Justice and Equity Centre

Real-time data for consumers consultation paper

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About the Justice and Equity Centre

The Justice and Equity Centre is a leading, independent law and policy centre. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we work with people and communities who are marginalised and facing disadvantage.

The Centre tackles injustice and inequality through:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change to deliver social justice.

Energy and Water Justice

Our Energy and Water Justice work improves regulation and policy so all people can access the sustainable, dependable and affordable energy and water they need. We ensure consumer protections improve equity and limit disadvantage and support communities to play a meaningful role in decision-making. We help to accelerate a transition away from fossil fuels that also improves outcomes for people. We work collaboratively with community and consumer groups across the country, and our work receives input from a community-based reference group whose members include:

- Affiliated Residential Park Residents Association NSW;
- Anglicare;
- Combined Pensioners and Superannuants Association of NSW;
- Energy and Water Ombudsman NSW;
- Ethnic Communities Council NSW;
- Financial Counsellors Association of NSW;
- NSW Council of Social Service;
- Physical Disability Council of NSW;
- St Vincent de Paul Society of NSW;
- Salvation Army;
- Tenants Union NSW; and
- The Sydney Alliance.

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The Justice and Equity Centre office is located on the land of the Gadigal of the Eora Nation.

Contents

1. Introduction

The Justice and Equity Centre (JEC) welcomes the opportunity to respond to the Australian Energy Market Commission's (AEMC) Real-time data for consumers consultation paper (the Paper).

This process is critical to ensuring that metering makes the optimum contribution to a more flexible and efficient energy system and supports safer and more transparent and affordable energy services which meet the needs of all consumers.

Key aspects of an effective metering and data framework are currently absent. While this process is centred on consumer access to real-time data, it is an opportunity to address these gaps and put in place crucial foundations for an energy system that better promotes and protects the interests of consumers.

Establishing appropriate data frameworks requires establishing the fundamental purpose (and scope) of metering and the data it creates. The existing metering and data frameworks are obsolete. The expansion in capability of advanced metering extends well beyond the coverage of existing laws and regulations relating to metering and data. This results in substantial scope for metering entities to utilise their control of the metering platform in ways that do not consistently prioritise, promote and protect the consumer interest. The existing framework does not sufficiently define (and limit) the scope of responsibility for metering entities. It does not place robust guidelines around how data should be collected maintained, controlled and provided to ensure metering effectively fulfills its intended role. This process should address these deficiencies.

The JEC strongly recommend the AEMC adopt an expansive approach to consideration of the proposed rule change, recognising that appropriate frameworks for real-time data for consumers, require wider consideration of metering responsibilities and functions, and ensuring that consumer access and control of data is consistent with other data arrangements.

Existing issues need to be addressed in any rule change

Technological change and the greater scope of capabilities of advanced metering, in conjunction with power of choice reforms reassigning metering responsibility, have created substantial gaps in the laws and regulations governing metering and data. These gaps unintentionally allow for action by metering entities and retailers leveraging their control of the metering installation. As it stands, this may allow them to use the installation and the data it produces, in ways that do not prioritise and promote the consumers interest.

Many metering providers are incorporating extra functionality (both software and hardware) into the metering platform, well beyond its core purpose. This potentially creates excess costs related to the meter and ongoing metering, which are not transparent and which must be recovered from the impacted consumer, or the wider consumer base.

Additional metering functionalities are often 'proprietary', limit interoperability, and confer privileged access to the metering entity, the retailer or others. At the extreme this effectively allows metering parties to leverage their (relatively limited) intended role, to create a form of

monopoly over each meter they are responsible for. This is not in the consumer interest and risks undermining scope for the metering platform to fulfil its key roles.

Solutions need to address scope of metering and data arrangements

To resolve this, the scope of the metering platform should be more clearly defined and restricted. Alternatively, all functionality that goes beyond that required for settlement, billing, and maintenance should be fully accessible, interoperable and open to competitive provision. Regulation of the functionality of the metering platform should enable consumers to appoint an authorised representative of their choice to manage additional functionality (and any data involved), for their benefit, with a clear understanding of the costs and benefits involved. The 'regulated functions' involved with installing and managing the metering platform for its defined purpose, should not confer benefit or privilege to the metering parties or retailers.

All bespoke capabilities built into the metering platform, such as energy management software and additional relays and communications modules for direct consumer energy resource (CER) control should reside outside the metering installation. This would enable consumer choice in adoption of only those products and services that are of interest to them and keep costs of the metering platform down. The metering installation itself should be a technically and commercially neutral enabler of CER products and services (rather than a competitor to them).

