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**Facilitating access to consumer energy data**

AGL Energy (**AGL**) welcomes the opportunity to make a submission in response to the COAG Energy Council's Facilitating Access to Consumer Energy Data Consultation Paper (**Consultation Paper**).

AGL is one of Australia's largest integrated energy companies and the largest ASX listed owner, operator and developer of renewable generation. Our diverse power generation portfolio includes base, peaking and intermediate generation plants, spread across traditional thermal generation as well as renewable sources. AGL is also a significant retailer of energy, providing energy solutions to around 3.5 million customers throughout eastern Australia.

In addition, AGL is continually innovating our suite of distributed energy services and solutions for customers of all sizes. These behind-the-meter energy solutions involve new and emerging technologies such as energy storage, electric vehicles, solar PV systems, digital meters, and home energy management services delivered through digital applications.

AGL strongly supports the principle that consumers should have greater access to and control over data that directly relates to them. We consider that a well-designed regulatory regime should facilitate this access and control to allow customers to seek value from their data, while also preserving incentives for efficient investment and innovation in data from businesses, and fostering trust from the community in data use and privacy.

**The Consumer Data Right**

The Murray, Harper, Coleman, and Finkel inquiries all recommended that Australia develop a data right and standards for customers to access and transfer their information in a useable format. Additionally, in May 2017, the Government received the Productivity Commission's (**PC**) report on their *Inquiry into Data Availability and Use*.<sup>1</sup> This report included a set of 41 recommendations, including for the creation of a new economy-wide Consumer Data Right (**CDR**).

On the basis of the recommendations from these reviews, in the 2017-18 Budget, the Treasurer, the Hon Scott Morrison MP, announced that the Government would introduce an Open Banking regime in Australia and commissioned a review to recommend advice on design and approaches to implementation.

Although it has not comprehensively responded to the PC's recommendations, in November 2017, the Government indicated it will adopt the PC's central recommendation to create a CDR, with its design to be informed by the report of the Open Banking Review, which represents the detailed consideration of the CDR in the banking sector.

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<sup>1</sup> For more information please see: <https://www.pc.gov.au/inquiries/completed/data-access#report>



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Furthermore, the Government has also announced that the recommendations of the Open Banking Review, if adopted in full, would establish the fundamental aspects of a CDR regime for the entire economy, and that the Open Banking model will expand to become the basis of the architecture for the CDR more generally as it applies to energy, telecommunications, and other industry sectors.

As a result, the Open Banking Review considers that governance arrangements, the scope of data captured, the implementation expectation, and the education of consumers would all be established through the government's response to this Review and would not be open to significant adjustment between sectors.

For that reason, we consider that it is essential that the Government ensures the design of the Open Banking regime works for all sectors of the economy, and that emerging data models for access to energy take as their basis the CDR and the fundamental principles outlined by the Open Banking review.

To that end, we consider that the proposed objective for the consumer electricity data access scheme should be aligned with the CDR and Open Banking Review, rather than have its basis in a more narrow aim. A goal that is not aligned with the CDR risks divergence from an economy-wide and national approach to access to data. Within that consideration, we consider that a number of elements of the Consultation Paper diverge from the CDR and alignment with the Open Banking Review and are not fit for purpose to meet this aim.

While customers already have a right to access consumption data in the energy sector, we agree that the process can be streamlined and made more efficient by aligning the framework with technical architecture, regulation, and processes that are being considered in other sectors. We therefore look forward to a refocussing of direction from the COAG Energy Council in response to the recent progress made with the CDR, and further working with stakeholders to understand how the CDR can be effectively implemented in the energy sector.

In our view, this would require a re-evaluation of the appropriate solution for data access. While the Consultation Paper has some useful elements in terms of discussing data access in the energy sector, we do not consider that the solutions proposed should be presented to COAG in their current form. Rather, we would ask the Government to work with Treasury and develop a work program to investigate how the CDR can most efficiently be implemented in the energy sector.

### **Principles of open access to data**

We strongly support the principles of open access to data and the recommendations made by the Open Banking Review. These principles are more overarching than the basis for the Consultation Paper, which recognises a need to develop a consumer electricity access data scheme but does not have a foundation in the more holistic data right envisioned by the PC.

