

Australian Energy Market Commission
Level 15
60 Castlereagh Street
Sydney NSW 2000

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Bill Transparency Consultation Paper

The Australian Energy Council ('AEC') welcomes the opportunity to make a submission on the Energy Security Board's ('ESB') *Bill Transparency Consultation Paper*.

The AEC is the peak industry body for electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. AEC members generate and sell energy to over 10 million homes and businesses and are major investors in renewable energy generation. The AEC supports reaching net-zero by 2050 as well as a 55 per cent emissions reduction target by 2035 and is committed to delivering the energy transition for the benefit of consumers.

Background

Following the system black event in South Australia on 28 September 2016, the Coalition of Australian Governments (COAG) Energy Ministers agreed to an Independent Review of the National Electricity Market ('NEM'). Dr Alan Finkel AO was appointed Chair of the Expert Panel that conducted the Review ('the Finkel Review'). The Final Report, *Independent Review into the Future Security of the National Electricity Market: Blueprint for the Future* was released on 9 June 2017.¹

The Review report contained several recommendations related to data. Recommendation 7.14 called for the Energy Security Board ('ESB') to develop a data strategy for the NEM. It was proposed that the first phase of the data strategy be completed by end-2017 and this should include a rigorous gap analysis to consider whether additional measures were needed to collect and share information. The ESB was to report to the COAG Energy Council on the completion of the first phase by end-2018 and this was to include provision of information about costs for design, implementation, and maintenance of the first phase.²

The Review also identified a range of data needs, including addressing a lack of transparency of information about electricity prices and consumer bills and overcoming ineffective arrangements for sharing electricity consumption data. Identifying the range of needs was seen as important for assisting consumers, service providers, system operators and policy makers. Recommendation 6.1 proposed to improve transparency and clarity of electricity retail prices to facilitate consumers understanding and comparing prices, being aware of when their discounts expire and making informed decisions about investing in Consumer Energy Resources ('CER').³

The Australian Competition and Consumer Commission ('ACCC') provided its Final Report for the Retail Electricity Pricing Inquiry ('REPI') in June 2018. Recommendation 40 addressed concerns around retail price monitoring, arguing that it "should be streamlined, strengthened and appropriately funded to ensure greater transparency in the market, reduced costs, and allow governments to more effectively

¹ Finkel, A, Moses, K, Munro, C, Effeney, T, O'Kane, M. (2017) *Independent Review into the Future Security of the National Electricity Market: Blueprint for the Future* at <https://www.energy.gov.au/government-priorities/energy-markets/independent-review-future-security-national-electricity-market>

² Finkel et al (2017) *ibid*

³ Finkel et al (2017) *op.cit.*

respond to emerging market issues.”⁴ The ACCC posited that state governments should agree to close their own price reporting and monitoring schemes in place of an expanded NEM-wide regime. The ACCC stated that this reporting should be on retail electricity prices, retail revenues, costs and profits, wholesale market competitiveness, and analysis of the contract market.⁵

In August 2018, the ACCC was directed by the Treasurer to run a seven-year inquiry into the supply of electricity in the NEM. The ACCC Terms of Reference provide for the ACCC to monitor retail prices, wholesale market prices, profits being made by generators and retailers and contract market liquidity.⁶ For the June 2023 Report into the NEM, the ACCC drew on a data set of 49 million electricity bills.⁷

The ESB released its Data Strategy in July 2021, along with its Post 2025 Market Design. Jurisdictions agreed to support implementation of the Data Strategy in December 2021. The Data Strategy proposed to address four key challenges including ensuring that “customers, market participants, operators and policy makers have the data they need to make efficient and effective decisions”.⁸ Implementation of the Data Strategy was proposed to begin in 2021-22 and initial measures to include design and cost options to address the top five identified priority data gaps which were network transparency, overvoltage, electric vehicle transparency, updating consumer research and bill transparency. The proposed impact of Bill transparency was identified as “more effective consumer protections and understanding of new consumer services...due to better visibility of consumer bills, reduced duplication of retail costs and reduced market power risks and more efficient pricing”.⁹