We recommend amending chapter 7 of the National Electricity Rules (NER) to give effect to more explicitly, and narrowly define the scope of metering and the relationships which underpin the creation and management of meter data, to clarify and affirm the role of the metering platform in the future energy system.

Proposed assessment criteria are not sufficient

We do not consider the assessment criteria relating to 'effective implementation' appropriate. The JEC contends there should not be undue focus on a least-cost solution. Instead, focus should be on solutions likely to be most effective, robust and appropriate to promote long term consumer benefit.

The fundamental test for a rule change should not be whether it is palatable to existing market participants but whether it is fit-for-purpose and delivers the best outcomes for consumers. Appropriate arrangements to facilitate access to real-time data will likely impose costs regardless. The question is how to ensure those arrangements (and any costs involved) are capable of delivering better outcomes and promoting the long-term interests of consumers. The AEMC should prioritise ensuring the arrangements are appropriate over ensuring a 'least cost solution for market participants.

In practical terms this would mean prioritising assessment criteria 1 – outcomes for consumers over assessment criteria 4 – effective implementation – where implementation relate to the impact of changes in the short term, required changes to existing market conditions and the imposition of short term costs.

2. Real-time data should be supplied at 1hz frequency

We consider real-time data essential to effectively orchestrating and managing CER, as well as enabling new CER products and services which deliver benefits for individual consumers. Real time data (and the regulatory arrangements which govern its generation, availability and use) must of be of a type, accuracy, and frequency to enable a wide range of consumer and grid services.

Data requirements should support most beneficial uses

What is regarded as 'real-time' for the integration and management of CER and other grid services differs from what may be considered 'real-time' for the purposes of simple visibility and consumer understanding of energy use. These framings of 'real time' are fundamentally different and should not be conflated. The former relates to management – often automatic - of resources and load (for the benefit of the consumer) whereas the latter is limited to providing energy insights and manual management (to the extent that a consumer has the flexibility and capacity to do so).

Real-time data (i.e. ≤1hz) is necessary for on-site orchestration and management of CER whereas near real-time provision (i.e. >1hz) may be sufficient for other use cases e.g. in-home or app-based displays. Data provided at a frequency of at least once per second (1hz) should qualify as 'real-time'. Data provided at a lower frequency (i.e. at least once per 300 seconds) should be referred to as 'near real-time'.

In considering the rule change priority should be given to use cases that facilitate the integration and optimised utilisation of CER given these provide the greatest potential benefit for consumers and the system.

Existing CER orchestration and management services rely on on-site data provision of at least 1hz and require the installation of a secondary meter if the provider cannot access this data from the primary meter.

Access arrangements should support choice that benefits consumers

Access to real-time data would ensure that consumers do not incur the material cost associated with installing a parallel meter. This potentially increases scope for a wider range of consumers to access benefits from third party orchestration and management services without the inefficient cost of a secondary meter or device.

We support implementing arrangements which would enable authorised representatives, appointed by the consumer, access to the smart meter communication port to enable the efficient provision of products and services which consumers may choose for their own benefit. We understand this port could provide local access to real-time data but is currently sealed and only accessible by the metering provider or a level 2 accredited service provider (ASP). While regulation of access would be required, existing restrictions do not support competition in service provision for consumers.

Under the existing framework and arrangements consumers' authorised representatives have not been able to negotiate access to real-time data (locally or otherwise) on fair and reasonable terms. Metering parties can configure the metering platform in ways which preference themselves and have the ability to restrict the utility of the platform and availability of data for third parties chosen by the consumers. Their position as an effective metering-point monopoly makes negotiations for data access difficult, and allows them to set terms and prices which are often unreasonable or potentially contrary to the best interests of the consumer.

Holistic consideration of scope and definition of data is required

A definition of real-time data provision should be consistent with definitions of basic and advanced power quality data, metering data, energy data, and any other references to 'data' in the NER. We consider this requires provisions governing the availability of data for consumers to determine the standard of data covered by other references. There is a risk that definitions and scope of data become fragmented and that this rule change inadvertently creates 'data silos' in which different access rights, commercial arrangements, and regulations apply to different aspects of data, or the same data in different circumstances. This risks exacerbating 'holes' in regulatory coverage which may be exploited or otherwise undermine the effectiveness of metering and data regulation.

We recommend the AEMC consider all data captured by the metering platform holistically and ensure all definitions and determinations relating to data are consistent with those defining consumer access and control of data.

3. Data sharing arrangements should enable local access to the meter

Local access to real-time data is necessary to ensure consumers can choose between CER products, services, and service providers on a commercially and technically neutral basis.

