better Billing Guidelines which mean these arrangements will likely vary in the future: Notice of Instrument: Better Bills Guideline (aer.gov.au)

22 https://www.aer.gov.au/retail-markets/guidelines-reviews/electricity-and-gas-consumption-benchmarks-for-residential-customers-2020

used for wider consumer metrics and analytics[23]. For example, key findings have been used in a range of estimates made across the energy agencies[24] and the 2014 and 2017 the AER benchmarking surveys (de-identified) have been important inputs into NEAR research.

The regulated processes for electricity consumption benchmarks prescribed in the Rules requires AER to gain consent from the consumer during the survey, then access supporting meter data from the relevant network business. There are 17 distribution network businesses, which have diverse processes, data formats and timelines. Even with the AER's information-gathering powers and a clear regulated requirement, this process has previously been complex and taken multiple months.

For the 2020 survey, the AER trialled a new approach and engaged with AEMO directly to provide meter data. This trial aimed to reduce the time required and was in response to AEMO's growing coverage of meter data. The AER is already a "prescribed agency" so AEMO was able to agree to provide data. AEMO disclosed the information but included conditions on permitted purpose and restrictions on the secondary disclosure of the individual data records. These conditions were part of AEMO managing obligations on the management and disclosure of protected information and related liabilities.

Additionally, due in part to the constraints on sharing data and also because the survey focused on its primary purpose (rather than broader concerns), the consent obtained from consumers was then not broad enough to cover the use of data for research or projects outside of the development of the benchmarks. This is unlike the consent supported in some other surveys (including the 2014 and 2017 benchmarks) which allowed the deidentified raw data to be shared with external parties support for further research.

Overall, this process met much of AER's primary purpose, with AEMO's data used to produce the 2020 benchmarks. However, it also provided a range of learnings. The restrictions on secondary disclosure and limited consent have prevented use by other government agencies for further analysis of energy usage.[25] It also may not have achieved the goal of a more efficient approach, because, while AEMO has growing coverage of meter data (due to the shift to smart meters and global settlement), in 2020 when this survey was undertaken AEMO's meter coverage in some areas proved insufficient to avoid duplicate processes with the networks.

This approach had the unintended result of limiting access to the most up-to-date, consistent over-time and statistically valid data on consumers currently available. NEAR and at least one State department have already sought and failed to gain access to the 2020 data set. Limits on consent provided by survey respondents cannot be resolved even if AEMO's data conditions could be revisited. Both of these requests sought de-identified data, for use by trusted government entities aiming to better support and benefit all energy consumers.[26] For example, NEAR seeks to use the data in research to improve forecasting and energy efficiency policy, both of which can lower costs for consumers. The State department seeking access aimed to use it to improve a non-commercial tool that has received government funding to provide independent, tailored advice to consumers seeking to invest in solar.

Lack of access to this survey data will increase gaps in understanding energy consumers in the short term and may lead to duplicated costs with additional surveys undertaken. Broader issues around the need for consumer metrics and related research are being considered in another workstream as a priority data gap in the Data Strategy.

[23] The Data Strategy is considering the broader need for more consistent consumer research and metrics as part of separate priority project.

[24] For example in the AEMC's estimates of typical forward bills estimated consumption levels have been drawn from the Bill Benchmark results.

[25] The specific consent provided by consumers on this occasion may also create hurdles – as they reflected the expectations of limited sharing created by the AEMO constraints. Standard consent approaches are being considered in the Data Strategy along with a range of other common guidelines requirements.

[26] The specific consent provided by consumers on this occasion may also create hurdles. Consent issues are being considered in the Data Strategy along with a range of other common guidelines requirements.

With reforms

Under the proposed reforms, when AEMO shares data with a Class A body (such as AER, CSIRO/NEAR and State energy departments) liability for protecting the data will pass to the Class A body. As part of considering eligibility for Class A bodies, they have a range of existing obligations to manage protected data.[27] The intent is that this transfer of liability means AEMO will not apply additional restrictions.[28]

In a future case of this nature it seems appropriate that the AER has the obligations, systems and processes to appropriately protect the data. Within its existing requirements, AER is able to make appropriate decisions around further sharing of the data in a range of protected forms, particularly with other Class A bodies. This would have had clear benefits in this case. Standing arrangements on this basis could also be used to increase clarity and reduced complexity in AER accessing data from AEMO.