The scope of data of the Bill Transparency Consultation Paper is retailer-held billing data for small customer electricity bills covering residential and small business. It is reported that decision makers need access to electricity billing data so they can understand what consumers are paying for electricity. The ESB consulted with policy makers, regulators and consumer groups to identify the themes of “vulnerable consumers, customer engagement, retailer behaviour and policy design and evaluation” as the most common themes across stakeholder groups. The ESB proposed that these themes would improve outcomes for “consumers experiencing vulnerability, promoting affordability, and relating to the energy transition plan”.¹⁰

Regulatory developments since 2017

The AEC notes that the Bill Transparency Consultation Paper proposed that data on what consumers pay could be grouped around four main themes: vulnerable consumers, customer engagement, retailer behaviour and policy design and evaluation.¹¹

⁴ ACCC (2018) *Retail Electricity Pricing Inquiry – Final Report* at <https://www.accc.gov.au/inquiries-and-consultations/finalised-inquiries/retail-electricity-pricing-inquiry-2017-18> p.321

⁵ ACCC (2018) *ibid*

⁶ ACCC (2019) *Monitoring of supply in the National Electricity Market – March 2019 Report* at <https://www.accc.gov.au/about-us/publications/serial-publications/inquiry-into-the-national-electricity-market-2018-2025/monitoring-of-supply-in-the-national-electricity-market-march-2019-report>

⁷ ACCC (2023) *Inquiry into the National Electricity Market: June 2023 Report* at <https://www.accc.gov.au/about-us/publications/serial-publications/inquiry-into-the-national-electricity-market-2018-2025/inquiry-into-the-national-electricity-market-june-2023-report>

⁸ ESB (2021) *Data Strategy Final Recommendations* at <https://esb-post2025-market-design.aemc.gov.au/data-strategy#past-papers> p.10

⁹ ESB (2021) *op.cit.* p.30

¹⁰ ESB (2023) Consultation Paper at <https://esb-post2025-market-design.aemc.gov.au/data-strategy#past-papers> p.30

¹¹ ESB (2023) *ibid*

There have been significant regulatory developments on the four themes since the data strategy was first proposed in 2017. The AEC addresses each of these themes below, with reference to the regulatory developments since 2017.

Vulnerable customers

- ACCC Inquiry into the NEM
- AER vulnerable customer strategy
- Protecting customers affected by family violence
- Proposed expansion of data points AER Retail performance reporting procedures and guidelines (2023 update)

Customer engagement

- ACCC Inquiry into the NEM
- Introduction of Consumer Data Right ('CDR')
- Better Bills Guideline including better offer provisions
- Advance notice of price changes
- Regulating conditional discounting
- End of benefit period notification

Retailer behaviour

- ACCC Inquiry into the NEM
- Introduction of Default Market Offer ('DMO')/Victorian Default Offer ('VDO')
- Proposed expansion of data points AER Retail performance reporting procedures and guidelines (2023 update)

Policy design and evaluation

- ACCC Inquiry into the NEM
- Introduction of Default Market Offer ('DMO')/Victorian Default Offer ('VDO')
- Proposed expansion of data points AER Retail performance reporting procedures and guidelines (2023 update)

The AEC notes that there has been major reform in each of the identified themes since the Data Strategy was first proposed. The response to the REPI Inquiry was to provide for the ACCC to inquire into the NEM and as part of that to obtain detailed data on what consumers actually pay. The Data Strategy indicated that the proposed impact of Bill transparency would be enhanced consumer protections and understanding of new consumer services, which the above list indicates is occurring. The two outstanding issues are the access to data for all market bodies and the inefficient collection of data from retailers. The AEC addresses the former below and the latter in response to question 17.