Real-time data from smart meters can be accessed locally via a communication port on the meter but local access is not currently permitted or facilitated under the NER. Communication ports are protected by a seal which the NER prevents third parties from breaking and replacing. This can only be done by metering parties, a restriction which confers an unreasonable competitive benefit to them beyond the scope of their primary regulated role.

While remote access may have an auxiliary role in providing consumers with visibility of their energy data, it is unlikely to be appropriate for orchestration and management due to issues with data latency. As such, local access to real-time data should be prioritised where possible. Where this is not possible, for instance because the meter does not have a communications port, consumers should be provided with a separate device that is capable of interfacing with the meter to ensure that data is accessible on-site.

We do not consider retailer-provided applications or portals (or other forms of cloud-based provision) an appropriate substitute for local access. Physical local access should be secure and provide for multi-user access. A framework that rests on remote access to data would make retailers gatekeepers of consumer data and unreasonably restrict scope for competition by any third parties the consumer may wish to authorise.

4. Consumers should not pay for access to data

Consumers pay for their meter and the data relates to their usage. In principle this means that consumers own and should have exclusive control over the data generated by the meter.

Meter data is the consumer's to control

It should be made clear in the rules that the metering data is the consumers'. Except for defined purposes enabling safe, efficient operation of the energy system, any access and use of the consumers metering data (and/or CER attached to or controlled by the metering installation) must require explicit, informed consent of the consumer and should be for the benefit of the consumer.

It is inappropriate for such consent to be a secondary condition of the supply of energy to the consumer, or to be bound up in the retail service contract. This is often currently the case and may be resulting in consumers being regarded as having consented to control or limitation of their assets, or use of their data, in ways they neither intend or benefit from. This process must explicitly seek to prevent such practices by putting in place clear and robust rights and requirements.

Free provision of data which promotes the interests of consumers

Defined data should be made available free of additional charge to defined market participants (such as DNSPs, retailers, and AEMO) for a range of defined purposes. These purposes should promote the safe, efficient, and reliable operation of the system. We do not support managing access to this data by negotiation with metering parties and retailers. This would be both inappropriate and ineffective because:

- The data is the consumers' to control and has been paid for by the consumer.
- Data costs are not transparent and are recovered through direct consumer costs (and costs shared amongst other consumers). As such any additional costs paid to metering parties or retailers for data would result in consumers 'paying twice'.
- Any negotiation between metering parties and DNSPs or other parties is subject to the effective 'monopoly' position of the metering entity – given that each metering point/collection of metering points is non-substitutable.

If provision of this defined or 'extra' data to DNSPs (or other parties) is subject to additional payment to metering entities, there must be measures to make data costs transparent. It would also require regulation to ensure against consumers 'paying twice', or metering parties exercising unreasonable market power due to their privileged access of the metering point and the data it generates.

Measures to ensure consumer control and benefit from data

Consumers should have discretion over how all other data (that is any data that falls outside the above defined purposes) is used or monetised. Consumers should have free and ready access to their data and be able to exercise control (FPIC) over how it is used (or not) and monetised (or not).

Consumers cannot be confident costs related to metering and metering data (including real-time data) incurred on their behalf are prudent and efficient given they have no visibility of these costs. The JEC would prefer metering costs to be regulated and required to be transparent, restoring arrangements governing metering provided through DNSP responsibility. In any case, where such costs are not transparent, arrangements should ensure they are not duplicated.

The JEC recommend including metering parties under Ombudsman schemes to ensure consumers have appropriate avenues for dispute resolution – particularly as data takes on a larger role in the energy system. Ombudsman oversight could assess how the market for metering providers is working and provide consumers with non-contractual recourse for complaints. The latter is important given that, under current arrangements, consumers have no oversight of retailer contracts with their metering providers, and no legal recourse to resolve any issues they may have with the actions of metering entities.

5. Real-time data should be standardised and readable across devices

The real-time data generated by metering should be interoperable using an open standards-based protocol and standards-based communication interface. This ensures the metering point provides the optimum platform for consumer benefit, regardless of service or product provider, and establishes that platform in a way that is most likely to support future use-cases which can benefit consumers.

Metering and data interoperability should ensure that data is presented in a useable format and readable across a range of devices that consumers and their service providers may utilise.

6. Further engagement

We would welcome the opportunity to discuss these matters further with the AEMC and other stakeholders. If you have any queries about this submission please contact Jan Kucic-Riker, Policy Officer, Energy and Water Justice at jkucicriker@jec.org.au