19 August 2022

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Submission on the ESB's Data Strategy – Initial Reforms

Introduction

1. This is Vector Limited's (Vector)[1] submission on the Energy Security Board's (ESB) *Data Strategy – Initial reforms Consultation paper* (the Consultation Paper), dated July 2022.

2. Since the ESB's initial consultation on the Data Strategy in 2018, Vector has been consistently supportive of the intent behind the Strategy – a shift from a regime which prohibits all data disclosure by default, to one which authorises protected data sharing where there are safe controls and clear benefits for all energy sector stakeholders.

3. Importantly for the longer term, greater access to energy data supports ongoing and impending market reforms and the transition to a low carbon energy future.

4. As a provider of smart metering services in the National Electricity Market through our smart metering business (Vector Metering), we broadly support initiatives that unlock and optimise the value of energy data – a critical enabler of the Data Strategy. Greater access to data enables the rapidly evolving energy sector to become more adaptive to new business models that are enabled by new technologies, which on their own create new needs for data.

5. We support more effective access to public sector energy data by removing identified regulatory barriers and making incremental improvements to the relevant legislation and regulations/rules. We agree that greater access to data held by the Australian Energy Market Operator (AEMO) in a secure way will help "improve consumer outcomes through more efficient planning, lower costs, reduced consumer risks, and innovation". We understand the ESB intends to undertake more in-depth reforms under the Data Strategy which involves an 'overhaul' of the energy data system at a later date.

6. We note in particular one of the New Energy Data Principles underpinning the Data Strategy, which is to ensure that the appropriate privacy and security settings are in place and maintained. In our view, this is a key element to ensuring the robustness and sustainability of any new energy data sharing arrangements.

[1] Vector's Australian and New Zealand advanced metering business – Vector Metering – is an accredited Metering Provider and Metering Data Provider, and a registered Metering Coordinator, in Australia's National Electricity Market and the equivalent in New Zealand. Vector Metering provides a cost-effective end-to-end suite of energy metering and control services to energy retailers, distributors and consumers.

Vector is one of New Zealand's largest listed companies and provides energy and technology services across the country, with a vision of *creating a new energy future*. We are the largest provider of electricity and gas distribution network services in New Zealand, and the country's leading provider of advanced metering solutions. We also provide fibre network services, solar PV, energy storage, home energy management solutions, and electric vehicle recharging services.

Responses to selected consultation questions

Definition of Class A Bodies

Q1. What is the appropriate scope for Class A Bodies?

Q2. Should Class A Bodies include entities that already have their own data collection powers?

Q3. Should Class A Bodies have a right to make subsequent disclosure?

Q4. Do you have any concerns with disclosure to Class A Bodies that have not been considered above?

7. Vector considers the Class A Bodies proposed in the Consultation Paper (e.g. regulators), together with the existing Class A Bodies, to be the appropriate scope for Class A Bodies.

8. In our view, the scope for Class A Bodies should not exclude energy regulators or government agencies that already have their own data collection powers and appropriate security settings. Such bodies may be collecting datasets that are totally or partially different from data being collected/held by AEMO. They would therefore not be able to realise and optimise the value of public sector energy data they cannot access.

9. It is noted in the Consultation Paper that AEMO "holds limited personal information" (page 10). In our view, it is not unreasonable to expect that Class A Bodies, in the performance of their statutory functions, will mainly use data for public policy making and macro and statistical analysis, rather than focusing on individuals. Wherever possible, AEMO should attempt to disclose information at an aggregated or de-identified form to Class A Bodies.

10. For the purposes of sharing data with Class A Bodies only, we suggest that AEMO enter into a memorandum of understanding (MoU) with these Bodies and assure itself that Class A Bodies have the appropriate security and privacy settings to receive, process, and securely store that data, prior to disclosing any data. Should a Class A Body wish to make subsequent disclosure to a Class B Body or other entities, we suggest that a standard data agreement be developed and used for this subsequent purpose. We discuss our proposed terms for such an agreement in our response to Q5 to Q7.