Throughout submissions to the PC's overarching data review and other consultations, AGL has advocated for a number of clear principles as they relate to open access to data. Additionally, in 2017, AGL formalised new Data Policy Principles<sup>2</sup>, that drive our focus and policy in this area. We consider as fundamental principles that:

- Customers should be provided easy access to their own consumption data.
- Customers should retain direct control over who is permitted access to their data, other than regulated entities for market settlement and other regulated and controlled purposes.
- The ability to use data to drive a competitive advantage will motivate data creation and product and service innovation, which is ultimately in the customers' interest.

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<sup>2</sup> For more information on AGL's Data Policy Principles and customer data and transparency, please see AGL's sustainability report, available at: <http://agl2017.reportonline.com.au/sustainabilityreport/customers/customer-experience>



- Any data access rule change should impose minimum obligations for data provision that include format standardization and data portability, but should not limit innovation or come at a cost to customers that does not realise sufficient benefits.

In examining the objectives of the CDR, we note that the Open Banking Review has adopted similar principles, noting that that the CDR framework must fundamentally support the creation and maintenance of a system that:

- a) Should be customer focussed

The outcome should be for the customer, be about the customer, and be seen from the customer's perspective. Not only should the outcomes promote a well-designed customer experience, but all participants should feel justifiably confident in the system and in control of their own information.

- b) Should promote competition

The outcome should be done to increase competition for the products and services available to customers so that customers can make better choices. It should not unreasonably lock out new participants and should not place unreasonable costs on existing participants.

- c) Should encourage innovation to create opportunities

The outcome should provide a framework on which new ideas and business can emerge and grow, establishing a vibrant and creative data industry. It needs to be flexible, future oriented and responsive to change. As technology improves, the optimal short-term solution now may not be the best solution in the future if it is inflexible to change.

- d) Should be efficient and fair

The outcome should be consistent with security and privacy in mind, so that it is sustainable and fair, without being more complex or costly than needed. Where regulation is required it should first seek to assist market forces, only seeking to replace them when there is no other suitable alternative.

We support these four principles, and consider that they should also be at the focus of any further consultation of discussions regard access to customer's energy data as well as data in other sectors.

As a participant in an industry that will be required to apply the CDR in a way that links closely with other industries, we would advocate for a unified approach to open energy services data provisions that aligns closely with other industry sectors, and would urge the Consultation Paper to refocus its aims in alignment with these principles.

### **AGL's Position on the Open Banking Review**

AGL is supportive of the recommendations of the Open Banking Review, and consider that the principles in that review form a much more resilient basis for the framework, scope, safeguards, and technical aspects for a data provision model. While we note that there are some differences for the energy sector that will need to be considered in the development of an effective CDR framework and associated architecture, we do not consider that the energy sector should consider a model for open access that diverges from these recommendations.

We provide a more detailed view for each of the areas under the Open Banking Review as they apply to the energy sector below, which we consider should apply to any model for data access proposed by the COAG Energy Council:

#### *Regulatory framework*



We support recommendations regarding the regulatory framework that should apply to both the CDR and Open Banking, including the responsibilities of regulators and those within the system. In particular, we support a design that minimises duplication of existing legislation, consideration to the right hierarchy of regulations and standards, and the principle that legislation should only contain ideas and principles that are overarching.

We agree that in the context of the objectives of the CDR, data access frameworks should have specific Rules that consider the characteristics of the energy sector as well as interoperability across the economy-wide data transfer system.

We note that as part of its response to the PC's *Inquiry into Data Availability and Use* the Government has committed to a dual-regulator model, involving the Australian Competition and Consumer Commission (**ACCC**) as the lead regulator, with strong support from the Office of the Australian Information Commissioner (**OAIC**). This is in contrast to the model proposed in the Consultation Paper where AEMO has a principle role in developing a scheme, accreditation, and compliance monitoring and enforcement of participants.

In the Open Banking proposal, the ACCC would seek to promote competition and customer focussed outcomes within the system, while the OAIC will aim to ensure that strong privacy protections are a fundamental design feature of the CDR. To set technical standards for the CDR, the Government will engage in a process of close collaboration with designated sectors, the technology community, and consumer and privacy advocates. We consider that this is a more appropriate framework than proposed in the Consultation Paper and aligns better with the existing roles of regulators.