Other issues in this case study may be addressed by wider Data Strategy initiatives and recent related reforms including:

- common guidelines for consumer survey consents, to ensure that (whenever appropriate) consumer benefits can be maximised from public investment in research by energy bodies. These will be considered in the Data Strategy as part of a workstream on Common Guidelines.
- A more coordinated shared approach across energy bodies to consumer research and metrics, to maximise consumer benefits from public investment in research and meet the needs of a wider range of stakeholders and policy/planning problems. This is being considered in the Data Strategy as one of the Priority Projects to address key gaps
- The Global Settlement reform, completed in May 2022, requires AEMO to collect electricity meter data for all sites in the NEM to complete settlement calculations.

7.3 Research industry partnerships

Issue: How, if at all, would data access and sharing constraints imposed on Class B recipients impact research projects involving industry partners?

Context: Improving access to data for research and trials to support the market transition is a clear goal of the reforms proposed in this Consultation Paper. Much of this research is undertaken by public universities and research institutes who, under these reforms, could be able to access data from AEMO as Class B bodies.

However, trials and research underway to support the market transition are largely undertaken in partnership with industry. Industry partners play a critical role in these projects by supporting: access to data; real-world trials and real-world customers; and increasing the influence and usefulness of research outcomes across the sector.

Industry research partners, as commercially interested parties, are not proposed as Class A or Class B bodies, and so are not entitled to receive protected information directly from AEMO under the reforms proposed in this Consultation Paper. One question raised by this consultation paper is whether their involvement could limit the benefits of providing greater data access to these trials.

7.3.1 Case Study: RACE for 2030 and C4NET

Major research partnerships are underway and are undertaking much of ongoing research, including:

a) ***RACE for 2030:***

[27] Their existing obligations to protect data are part of in their eligibility to be Class A bodies.

[28] Some exceptions may remain, for example for particularly commercially sensitive information.

RACE for 2030 (**RACE**) is a 10-year cooperative research centre established in 2020 with a mission to drive innovation for a secure, affordable, and clean energy future.

RACE has 75 partners. This includes research partners across Australian and international universities, research institutes and CSIRO. Industry partners include large energy users, technology businesses (including start-ups) that provide products and services for businesses and households, energy retailers and networks, industry associations, investors and State governments.

RACE considers that access to data is crucial for providing innovative energy solutions to consumers. Some of its projects require access to energy data to achieve impact. For example, the project "RACE for Everyone: Innovative fore-sighting and planning" involves identifying, quantifying and mapping energy productivity, demand management and DER opportunities to map forecast reliability levels and expected unserved energy.

RACE invites its partners to collaborate in its research efforts. Data sharing between RACE partners is project-specific. Some of RACE's partners are Class A or Class B bodies, but many are not.

b) ***C4NET:***

The Centre for New Energy Technologies (**C4NET**) is an independent, member-based not for profit, incorporated in 2018 to deliver data-driven research to assist with the rapid transition of the energy sector. One of C4Net's core focus areas concerns harnessing the value of Victoria's smart meter coverage and other energy data resources.

C4Net conducts its research in collaboration with universities and the Victorian networks (AusNet Services and Powercor, on behalf of Citipower and United Energy). C4Net is supported by AEMO and the Victorian State Government Department for Environment, Land, Water and Planning.

The RACE and C4Net research partnerships cover a large proportion of publicly funded energy research. Other major players include ARENA and the CSIRO, who also work with RACE and C4Net and a wide range of industry partners.

Neither C4NET nor RACE are currently classed as a Class A or Class B body. However, both have indicated that they do not need direct access to data, as long as their university and other partners can access data as part of key workstreams. Many of these projects will already be dealing with issues of confidential data between the project parties.

Discussion:

Public universities working under the C4NET and RACE partnerships have the potential to gain greater access to protected information as Class B bodies.

Industry research partners are not proposed as Class A or Class B bodies. As commercial private companies, it is not readily appropriate for AEMO to share protected information with them.

However, it is possible that Class A bodies may share protected information with industry research partners, once they have received that information from AEMO.[29] In that case, however, liability will have already transferred to the Class A body and AEMO will not be responsible for conditions that are imposed on disclosure to the industry research partner.