11. Enabling AEMO to put in place the above MoU would facilitate regular and efficient data sharing with Class A Bodies. It will reduce the administrative burden on AEMO of processing multiple data requests. The MoU can make the risks and responsibilities around the protection and disclosure of information clearer. It needs to make clear which party bears the responsibility of storing, handling, and securing the disclosed data and where the privacy obligations lie.

Definition of Class B Bodies

Q5. What is the appropriate scope for Class B Bodies?

Q6. Is it appropriate to require that Class B Bodies conduct (or propose to conduct) research related to "energy".

Q7. When is it appropriate for AEMO to disclose data to Class B Bodies?

12. Vector considers the definition of Class B Bodies in the Consultation Paper, which includes Australian public universities and other higher education institutions, and prescribed bodies that conduct or propose to conduct research related to energy, to be appropriate at this time.

13. To overcome the need for lengthy and costly bilateral negotiations between AEMO and Class B Bodies, we propose the development of a template default data sharing agreement ("standard data agreement") that will allow for data sharing on set terms. Such an agreement could be stipulated or set out in rules or regulations and thus be enforceable under those rules or regulations, as is the case in New Zealand with the Default Distributor Agreement and associated Data Agreement, both of which are also contained in the Electricity Authority's *Electricity Industry Participation Code*.

14. AEMO's standard data agreement with Class B Bodies could, at a minimum, set out such terms as the following:

    a. the datasets or data elements that are in scope (or out of scope) – as a minimum, the standard data agreement should provide that data disclosed by AEMO should be in aggregated or de-identified form, i.e. AEMO will not provide personal information as a matter of course. Class B Bodies wishing to access non-aggregated data or personally identifiable information should procure it from market participants who are permitted to provide energy data on a commercial basis;

    b. the frequency of data disclosure by AEMO;

    c. the 'permitted purposes' relating to 'energy' for which the data disclosed to Class B bodies may be used;

    d. how the Class B body can demonstrate that data has only been used for the permitted purposes (e.g. audit rights or annual certifications);

    e. the circumstances in which the agreement may be varied;

    f. how permitted purposes may be expanded upon (e.g. by application to AEMO for a change or addition to a permitted purpose);

    g. the consequences of a breach of the agreement – the agreement could provide greater clarity and increased alignment between the risks and incentives between AEMO and data access seekers;

    h. future reviews of the agreement; and

    i. a reminder to data recipients of their obligations under the Australian *Privacy Act*, specifically in relation to taking steps to destroy or de-identify any data once it is no longer needed for the purpose it was collected for.

15. In relation to proposed standard term "c" above, we consider it appropriate to require that any research conducted by Class B Bodies that uses data from AEMO should be related to 'energy'. To overcome the potentially significant administrative burden of determining when AEMO should disclose data to Class B Bodies, we suggest that the 'energy' qualifier be narrowed down to research that would:

    a. provide insights that support the energy transition, e.g. research on the efficient integration of higher volumes of customer energy resources (CER) into the electricity grid, innovative pricing, impact of electric vehicles on the network, demand response programmes that incentivise greater consumer participation in energy markets, etc; and

    b. likely deliver significant net benefit(s) to energy consumers, e.g. increased choice for consumers through a wider array of innovative and more competitively priced energy products and services, and more timely detection of vulnerable consumers.

16. We further suggest that the standard data agreement require that any research by a Class B Body that uses energy data provided by AEMO should publish the findings of the research (without any personal information). This would be for the benefit of policy and regulatory bodies and all energy sector stakeholders.

Amendment by Ministerial Order

Q8. Should the regulation making power to prescribe additional bodies as Class A Bodies and Class B Bodies be replaced with a Ministerial Order process?

17. Vector does not have any issues with a Ministerial Order process (subject to agreement by all relevant Energy Ministers) replacing regulations in prescribing additional Class A Bodies and Class B Bodies.

Disclosure to Class A and Class B Bodies

Q9. 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 the enforcement of those conditions?
. . .
f) Should Option 2 or Option 3 also apply to Class A Bodies?