Additionally, the PC has recommended that policy responsibility for data is given to a new national statutory office holder, the Office of the National Data Custodian (**NDC**). It is intended that the NDC will be a facilitator of improved data access and best practice, and the PC has proposed that the NDC will have oversight of the national data system and will assume a number of key responsibilities.

Within this context, we consider that the emerging framework of data regulation under the auspices of the ACCC, OIFC, and NDC is a more appropriate head of power for regulation of a consumer data scheme rather than AEMO as presented by the Consultation Paper. Nevertheless, we consider that where appropriate, AEMO, the AER, and the AEMC can provide input into the framework as per the terms of the Australian Energy Market Agreement (**AEMA**) and the respective roles of these market bodies in administering the National Electricity Law (**NEL**) and National Gas Law (**NGL**).

AGL firmly supports recommendations to leave the determination of Standards and formats for the sharing of customer data to industries to develop and agree, perhaps with the assistance of AEMO, which has an existing role in facilitating technical industry forums. The risk of centrally regulating such Standards is that industries become locked into old technologies and it is much more challenging to update data sharing Standards and processes. Regulating Standards also offers insufficient scope to experiment with new technologies before making investment decisions.

### *Scope*

While the scope of the Open Banking review expressly considers financial data, the principles relating to categories of data and identification of eligible participants should apply equally across other sectors, and could equally apply to the energy sector. We agree with the finding that both customer-provided data and transaction data, as defined in that review, should be provided to customers, although how these definitions are mapped across to other sectors may require some further investigation.

We further agree that value-added customer data and aggregated data sets should not be included in the scope of Open Banking for the reasons outlined in the Review. Similarly, product data, which is already provided in the energy sector under other reporting frameworks, should be available to customers.



However, we do not consider that the centralised hub model suggested in the Consultation Paper is flexible and resilient to changes in the type of data that will need to be provided by participants.

For example, we also consider that consumer data related to agreements for the sale of gas to customers will need to be considered under the CDR. This data is not currently under the scope of the Consultation Paper, but future attempts to refocus the application of the CDR to the energy sector would need to consider the additional data to be provided in a more encompassing access framework, which may lend themselves to more efficient and flexible solutions.

Additionally, other energy-related data that is held by participants that are not covered by energy legislation and able to be monitored by AEMO may be subject to the obligations, depending on the type of data that is being accessed. Foreseeably, the CDR could cover the customer data that relates to future operations of a number of service providers, which would not be in scope if the design of the model was limited to a centralised hub with registered energy market participants feeding into that pool.

For this reason, we favour the development of a model that follows the technical architecture of the Open Banking Review, rather than the centralised and strictly defined model proposed in the Consultation Paper.

#### *Safeguards*

Customer confidence is critical to the success of open access to data. Customers need to trust that the right safeguards are put in place to ensure that an innovative data industry does not come at the cost of customers' rights to confidentiality. To that end, we support the development of safeguards to maintain confidence in the system, including expanding certain privacy and confidentiality principles and remedies beyond their current ambit, and clarifying liability.

We consider that AEMO is not well placed to regulate many of these activities, and may indeed not have the applicable powers under the NEL and NGL to undertake many of the enforcement activities proposed in the Consultation Paper. Rather, we favour the model proposed in the Open Banking regime that utilises the ACCC (or AER as it could relate to energy-specific requirements) and the OAIC.

We support the requirement that access to data should require informed, explicit customer consent, and that data should only be shared when the customer has given an explicit direction to the data holder to do so. Additionally, the direction to share data should be consistent with the existing authorisations on an account, and customers should be notified of the data they are sharing and be able to revoke access easily.

#### *Technical aspects*

The technical aspects of the data transfer mechanism are perhaps the most controversial as far as they might relate to other sectors that already utilise different communications and data protocols for communication between market participants. Nevertheless, we consider that the principles recommended by the Open Banking Review could be applicable generally, and, that mechanisms to facilitate an economy-wide protocol, should be considered as a baseline to enable Rules and Standards to be established for other sectors.

