Justice and Equity Centre

Real-time data for consumers directions 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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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 directions paper (the Paper).

Developing an effective framework for managing equitable and efficient access to real-time data is essential to enabling the AEMC's work program to maximise the value of CER for consumers. Building robust frameworks for access to real-time data for smart meters promotes the long-term interests of all consumers through enabling the efficient integration of CER and operation of the energy system. These are critical enablers for an energy transition that works for consumers.

The Paper's recognition of the fundamentally different framings for consideration of real-time data are welcome. What should be regarded as 'real-time' for the efficient 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. Recognition of this fundamental difference should inform a future-focussed approach to metering data.

We welcome the proposal to define real-time data as energy data recorded every second and delivered within a second. This frequency of provision is required to enable on-site orchestration and management of CER and recognises that this use case is critical for enabling assumed CER benefits to consumers and the energy system.

Progress on providing multi-party, interoperable access to real-time data is also welcome, though insufficient as regards the timelines associated with enabling this functionality. Open interoperability in data access is critical to ensuring shared access arrangements serve the consumer interest, regardless of their service or product provider, and critical to ensuring competition works for consumers.

Notwithstanding these important achievements, the broad direction the Paper takes on a staged implementation, pricing, and competition undermines our confidence in the ability of the proposed framework to work in the long-term interest of consumers.

We are concerned and disappointed to see many of the entirely predictable issues arising from maintaining the existing industry structure for metering services left unaddressed in the approach proposed in the Paper. These issues, and the ongoing inability to address them under the prevailing industry structure, will frustrate the development and delivery of a fair and efficient real-time data framework.

As we outline below, metering arrangements must enable access to products and services essential for an evolving energy system, rather than being based on current use cases. Policies must likewise ensure that real-time data is available at reasonable cost through regulated pricing mechanisms or incentives for service providers to absorb costs. We also strongly recommend the Commission consider alternatives to maintaining existing market arrangements to ensure the metering platform and the services it enables are treated as a shared market resource rather than a proprietary asset. Failure to do so will curtail the scope for the transition to result in equitable and efficient outcomes for all consumers.

2. A 15-year transition is unacceptable

The proposal to implement a 15-year transition is impractical and undermines scope for the development of a market for real-time data services which can benefit all consumers. If a transition is required, it must be undertaken on a substantially shorter timeframe.

The Paper proposes a 'staged implementation approach' to achieve universal access to real-time data. The Commission justifies the approach on grounds that:

- there are costs associated with accessing real-time data from meters;
- demand for real-time data as a standalone product has so far been modest; and
- for some consumers, alternative devices may presently deliver a better value real-time data service.

We consider this reasoning flawed and address each of these points in turn.

A more nuanced consideration of cost is required

We understand the effective and practical provision of real-time data comes at a cost. But this should not be regarded as an exclusionary factor. Instead, the quantum and timing of costs should be considered against the degree to which that timing may enable desired (or required) benefits.

Delaying action on grounds of costs may preclude the realisation of more substantial benefits. Metering assets and access frameworks must provide a platform that enables efficient and equitable access to the products and services necessary for the safe and efficient operation of an energy system radically different from the one we have today. Put simply, metering arrangements must be future-focused, not narrowly concerned with existing use-cases and market offerings which are both grounded in legacy metering assets and curtailed by existing regulatory deficiencies.

The rule change should aim to produce arrangements that facilitate the future state in the most efficient manner possible. Attendant costs should be considered in view of this objective and, importantly, considered in relation to when incurring costs earlier may enable more rapid (and substantive) realisation of expected benefits.

Assessments of data utility must be future focussed

The implementation of advanced metering itself was not driven by active consumer choice or expressed preference for more advanced metering, but an assessment that advanced metering is a critical enabler of efficiencies and services consumers would require (and which would serve their interests) in a contemporary energy system.

Real-time data as a key product advanced metering was implemented to enable, should be regarded similarly. In any case, we consider the Papers' assessment inconsistent with the Commission's vision for 'a consumer-centric, net-zero energy system, where all types of households with varying levels of participation, including vulnerable consumers, will benefit from the energy system.'

If the Commission accepts that equitable, universal access to real-time data is a cornerstone of its vision for a future energy system, then access arrangements should reflect this principle irrespective of existing demand for real-time data. This is particularly critical when existing consumer demand is a function of the disjointed existing framework governing access to and use of metering data.

If anything is taken from the Victorian experience, it should be that making access to real-time data (and the utility of that data) contingent on consumer action limits uptake and market development of related products and services. Consumers do not want real-time data for its own sake and are unlikely to ask or advocate for it. They do want (and arguably need) the products, services, and better system outcomes it enables, and it is demonstrably in their interests for the framework for metering and data to facilitate the realisation of such outcomes.