18. For Class A Bodies, we believe AEMO should be setting the terms of the MoU with Class A Bodies, with input from the latter. For Class B Bodies, a standard data agreement ought to be developed, in consultation with industry stakeholders. We set out our proposed terms for a standard data agreement for Class B Bodies in our response to Q5 to Q7.

19. Vector prefers either Option 2 (*Standard data transfer conditions agreed with a nominated regulator*) or Option 3 (*Conditions on use and disclosure of the protected information are written into law*) or a hybrid of the two options, as noted above. Ideally, we think this standard data agreement, once developed, should be adopted into rules or regulations, such that breach of the rules is enforceable by the regulator (e.g. use and disclosure conditions). Civil penalties can act as a deterrent against non-compliance and be contained in the rules or regulations.

20. The standard data transfer conditions (whether specified by law or via a standard data agreement) would then need to be complied with by Class B Bodies, and the designated regulator would be the enforcer of such conditions, under Option 2.

21. Under Option 3, conditions on Class B Bodies could be introduced into the *National Electricity Law* and *National Gas Law,* but this may be a less flexible option than Option 2, for example, if additional permitted purposes were to be added.

22. Both Options 2 and 3, or a hybrid of the two, would allow AEMO to avoid having to impose and enforce conditions on data recipients (Option 1), including having to form a view on whether it is appropriate to disclose data or not. This would enable AEMO to focus on being a market operator, rather than a data request assessor and enforcer. A consistent application of conditions by a more qualified or resourced regulator or via legislation would be a better outcome.

Cost recovery

Q11. 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?

23. Vector agrees with expanding AEMO's statutory functions to include the disclosure of information – for the purpose of recovering data sharing costs from Class A Bodies and Class B Bodies. This would ensure the sustainability of any new data sharing arrangements.

24. We also agree with providing AEMO the authority to recover 'other costs' (e.g. the cost of non-standard data transfer) from Class A Bodies and Class B Bodies seeking access to the data on a cost-for-service basis. However, protections should be put in place to ensure that AEMO does not become a competitor to other data holders who are permitted to provide energy data on a commercial basis, e.g. Metering Data Providers.

Other amendments

Q12. Are there any improvements on the status quo that we should be considering (noting that wider concerns could also be considered as part of more in depth design of the new fit-for-purpose regime)?

Q13. 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?

25. Vector agrees with the ESB's intention to only amend AEMO's data provision ability at this stage. This would reduce the complexity of the initial Data Strategy reforms, enabling the value of existing data to be unlocked for new technology trials, insights from which would inform ongoing and impending Post-2025 market reforms. At this stage, the focus should be on the delivery of the most immediate benefits from these initial reforms in a cost-effective way to the energy sector and consumers.

26. Any wider concerns, such as amending the AEMC's and/or AER's data-related provisions, which are likely to involve more complex changes to the energy data system, can be considered at a later date as part of the next steps of the Data Strategy.

Research industry partnerships

Q14. 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?

27. Vector suggests that the initial Data Strategy reforms focus on Class A and Class B Bodies at this stage, rather than on industry research partners, to minimise complexity and enable the timely implementation of these initial reforms. AEMO is not the only source of energy data for industry research partners, who usually have the wherewithal to procure targeted datasets from other market participants who also collect/hold data, or via the energy Consumer Data Right (CDR) that will be implemented this year, e.g. through aggregators or accredited third parties under the CDR.

28. As such, we suggest that the question regarding the on-disclosure by Class B Bodies to industry research partners be considered during the next steps of the Data Strategy, which would involve an overhaul of the energy data system.

Concluding comments

29. We are happy to discuss any aspects of this submission with ESB officials. Please contact Paul Greenwood (Industry Development Australia, Vector Metering) at tel: 0404 046 613 or Paul.Greenwood@vectormetering.com in the first instance.

30. No part of this submission is confidential, and we are happy for the ESB to publish it in its entirety.

Yours sincerely

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