



TELSTRA CORPORATION LIMITED

Submission to the Energy Ministers consultation on NEL/NER amendments for the Consumer Data Right

12 October 2021



01 Introduction

We welcome the opportunity to comment on the package of proposed regulatory amendments to implement the Consumer Data Right (**CDR**) for energy (**the consultation paper**).

We have previously expressed our support for CDR and continue to believe that providing customers with their data in a common, accessible format will enable them to make better, more informed decisions and help drive competition and innovation across the economy. We recognise the need to ensure that the energy framework can facilitate the CDR regime as it is applied to electricity retailers. In the below submission, we encourage Ministers to only make changes to the National Electricity Law (**NEL**) and Rules (**NER**) which are necessary for the enablement of CDR, and to utilise existing energy change processes for those which are not immediately necessary.

02 Changes necessary for immediate enablement

Changes which are necessary for the immediate enablement of the CDR should be progressed by Ministers through this package of reforms, these include:

- NEL amendments to confer statutory functions on the Australian Energy Market Operator (**AEMO**)
- NER amendment 8.6A to ensure that AEMO and registered participants can share CDR data in accordance with CDR rules
- NEL amendments to provide the Australian Energy Market Commission (**AEMC**) ongoing rule making power

2.1. Governance of two regimes

Questions relating to the governance and operation of two separate regimes must be considered in more detail regarding the NEL amendment for AEMC rule making powers. We support the AEMC being able to consider rule-changes which are triggered by the CDR; however, it is unclear how the overall governance of these regimes and objectives will be managed.

The AEMC is an independent decision-maker, with clear accountabilities and rule-making powers, focusing on the efficient operation of the market in the long-term interests of the consumers. The AEMC is governed by three objectives, the two relevant in relation to the CDR are the National Electricity Objective (**NEO**) (stated in the NEL) and the National Energy Retail Objective (**NERO**) (stated in the NERL). The AEMC is required to apply the NEO and NERO in rule change processes and reviews.¹

The objective of the CDR is to enable consumers to require information sharing, efficiently and conveniently by designated businesses to create more choice and competition or otherwise promote the public interest.² If a CDR policy change would conflict with, or otherwise impact, existing energy rules how will the proposed NEL amendment ensure that:

- the AEMC is able to apply the NEO and NERO as required by their statutory function in an objective and independent way;
- there is a mechanism for review and resolution if a CDR change conflicts with the NEO or NERO; and

¹ See s 32 NEL and s 224 NERL. Also see, [Applying the energy market objectives \(aemc.gov.au\)](https://www.aemc.gov.au)

² [Treasury Laws Amendment \(Consumer Data Right\) Act 2019 \(legislation.gov.au\)](https://www.legislation.gov.au)



- there is an interim period of consideration/change process where a retailer may be breaching one of the two regimes should a conflict arise.

We also recommend ensuring that the AEMC is engaged with during the consultation process of CDR policy changes, and that there is a formal/recognised process for commencing rule change requests which are necessary as a result of changes to the CDR (i.e. who will be requesting the AEMC commence a rule change following amendments to the CDR).

03 Changes not necessary for immediate enablement

The current consultation and proposed package of reforms must focus on what is necessary for the immediate enablement of CDR, while ensuring that the appropriate processes and reviews and undertaken for other proposed changes.

3.1. NER amendment to rule 7.14

The consultation paper identifies that the change to rule 7.14 will encourage standardisation over time but does not demonstrate how this change is immediately necessary for CDR enablement. We do not consider the removal of the word 'minimum' under 7.14 is necessary for the immediate enablement of the CDR and that the application of the CDR technical standards and rules will not be impeded by retaining it.

Changes to the operation of 7.14 may have broader market impacts which would benefit from engagement and consultation with other market bodies and participants who would be otherwise unaware of the Minister's current consultation paper.

The AEMC rule change process is the recognised mechanism for market changes of this nature, and we strongly encourage that this change undergoes the appropriate consideration and assessment under the existing energy arrangements. For example, it is unclear to what extent the proposed amendment to 7.14 may impact innovation (such as how data providers display and tailor information in a way that is meaningful for their customers and their product/service). Further, the consultation paper highlights that standardisation will *allow AEMO to specify a single format*³ but does not consider whether this single format will be in the best-interest of the customers or whether AEMO is best-placed to determine this.

If Energy Ministers are of the view that an immediate change is necessary for the enablement of CDR, then we strongly encourage the change to be limited to ensuring the effective management of CDR for example, by enabling the minimum requirements to include specifications for the 'manner or form' that is necessary for the data to be used for CDR.

3.2. Expansion of data access

The proposed amendment to the regulation under the NEL (clause 8A) would enable AEMO to share data with the Commonwealth Scientific and Industrial Research Organisation (**CSIRO**) and the National Energy Analytics Research (**NEAR**) program. This proposal is reflective of the draft Energy Security Board (**ESB**) data strategy which was consulted on with industry in 2020. Recently, the ESB

³ NEL_NER Consultation paper <https://energyministers.gov.au/publications/consumer-data-right-energy-%E2%80%93-nelner-amendments-%E2%80%93-consultation-0>



made recommendations to Energy Ministers which were considered by National Cabinet for the immediate commencement of the final data strategy.

The final data strategy focuses on establishing a Data Advisory Leadership Committee (DataLAC) to investigate, consult and progress data strategy objectives across matters of governance, reporting and data access. As this proposed NEL amendment is not necessary for the immediate enablement of CDR, and is subject to consideration through another process which will include consultation across relevant market bodies and participants, we recommend that such a change occur through the DataLAC and data strategy objectives.

04 Administrative

In the NER Amending Rule, the terms 'CDR data' and 'CDR provisions' need to be made global definitions in the NER (defined in Chapter 10) as they are terms proposed to be introduced into the NER but are only defined in the NEL and not yet defined in the NER. The terms should then simply be defined by reference to the NEL, i.e. – *has the meaning given in the NEL.*