In terms of access to data for all market bodies, the Consultation Paper notes that the ACCC is restricted in sharing the data it compulsorily acquires under *section 95ZK of the Competition and Consumer Act*. It also notes that the information can and has been shared with the AER. The Consultation Paper also notes that if the AER was the entity to collect billing data, legislative and/or regulatory amendments are likely required for data sharing with other users. AEMO also has data sharing restrictions.¹²

The AEC considers that if the case is to be made for additional collection and sharing of data about what customers pay beyond what is currently collected and shared, the onus is on the proponent to provide detailed analysis on the costs and benefits of that requirement. The next section focuses on the costs of providing for data requests and as consumers ultimately end up paying for the retailer resources required to fulfil these requests, it is essential that attention be paid to the underlying resource requirement.

¹² ESB (2023) op.cit.

Cost benefit

The AEC has supported the development of the Data Strategy but has sought to emphasise that any new datasets must be targeted, cost effective, and delivered securely. In principle, the AEC supports improvements to data sharing arrangements that would reduce the costs and regulatory burdens imposed upon retailers as identified as a goal in the Bill Transparency Consultation Paper. It is not clear to the AEC that the options and recommendations outlined by the ESB would achieve this goal, as a rigorous cost-benefit analysis has not been undertaken. The AEC notes that the Finkel Review proposed that information about costs for the data strategy be provided by 2018. It is noteworthy that this recommendation was made in 2017 and it is now more than five years later and there has still been no cost benefit analysis.

The AEC has constructively engaged with the Data Strategy since 2020 and has continued to highlight the importance of cost benefit analysis to ensure that any data access improvements are cost-efficient and appropriately targeted. In the absence of any such cost benefit analysis, the AEC remains concerned that the options proposed by the ESB would have a perverse outcome, serving to increase the costs and regulatory burdens on retailers rather than reduce them.

The AEC observes that there has been a significant increase in policy maker interest in data since the Finkel Review. The AEC is very concerned about an increased focus on data which is not accompanied by cost benefit analysis. The AEC understands the need for data driven policy but notes that the potential for data mining is virtually endless. At some point, the many different data requests to retailers need to be curbed in the consumer interest. Retailers' close relationship with their customers gives them a unique insight into what customer priorities and preferences are and retailers inherently understand the affordability constraints of many customers – it is a business imperative to meet the needs of their customers and deliver them the most suitable prices and service offerings. The retail sector is very concerned about the intense, at times, unbridled current focus on data as it knows the costs involved. The AEC contends that the bodies that are seeking to acquire this data need to provide detailed evidence of the consumer benefit of doing so.

The CDR data reforms were a significant cost on retailers, with the cost to AEMO alone being \$5 million for capital costs and \$410,000 ongoing per annum.¹³ While the costs for CDR have been significant and the reform was touted as much needed, the consumer response has been muted.

In another example, the AER consulted on its Retailer Performance Reporting Procedures and Guidelines in July 2023. In its Issues Paper for this review, the AER proposed several new indicators, refinements to current indicators and greater frequency and granularity of data. As the AEC outlined in its submission to the AER:

“Some of the AER’s proposals for new indicators and greater frequency and granularity require significantly more data points, increasing the number of data points from a few thousand to the tens of thousands. With increases in the number of data points come increases in the retailer resources required. Some businesses report the additional proposed expectations could double the amount of time spent on AER performance reporting. The most significant issue appears to be validation of data before it is signed off by the business and the AEC understands that the human resource requirement can be very significant. In addition, retailers have limited time in which to provide the data to the AER, exacerbated by the proposed increases in data points. This will place unreasonable strain on retail businesses.”¹⁴

¹³ AEMO (2023) Draft Report and Determination at <https://aemo.com.au/en/consultations/current-and-closed-consultations/participant-fee-structure-for-the-consumer-data-right-cdr-declared-nem-project> p.10

¹⁴ AEC (2023) Submission to AER Retail performance reporting procedures and guidelines (2023 update) p.1