If consumers are not currently getting value from real-time data, either directly through valuable products and services, or indirectly through a more efficient and flexible energy system, then market bodies must examine the reasons for this failure.

Backward-facing assessments of the utility of real-time data are not appropriate. Assuming that consumers lack interest or see little benefit from these products and services, and assigning a low value to real-time data is not an appropriate promotion of the consumer interest. The conclusion that 'presently, not all consumers want or need real-time data' is akin to assumptions around bandwidth demands and proposed speeds being 'more than enough' for the average household at the start of the NBN rollout.

It is important not to conflate the two overarching use cases for real-time data in any such examination. For instance, a consumer may see little value (or even desirability) in close oversight and manual management of energy use at their premises through obtaining visibility of their real-time data. However, that same consumer may have a great interest (and realise significant value) in automating the management of resources or load at their premises through assigning this responsibility to their retailer or a third-party provider.

The nascent market for real-time data services may not be delivering the value consumers expect under current circumstances. This however should not be taken to mean that real-time data is of limited value, or that significant reforms (and costs) to unlock greater utility, are not warranted. The failure to innovate and create and realise value for consumers is due in part to a market structure that assumes retail competition alone will deliver such products and services. This assumption has not been borne out in experience.

As we have pointed out in our submissions throughout the Commission's CER work program[1], retailers, in their capacity as the primary financially responsible market participant, face an incentive to mitigate risk where they can, including by offloading risk to unknowing consumers wherever possible – for instance by letting them remain on high-priced, inferior retail offers.

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[1] See JEC submissions to AEMC Accelerating smart meter deployment draft determination, AEMC Unlocking CER benefits through flexible trading draft determination, AEMC Electricity pricing for a consumer-driven future consultation paper.

This fundamental misalignment between the commercial incentives of retailers and the interests of consumers is not an aberration due to the behaviour of 'bad actors' but a feature of the system enabled by the market's existing rules and regulations. Consideration of the appropriate future structure to most effectively and efficiently enable the use of data to promote consumer interest, must be grounded in a realistic assessment of the current framework, and where its flaws underpin observed consumer actions and outcomes.

Appropriately contextualising the role of alternative devices

Under certain circumstances alternative devices may deliver a better value real-time data service to some consumers. These consumers typically already have CER and rely on in-built metering capabilities or a secondary meter to provide access to real-time data. However, consideration of what may be an equivalent (or even superior) alternative for any one individual, is not a meaningful basis for establishing an efficient framework capable of working equitably and delivering the best outcomes for all consumers.

Our concern is not so much with any potential inefficiency associated with providing these individual consumers access to real-time data through their primary meter, as with ensuring that consumers that could otherwise benefit[2] from real-time data have a fair and accessible pathway to do so.

Staged implementation as proposed promises to eventually realise such a state but substantially limits who can derive value from real-time data in the intervening 15-year transition period. The proposed staged implementation risks producing a one-size-fits-none framework where the consumers who stand to benefit directly from real-time data are (to some extent) already able to do so, while those for whom the value of real-time data hinges on broader uptake remain locked out, with the wider benefits for all less fully realised.

The decision to assess the value of real-time data on an individual basis rather than from a system-wide perspective unduly delays the realisation of benefits of real-time data for consumers with and without CER. The universal provision of real-time data would accelerate the delivery of new products and services that use data to support consumers with their energy decisions. Importantly, it would help enable the kinds of orchestration and systemic demand flexibility which are currently being considered as critical to the energy transition.

We strongly recommend a substantially curtailed transition period, where any transition period is deemed necessary. The Commission should set the shortest possible timeframe for the transition to universal access to real-time data, with stronger incentives for real-time data to be made available in advance, and more robust measures to inform and protect consumers during the transition period.

In any case, the Commission should transparently assess the costs and benefits of shorter transition timeframes and work with industry to ensure all future meters can provide local access to real-time data at the earliest possible juncture. In addition, any access framework for real-time data access must be accompanied by provisions to support greater competition in the provision

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2 These benefits may be contingent on economies of scale, particularly as concerns consumers that do not have CER.

of real-time data products and services. We outline our concerns with how competition is managed under the proposed framework in Section 8.

3. All meter data is the consumers to control

The Commission's proposal to limit the definition of real-time data to three data points will produce a dangerous and unacceptable gap between the data created by the meter (currently determined at the discretion of the MSP) and the data over which consumers have a right of access and control.

