19 August 2022

Ms Anna Collyer
Chair
Energy Security Board
COAG Energy Council Secretariat
King Edward Terrace
PARKES ACT 2600

Email to: info@esb.org.au

Dear Ms Collyer

Data Strategy – Initial Reforms

Energy Queensland Limited (Energy Queensland) welcomes the opportunity to provide comment to the Energy Security Board (ESB) in response to its *Data Strategy – Initial Reforms* consultation paper (consultation).

This submission is provided by Energy Queensland, on behalf of its related entities, including:

- Distribution network service providers, Energex Limited and Ergon Energy Corporation Limited;
- Retailer, Ergon Energy Queensland Pty Ltd; and
- Affiliated contestable business, Yurika Pty Ltd and its subsidiaries including Yurika Telecommunications.

Energy Queensland acknowledges the need for a data strategy which supports the sharing of energy market data where it is in the interests of customers, delivers community benefit and facilitates energy market reform. Further, the data-sharing regime must be efficient and cost-effective for all parties. To achieve these objectives, it is critical that issues raised in response to the initial paper, including the protection of commercially sensitive information, customer privacy and cyber security, are appropriately addressed.

Energy Queensland supports the proposed amendments intended to permit the Australian Energy Market Operator (AEMO) to disclose protected information to Class A Bodies which have prescribed statutory functions and where there is a high level of confidence in the recipient's security and data protection.

While Energy Queensland acknowledges the benefit to Class B Bodies in obtaining data, equally there are benefits in having Class B Bodies engage directly with market participants (e.g. to enable the tailoring of data and insights). Such direct engagement facilitates market participants partnering in trials developed by researchers intended to address gaps in consumer needs. We also question whether market participants may be better placed to manage and safeguard personal and commercially sensitive information sought by Class B Bodies. We are also firm in our view that Australian data must be held in Australia – that it cannot be stored or used off-shore where privacy principles may be less than the governing legislation in Australia.

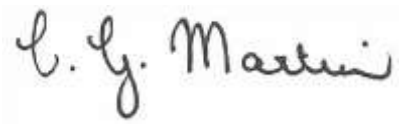
However, should this Data Strategy progress as proposed, and in AEMO sharing data with Class B Bodies, we suggest that at the very least Class B Bodies must be required to provide the results of their research and insights to industry participants at no cost.

While we recognise the Data Strategy intends to permit greater access to, and use of data held by AEMO, this consultation continues the overhaul of the energy data framework initiated by the Consumer Data Right. Bodies other than market participants and industry regulators will have access to personal information of a customer which may be considered sensitive. Given this, we are interested to better understand how current reforms, such as the rule change protecting customers affected by family violence, will work in a data sharing regime. We also remain concerned that broad access to personal information without consideration as to how the type of personal information stored by AEMO might expand in the future poses a safety and security risk to consumers. As such, a data-sharing regime intended to deliver consumer benefits and enable policy makers access to the data they need for effective decision making must preserve the confidentiality of the customer and consider the critical need for ensuring sufficient data protection and security.

Energy Queensland provides responses to the ESB's consultation questions in the attached response template.

Should the ESB require additional information or wish to discuss any aspect of this response, please contact me on 0438 021 254 or Laura Males on 0429 954 346.

Yours sincerely



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Encl: *Energy Queensland response to consultation questions*

Data Strategy – Initial Reforms	
ESB consultation question	**EQL Response**
1. What is the appropriate scope for Class A Bodies?	In Energy Queensland's view, the proposed expansion of Class A Bodies set out at paragraph 5.4 is broadly acceptable. These are government agencies/departments of similar nature to the current list. Those bodies may use the information for any purpose connected with the performance of the functions or exercise of the powers of the person or body (section 54C(3) of the National Electricity Law (NEL)).
2. Should Class A Bodies include entities that already have their own data collection powers?	Energy Queensland agrees it is not efficient to have multiple bodies collecting the same data under different information-gathering powers. We are of the view that a Class A Body should at the very minimum satisfy cybersecurity obligations that ensure disclosed data is protected.
3. Should Class A Bodies have a right to make subsequent disclosure?	Energy Queensland does not support secondary data disclosure to parties as there is limited to no ability to control: • Data security • How the data will be used; and • Whether private data of an individual could be released. Retailers are expected to become subjected to the highest levels of customer data security ever anticipated as a result of the Protecting Customers from Family Violence rule change, with the AEMC recommending nine tier 1 civil penalties relating to the need to protect personal data of the customer. Given this, the sharing of customer data appears incongruous with existing and anticipated regulatory obligations.
4. Do you have any concerns with disclosure to Class A Bodies that have not been considered above?	Energy Queensland has a general concern that these reforms will be to the derogation from the data provider's general contractual and equitable rights in relation to confidential information. These rights, and AEMO's corresponding duties, are reflected in section 54B of the NEL which provides that "AEMO is authorised to disclose protected information if it has the written consent of the person from whom the information was obtained". Energy Queensland's position is that, while AEMO and other agencies and bodies may have a