The AEC notes that the AER's stated use of the data in the Retailer Performance Reporting Procedures and Guidelines review is to "enhance the retail performance framework" as well as "monitor retail market outcomes to inform policy design" and "help target compliance and enforcement priorities".¹⁵ The AER is required to publish an annual retail market performance report under section 284 of the NERL. It is important to note that section 285 of the NERL provides detail on what the retail market performance report must include. The AEC contends that part (f) which provides for the AER to report on "any additional matters that the AER considers appropriate for inclusion" is too open ended and has left room for the AER to expand the data requests for its annual performance report beyond those that will enhance retail performance.¹⁶ The AEC strongly recommends that any rules made about additional data requirements beyond what is currently collected need to have tight boundaries around them so that the data requests do not expand exponentially.

The AEC proposes that as part of its findings on Bill Transparency, the AEMC outlines the boundaries and constraints on market bodies when requesting retailer data. If the AEMC fails in this task, the risk is that there will be an ever-expanding stream of data requests to retailers.

The AEC addresses the relevant consultation questions below.

Question 2. What are the issues faced by data holders or data users in providing and/or collecting data?

Within the Consultation Paper, retailers are identified as the "primary data holders of billing data across all customers."¹⁷ As such, under the current approach to bill data acquisition and analysis, retailers are noted by the ESB to be on the receiving end of "unnecessarily high costs"¹⁸ due to "multiple, uncoordinated and at times ad hoc"¹⁹ requests by multiple data collectors. The ESB reports this approach is also "inconsistent and duplicative".²⁰ Specifically, the Consultation Paper points out that some retailers receive "around 10 different requests for data per year"²¹ which require a cost of "over \$1 million per-year to respond to."²²

While the AEC does not support the current unnecessarily costly, uncoordinated approach, it is difficult to see how the proposed reform options improve the situation. There is no guarantee that data collection bodies would abandon their existing tailor-made data requests to retailers even if one of the ESB's proposed options was in place. Indeed, there is recognition within the Consultation Paper that there is the potential for added duplicate data requests across state lines.²³ The AEC contends that the purported cost-savings need to be significantly more thoroughly analysed and quantified.

Question 7: Do you have views on the preferred body to collect the data?

¹⁵ AER (2023) Performance reporting procedures and guidelines issues paper at <https://www.aer.gov.au/retail-markets/guidelines-reviews/retail-performance-reporting-procedures-and-guidelines-2023-update> p.2

¹⁶ *National Energy Retail Law (South Australia) Act 2011* at [https://www.legislation.sa.gov.au/lz/path=%2FC%2FA%2FNATIONAL%20ENERGY%20RETAIL%20LAW%20\(SOUTH%20AUSTRALIA\)%20ACT%202011](https://www.legislation.sa.gov.au/lz/path=%2FC%2FA%2FNATIONAL%20ENERGY%20RETAIL%20LAW%20(SOUTH%20AUSTRALIA)%20ACT%202011) p.171

¹⁷ ESB (2023) op.cit. p.23

¹⁸ ESB (2023) op.cit. p.8

¹⁹ ESB (2023) op.cit. p.34

²⁰ ESB (2023) op.cit. p.8

²¹ ESB (2023) op.cit. p.8

²² ESB (2023) op.cit. p.8

²³ For example, Victoria may be excluded in some of the potential ESB options, which could "lead to Victoria seeking to duplicate arrangements, reducing the potential benefits from streamlining data collection and potentially limiting data sharing." ESB (2023) op.cit. p.47

The AEC considers that without a cost benefit analysis, it is not possible to form a view about the preferred body or preferred options. Figure 1 indicates some concerns related to each option. Option 1 is viewed as the least cost approach but needs to be considered in the context of a broader review of the Inquiry.