It is also possible that Class B bodies may be able to disclose protected information to their industry research partners. However, this will only be possible if the conditions imposed on the Class B body (when it receives

[29] It is possible for AEMO to impose a condition on a Class A body that they do not share the protected information with anyone else, or with particular persons (such as industry research partners). However, the intent is that AEMO will not impose conditions on Class A bodies.

information from AEMO) allow it to engage in secondary disclosure. In other words, if the data sharing conditions permit it, universities may be able to share the data with their partners for a particular permitted purpose (e.g., for an energy policy project they are undertaking in collaboration with industry). If disclosure to industry research partners is important in some contexts, it is important that the conditions imposed on Class B bodies accommodate this in a secure way.

Key Questions:

The ESB is interested in stakeholder views on the following issues:

14 Should Class B bodies be permitted to disclose protected information to specified industry research partners? If not, will this limit the value of AEMO sharing data with Class B bodies? Will research projects conducted in collaboration with industry still be able to achieve their aims?

8 Next steps

The ESB invites comments from interested parties in response to this consultation paper by 19 August 2022. While stakeholders are invited to provide feedback on any issues raised in this paper, the key questions for consultation are summarised in Appendix A. Submissions will be published on the Energy Ministers' website, following a review for claims of confidentiality.

Further enquires on this consultation paper can be sent to the project team at info@esb.org.au.

Submission information	
Submission close date	19 August 2022
Lodgement details	Email to: info@esb.org.au
Naming of submission document	[Company name] Response Data Strategy Initial Reforms Consultation Paper June 2022
Form of submission	Clearly indicate any confidentiality claims by noting "Confidential" in document name and in the body of the email.
Publication	Submissions will be published on the Energy Ministers website, following a review for claims of confidentiality.

The ESB intends to hold a webinar on the material covered in this paper on 27 July.

Appendix A: Summary of Questions for Consultation

The ESB welcomes any comments on this consultation paper. In particular, the EBS is seeking feedback on the following questions:

#	Question
1	What is the appropriate scope for Class A Bodies?
2	Should Class A Bodies include entities that already have their own data collection powers?
3	Should Class A Bodies have a right to make subsequent disclosure?
4	Do you have any concerns with disclosure to Class A Bodies that have not been considered above?
5	What is the appropriate scope for Class B Bodies?
6	Is it appropriate to require that Class B Bodies conduct (or propose to conduct) research related to "energy"?
7	When is it appropriate for AEMO to disclose data to Class B Bodies?
8	Should the regulations making power to prescribe additional bodies as Class A Bodies and Class B Bodies be replaced with a Ministerial Order process?
9	Which disclosure option, if any, has the most merit? In particular: a. Who should be responsible for setting the conditions on disclosure? b. What should those conditions be? c. Who should be responsible for enforcement of those conditions? d. If a regulator is required for monitoring data sharing agreements, what existing body could or should play this role? e. What are the appropriate consequences for non-compliance with those conditions? What amount is appropriate for a civil penalty? f. Should Option 2 or Option 3 also apply to Class A Bodies? g. Are there any related considerations in resourcing these activities, where the development and enforcement of data transfer conditions would require an expansion of a nominated regulators and/or AEMO's functions?
10	Is it necessary and appropriate to clarify that authorised Class A and Class B recipients are responsible and liable for their own and any further use or disclosure of protected information?
11	Is it necessary and appropriate to expand AEMO's statutory functions to include disclosure of information in accordance with the law and rules and/or enforcement of conditions imposed in accordance with section 54C(4) of the NEL and section 91GC(4) of the NGL?
12	Are there any other improvements on the status quo that we should be considering? (Noting that wider concerns could also be considers as part of more in depth design of the new fit-for-purpose regime)

13	The current intention is to only amend AEMO's data provisions. We are not amending AEMC's or AER's data related provisions, as they involve legislation outside the national energy regime. Is this narrow approach appropriate?
14	Should Class B bodies be permitted to disclose protected information to specified industry research partners? If not, will this limit the value of AEMO sharing data with Class B bodies? Will research projects conducted in collaboration with industry still be able to achieve their aims?