	statutory right to require certain data to be provided, where data is provided on a voluntary basis, the provider should retain all of its rights to impose conditions on the use and disclosure of that data. This should include the obligation to seek the provider's consent to any disclosure of that data to a third party.
5. What is the appropriate scope for Class B Bodies?	Energy Queensland considers the proposed scope for Class B Bodies to be appropriate.
6. Is it appropriate to require that Class B Bodies conduct (or propose to conduct) research related to “energy”?	Energy Queensland acknowledges that universities and affiliated researchers play a vital role in transition and innovation, and we are supportive of an approach which removes data barriers and increases access to data required for research by Class B Bodies where they can demonstrate a valid need and it is cost-effective to do so. However, data sharing with Class B Bodies should provide reciprocal benefits. Market participants incur substantial costs associated with data collection and security. Without appropriate consideration to costs incurred by industry, a data sharing regime risks extensive costs being incurred by data providers which will ultimately be passed to consumers. We suggest a user-pays approach supported by a clear framework that outlines how costs will be recovered by the data owner should be adopted.
7. When is it appropriate for AEMO to disclose data to Class B Bodies?	See general concerns in the response to question 4, above. Energy Queensland also suggests disclosure to Class B Bodies should be subject to the following limitations: • Where information is provided on a voluntary basis, restrictions imposed by the original data provider on use and disclosure must equally be applied by AEMO; • No personal information should be disclosed by AEMO to Class B Bodies; • The data be held on-shore; • The Class B Body be required to report on how the data was used; and • The Class B Body be required to provide a copy of its research and insights to those market participants whose data was made available in a timely manner.
8. Should the regulations making power to	Energy Queensland does not support this change. In our view, there should be as much

prescribe additional bodies as Class A Bodies and Class B Bodies be replaced with a Ministerial Order process?	clarity as possible within the legislation as to the third parties entitled to receive the data.
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? f. What amount is appropriate for a civil penalty? g. Should Option 2 or Option 3 also apply to Class A Bodies? h. 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?	Without having visibility of the detailed legislative provision, Energy Queensland is of the view that Option 3 has the most merit as this option can provide certainty. However, we suggest there is a need for additional protections in relation to personal information and to protect the original data provider's rights and obligations (as noted above in previous responses).
10. Is it necessary and appropriate to clarify that authorised Class A and Class B recipients are responsible and liable for	Energy Queensland provides no comment.

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?	Energy Queensland is supportive of reforms that ensure the National Electricity Market is fit-for-purpose and capable of accommodating the rapid adoption of new technologies and the evolving needs of the electricity system, market participants and customers. However, we note that AEMO recovers costs incurred when performing its functions from Registered Participants. As such, we are of the view that amendments must ultimately be based on an assessment of cost-benefit to consumers and take into consideration privacy and data security.
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)	Energy Queensland considers that the proposed new section 54C(2A) is expected to attract a broad application. Interpretation of terms 'proposed', 'research', and 'energy' will unlikely restrict what could be considered a valid request for data. Although we recognise the importance of avoiding overly prescriptive criteria and acknowledge disclosure will be discretionary, we recommend a balanced approach should be adopted which supports an effective assessment into whether an application for data is valid and will ensure benefits exceed costs incurred by consumers. For example, adopting appropriate definitions or guidelines. Energy Queensland also recommends: • Division 6, Subdivision 2 of the NEL should be clarified so that the interaction between the various authorisations is clear. For example, if AEMO has no or limited authorisation under section 54B, is this overridden by the authorisation in section 54C? Similarly, how does section 54F interact with, for example, section 54C? • Energy Queensland does not support the proposed amendment of section 53D. AEMO **should** be restricted in the use of information, at least by the limitations in Division 6.
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	As general feedback, the confidential information obligations in the National Electricity Rules are piecemeal, complicated and lack clarity. Energy Queensland recommends these be reviewed and redrafted.

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?	In Energy Queensland's view, Class B Bodies should not be permitted to disclose protected information. Each further level of disclosure means an increasing loss of control over the protected information.