We therefore consider that the Open Banking model should be considered as a baseline for the energy sector, with any divergence from that model justified on the basis of efficiency gains of cost savings to customers, noting any impacts on interoperability between sectors and the resilience, flexibility, and capacity for safeguards of any model.

With that principle in mind, we consider that customer data should be transferred via application programming interface (**API**), and that these APIs should be built in accordance with standards set by an independent body. We are strongly opposed to a model that utilise a centralised data hub. In our view, centralised hubs are a highly intrusive design, with associated privacy concerns of having all data available to a single party and within a single location. Central data hubs require robust security protocols, given the sheer volume of



data and potential access seekers, and have major establishment and compliance costs with a high likelihood of issues relating to replication of existing solutions and participant systems. Furthermore, centralised hubs reduce incentives to create new data and often may be resistant to including new types of data or information from new participants as business models adapt.

A centralised hub is likely to be inflexible to change, which would be a critical failure of any access regime as with the move to digital services, consumer expectations of the availability of data will adjust and expand over time.

Lastly, we believe that standards should not mandate specific technology and should not intend to restrict innovation for data transfer. Standards should enable basic functionality and security, but they should also be useful for other sectors and promote interoperability as much as possible, while leveraging existing protocols in the energy industry.

### **Jurisdictional and economy-wide alignment**

A number of competing reviews are currently occurring in the energy sector with similar objectives of facilitating customer access to data.

The Victorian Department of Environment, Land, Water and Planning (**DELWP**) is currently investigating the potential to create a central, digital hub for the storage and access of electricity consumption data. The consumer data hub would give consumers, and their authorised third parties, access to recent and historical data on consumption, voltage, tariff and other electricity data.

Energy Consumers Australia (**ECA**) has been working on a data portability project to help facilitate consumer access to their own electricity data.<sup>3</sup> ECA released a discussion paper, which proposes an industry led process for facilitating access to electricity data that seeks to maximise the associated benefits for consumers.

The Queensland Department of Energy and Water Supply (**DEWS**) has developed an open data strategy<sup>4</sup>, based on the Queensland Government's open data initiative, detailing their data assessment processes and identifying data planned for release and the release schedule. The strategy reinforces a commitment to make data available in a variety of standard formats and through a number of applications.

The Open Banking Review referred to in this submission and the application of the CDR to other sectors is likely to continue to be developed through 2018.

In our view, and based on the Government's representations that the CDR as it relates to Open Banking will become the model for the energy industry, we consider that the COAG Energy Council's efforts to streamline third-party access to data should be redirected under the evolved landscape of the CDR and the direction of the Open Banking Review.

Similarly, we believe that State-based approaches are likely to provide no benefit in light of an impending national framework that will provide more expansive solutions and more significant economy-wide national benefits, and that on this basis competing data access frameworks should be merged under the same aims.

The multiple reviews that are currently occurring have competing objectives. While some are primarily aimed at driving innovation in emerging technologies, others have more simple aims of streamlining the provision of customer data to third parties. In our view, the objectives of these reviews will need to be considered and realised at the lowest overall cost by aligning with a more future proof access to data architecture as proposed under the open banking review.

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<sup>3</sup> For more information see: <http://energyconsumersaustralia.com.au/publication/electricity-meter-data-portability-discussion-paper/>

<sup>4</sup> For more information see: [https://www.dnrm.qld.gov.au/\\_\\_data/assets/pdf\\_file/0017/224243/open-data-strategy-2014-18-dews.pdf](https://www.dnrm.qld.gov.au/__data/assets/pdf_file/0017/224243/open-data-strategy-2014-18-dews.pdf)



We consider that any divergence from the Open Banking Review would likely lead to significant expenditure of costs and potentially move in a direction that is not compatible with the broader objective of digitisation of services and transformation. Any move to diverge from this economy-wide model is likely to impose unnecessary cost on customers.

We look forward to contributing to a model that more appropriately seeks to establish the CDR in the energy sector under those principles.

Should you have any questions in relation to this submission, please contact Aleks Smits, Manager Policy & Research on 03 8633 7146 or myself on 03 8633 6836.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Stephanie Bashir'.

**Stephanie Bashir**

Senior Director Public Policy