Appendix B: Background

The ESB Data Strategy

The ESB is implementing the Data Strategy to unlock data as an enabler in the energy transition. The Strategy plays a critical role integrated with the broader energy reform program. It provides overarching consideration of the energy sector's existing and future data needs, supporting the needs of consumers, industry and policy makers in the energy transition

The Data Strategy responds to an urgent need for energy-sector data reform to enable benefits to be realised for consumers as the sector transitions.

a) Data and digitalisation provide unprecedented opportunities to transform the sector into a smarter, more flexible and affordable system which is responsive to consumer needs.

b) But existing regulation and capabilities have not kept pace with the digital transition. Decision makers across the sector need better access to data – enabling improved outcomes for consumers in the form of reduced costs and fit for purpose customer protections. Changes are needed to enable accessing and sharing of data to support efficient decision making.

c) Emerging technologies and services increasingly depend on better use of data and digitalisation to be affordable, reliable and sustainable. Unlocking access to data is critical to improve consumer outcomes through more efficient planning, lower costs, reduced consumer risks and innovation.

The Strategy provides a necessary coordinated sector-wide approach which supports Post 2025 market reforms.

a) Economy-wide digitalisation and national data reforms create significant opportunities for energy and energy data capabilities are growing rapidly across the sector.

b) But despite this progress, existing markets and governance are not resolving identified needs, due to a range of regulatory barriers, market failures and coordination challenges.

c) As the digital and energy transition continues, new technology and data needs will continue to emerge. New arrangements are needed to identify emerging gaps, risks and opportunities for customers and decision makers. Reforms to regulatory frameworks are needed to put in place adaptive principles-based approaches that support data sharing and enable flexibility to meet changing consumer needs.

The Data Strategy recommendations were released 27 July 2021, along with the ESB's Post 2025 Market Design, and subsequently jurisdictions agreed to support implementation of the Strategy on 3 December 2021.

The Data Strategy has agreed New Energy Data Principles to guide reforms across the strategy and drive a paradigm shift in energy data policy. These principles state that:

> *"Frameworks governing management and use of data across the energy sector should:*
> 1. *Drive outcomes consistent with the energy market objectives and the long-term interest of consumers*
> 2. *Ensure appropriate privacy and security safeguards are maintained*
> 3. *Capture benefits of a transparent, innovative and informed digitalised energy market*
> 4. *Be fit-for-purpose, flexible and cost-effective for a digitalised market*
> 5. *Be coherent with wider national reforms on data"*

Implementation has begun. In 2022 – 2023 the ESB is focusing on two critical workstreams:

i. **Energy data access & sharing – to reduce barriers to data access to inform policy decision making**

ii. **Priority data gaps: DER** – designs options to support market bodies and policy makers resolve key gaps in the data needed achieve DER integration outcomes

Energy Data Access & Sharing: work underway in 2022 includes:

i. **Initial reforms**: proposed in this consultation paper to reduce barriers to data access for trusted policy makers and research

ii. **New Data Services**: designing options to support new capability, resources and processes needed to facilitate greater access and sharing of data, including with trusted bodies under Initial reforms.

Future work under Energy Data Access and Sharing, to begin in 2023, includes:

i. **Common Guidelines**: to streamline facilitation of access and sharing

ii. **New Energy Data Framework**: will design a longer-term fit-for-purpose regulatory framework to support agreed Energy Data Principles and provides ongoing flexible management of emerging data needs and capabilities.

Priority data projects: design options to addressing emerging data needs for DER in the transition

i. The three priority projects for development in 2022 focussed on data needs to support effective DER planning:
   - **Network visibility for market planning**: to inform the market in optimising benefits from DER and network assets for all customers
   - **EV visibility**: to plan for and manage EV growth efficiently
   - **Billing transparency**: to support better consumer protections and understanding of consumer needs in the market transition

ii. Further priority projects agreed which will be considered from 2023 include:
   - **Consumer metrics:** Updating ongoing consumer research to address critical gaps in understanding changing consumer needs and behaviours in the market transition
   - **Overvoltage impacts**: to support more efficient assessment of network monitoring system, by development methods to estimate the benefits of addressing over-voltage in local networks.

Current Regulatory Framework

The Legal Report was an important first step insofar as it investigated the current issues associated with data-sharing between energy market bodies that arise from the current regulatory framework. They include:

a) duplication of collection;

b) use of undesirable workarounds;

c) lengthy and costly bilateral sharing arrangements;

d) stalled or abandoned sharing negotiations – spending effort and resources on attempts to create workable sharing arrangements when ultimately, no data was able to be shared; and

e) data gaps – useful data not currently being collected by energy market bodies. Usually, this is because the data was not previously available or needed, however, with new technologies and increased competition in an ever-more complex market, this data may now be needed for effective planning and operation. Capturing this data would require new areas of policy development and supporting legislation.