	Base case post 2025	Option 1 Inquiry is broader than just data collection. ACCC data sharing limitations.	Option 2 AER data sharing limitations.	Option 3 AER data sharing limitations.	Option 4 Increase AEMO fees. AEMO data sharing limitations.
From whom to collect data	Retailers depending on jurisdiction	Large retailers		Large retailers initially and working with small retailers to collect data in the future Costs.	
Data scope	Varied data scopes	Existing ACCC's data fields	Existing ACCC's data fields expanded to include additional data that policy makers require Costs. No efficiency.	Utilise CDR standardised billing data fields and expanded to include additional data that policy makers require Limitations in using CDR to collect retailer held data. Additional costs. No efficiency.	
Frequency of data collection	Varied dependent on jurisdictional body	Annual	Quarterly Costs.		Quarterly or ongoing Costs.
System to share data	None	None	New automated system will have to be adopted Costs.	Built into new automated data sharing platform Costs.	
Services to link, aggregate and analyse data	None	None	AER supports policy makers in the analysis of data and interpretation of findings		AEMO data services unit supports data users Costs.

Figure 1: ESB Options and key AEC Concerns (concerns appear in coloured font)

Option 3 and 4 propose that the preferred body collect CDR standardised data from retailers. It is important to note key limitations in retailer system related to CDR data. The CDR data has been developed and mapped to return individual accounts. There is no ability within the systems to do bulk requests.

Options 3 and 4 also propose an automated system of data collection and sharing. Costing of this measure would involve detailed considerations, including the allowing for the development of standards which are common to all retailers (at present, retailers have their own individual standards) and addressing the question of whether intermediaries can be used to provide functions and services for retailers to facilitate the automation.

Option 3 and 4 could act as a barrier to entry due to the costs of automating systems or by limiting the growth of the smaller retailers to keep customers under 10,000 customers so they do not incur reporting costs.

Question 9: Do you have views on the appropriate systems to collect data? Does this vary by which retailers are covered or which agency is collecting data?

The AEC believes that the current excel file upload and data warehouse extraction by retailers for the ACCC's NEM Inquiry is the most appropriate system as the requirements are already built into retailers' systems and continuing to use this system imposes less additional costs provided that the format is identical to the ACCCs.

Question 13: Do you have views on the frequency of data collection and the relative cost and timeliness of data collection?

Data collection should remain as it is currently, to minimise additional costs and additional regulatory burden to that which is absolutely necessary.

Question 17: Do you agree with our preliminary assessment of each option?

The Consultation Paper does not outline analysis or evidence as to how the anticipated cost savings might be achieved. For example, options 2, 3 and 4 are argued to result in "savings from reduced ongoing jurisdictional costs" on the assumption that because of the implementation of these options, other jurisdictions would reduce their data requests.²⁴ Yet, the paper provides little evidence that this would occur, stating instead that "the collection of electricity billing data from retailers does not eliminate the ability for jurisdictions to continue to request data from retailers, if needed."²⁵ This raises the possibility that these new proposed data gathering approaches by the preferred body would just be in addition to other jurisdictional data requests already occurring, adding additional costs and duplicative data requests rather than removing them.

Question 18: Do you agree with the ESB's recommendations?

The absence of any cost-benefit analysis within the Consultation Paper creates uncertainty about potential costs and regulatory impacts. Considering that the past year has seen multiple retailers of last resort events and heightened prices for consumers amongst a wider cost of living context, the AEC recommends that the costs and benefits of Bill Transparency need to be adequately demonstrated.

The AEC agrees with the ESB's determination that "a more detail design of the data and transfer mechanism and a cost-benefit analysis is required to assess the relative incremental costs."²⁶ At present, without such an analysis, it is difficult for to adequately evaluate the Paper's recommendations.

Any questions about this submission should be addressed to Jo De Silva, General Manager Retail Policy by email to jo.desilva@energycouncil.com.au or by telephone on 03 9205 3100.

Yours sincerely,

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²⁴ ESB (2023) p.63

²⁵ ESB (2023) p.53

²⁶ ESB (2023) op.cit. p.42