The Commonwealth Data Right (CDR)

The Data Strategy, Legal Report and consultations held in respect of the proposals contained in this consultation paper all considered the Australian Government's introduction of the Consumer Data Right (CDR). The CDR applies across a range of sectors – including energy[30] – to provide consumers with more control over their data, enabling them to access and share data with accredited third parties to access better deals on everyday products and services. Although the CDR is a customer-driven initiative with a focus on data mobility, it is also likely to facilitate broader data sharing as participants implement common data standards.

The CDR for energy is targeted at facilitating the operation of the CDR in the energy sector, allowing data to be provided in accordance with the CDR rules and for AEMO to recover costs. The CDR amendments will impose obligations on AEMO and authorised energy retailers as data holders to provide certain data sets listed in the designation instrument on request to accredited third parties. Energy Ministers of the National Electricity Market (NEM) jurisdictions are currently considering whether amendments to the NEL are required – particularly given the NEL and NER currently restrict access to some of these datasets. We understand that energy Ministers have agreed these reforms, and amendments to the NEL are expected to be introduced in the middle of this year.

The CDR serves a different purpose to the objectives outlined in the Data Strategy. Whereas the CDR focuses on sharing data for the benefit of consumers, the Data Strategy seeks ways to facilitate secure data sharing between government bodies, universities and other key energy stakeholders. The proposals in this consultation paper are designed to operate independently of the CDR. Nevertheless, it is important to ensure coherence, consistency and harmony between the two regimes.

[30] The Commonwealth Treasurer designated energy as a sector covered by the CDR in June 2020, enabling rules to be made concerning the use of the CDR in the energy sector. The designation instrument and CDR Rules are made under the *Competition and Consumer Act 2010* (Cth). CDR Rules covering energy were released November 2021: Consumer Data Right rules amendments (version 4) https://treasury.gov.au/consultation/c2021-200441

The Data Availability and Transparency Act 2022

The Data Strategy and Legal Report also considered the *Data Availability and Transparency Act 2022* (Cth) (**DAT Act**), which came into force on 31 March 2022. The DAT Act (which was in Bill form at the time the Data Strategy and Legal Report were published) establishes a new legislative regime which allows for 'public sector data' to be shared by Commonwealth bodies with certain public sector recipients. The DAT Act adopts a largely principles-based approach towards data sharing, with data only being shared if, among other things, it is for a permitted 'data sharing purpose,'[31] consistent with specified 'data sharing principles'[32] and pursuant to a 'data sharing agreement.'[33]

Although DAT Act provides a robust framework under which data can safely be shared, its application is limited to 'Commonwealth bodies.'[34] Within the energy sector, this means that agencies such as the AER, the ACCC, the Clean Energy Regulator (**CER**) and the ARENA will be able to engage in the data sharing activities envisaged by the DAT Act. However, other key energy data holders such as AEMO, the AEMC and the National Energy Analytics Research (**NEAR**), who are not Commonwealth bodies, are currently excluded from the DAT Act.

Nevertheless, as noted in the Legal Report, we consider that the DAT Act provides some useful principles which can be extrapolated to inform the design of initial legislative reforms and the subsequent development of a new fit-for-purpose energy data framework. It may also be helpful in respect of Option 2 and Option 3 above (in particular, developing any standard data transfer conditions or imposing conditions at law).

[31] *Data Availability and Transparency Act 2022* (Cth), s 15. The data sharing purposes are:
(a) delivery of government services;
(b) informing government policy and programs; and
(c) research and development.

[32] *Data Availability and Transparency Act 2022* (Cth), s 16. The data sharing principles are:
(a) the project principle – data is shared for an appropriate project or program of work;
(b) the people principle – data is made available only to appropriate persons;
(c) the setting principle – data is shared, collected and used in an appropriately controlled environment;
(d) the data principle – appropriate protections are applied to the data; and
(e) the output principle – data can only be used for the data sharing project

[33] *Data Availability and Transparency Act 2022* (Cth), s 13.

[34] This effectively covers Commonwealth entities and Commonwealth companies (as those terms are defined in the *Public Governance, Performance and Accountability Act 2013* (Cth)), as well as any other person or body that is an agency within the meaning of the *Freedom of Information Act 1982* (Cth). However, it does not include Australian universities.