The Paper states the proposed data points of voltage, current, and phase angle 'are necessary and sufficient values to deliver the benefits of real-time data for consumers' and that 'a requirement to deliver a broader range of data could impose significant and unnecessary costs on access to the data without a clear benefit to consumers.'

Our central concern is that the proposed approach does not recognise to whom metering data belongs and curtails the explicit consumer right to data, while leaving the MSPs scope to create, collect, and utilise additional data unconstrained.

The absence of a consumer right to control (or at minimum oversee) how *all* data captured by their meter is used limits the scope of benefits consumers capture from smart meters. In our previous submission we outlined how such data arrangements could be improved to ensure defined market participants have access to the data they need to promote the safe, efficient, and reliable operation of the energy system[3].

Metering data fundamentally belongs to the consumer. Consumers pay for the meter and the data relates to their usage behaviour. Further, they cannot avoid using the meter and creating the data. As such, the beneficiary (and controlling agent) of said data must be the consumer, whether or not they choose to realise this benefit. Failure to make this principle explicit will lead to a contested property right and inherent incentive for MSPs to build capabilities into the meter to capture data over which the consumer has no oversight, no control, and no right.

> *The example of medical records is a useful explanatory tool – a patients' visit to a doctor creates data that has great potential value to a range of actors, but it cannot be provided or utilised without the permission of the patient, or for purposes designated by the doctor acting for the patient. In any case, the doctor (or anyone creating records on their behalf) cannot use or on sell any part of those records simply because they were involved in their creation or management.*

The extent to which meters are already capable of collecting data beyond that proposed to be made available indicates that relevant commercial parties (i.e. MSPs and retailers) see significant value in data points beyond voltage, current, and phase angle. At present, it is unclear how consumers or third parties could negotiate access to such data should they wish to do so.

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3 See JEC Submission to AEMC Real-time data for consumers consultation paper, pp. 6-7.

Consumers are therefore paying for a capability over which they have limited (or no) agency. If the consumers data access is to be constrained, then MSPs and retailers should also be constrained in the capability for data capture they build into metering. Alternatively (and preferably), the Commission should be unequivocal in asserting that whatever data a meter captures, is the consumers to control to whatever degree of access the framework facilitates. That is, the consumers agency should only be constrained by what is practically accessible from their meter, not by what is specified in the rules.

The Commission suggests any 'additional' data to that proposed in the Paper is protected under the consumer data right (CDR). Given additional data is already being collected, and the CDR is already in place and not providing any such protection, we are not confident that this would be the case without additional measures.

Even if the CDR does afford such protections, we are concerned the proposed real-time data framework, which maintains MSPs' exclusive control of smart meter functionality and allows them to develop services on the back of the data captured by meters (that is, to use the data without the consumers express permission as required under the CDR), will erode benefits flowing to consumers and redirect them to MSPs and retailers.

Definition of data

We welcome the Commission's proposal to define real-time data as data 'recorded every second and delivered within a second'. This definition provides the foundation necessary to ensure consumers could access the instantaneous data required to enable on-site CER orchestration and management services. Data provided at a lower frequency, such as the five-minute interval proposed by some stakeholders is not adequate and should be referred to as 'near real-time'.

To the extent possible, the definition of real-time data must be consistent with definitions of basic and advanced power quality data, metering data, energy data, and any other references to 'data' in the NER. Without such efforts, 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.

4. Real-time data costs must be regulated

We are very concerned with the proposal to allow MSPs and retailers to set prices for access to real-time data without any robust mechanism to ensure these prices are a fair or efficient reflection of costs.

Consumers should not face ongoing charges for access to real-time data. We welcome confirmation that once a real-time data stream is established, any subsequent access by a third party or future household resident should be free even if the retailer for the premises changes.

Cost schedules and information are insufficient

The proposal for the AER to annually 'publish the price of accessing real-time data for each smart meter model, charged by each retailer to its customers, and by each MSP to retailers' is impractical and incapable of delivering good outcomes for consumers. As noted earlier, the

commercial incentive for retailers to offload risk to unknowing consumers wherever possible, is likely to produce similar results for pricing access to real-time data as those pervading pricing in retail electricity markets today. That is, it is likely to result in most consumers paying more than necessary.

There are three key problems with relying on information and reporting to deliver fair and efficient data prices for consumers.

Consumer information is not sufficient to secure good outcomes

The proposal assumes all (or any) consumers are willing and/or able to engage with the energy market to a much greater degree than has ever been demonstrated. Good outcomes in the existing retail electricity market are predicated on the notion that consumers regularly churn providers despite consistent[4], demonstrable[5] evidence that most consumers will not engage in the behaviour required or assumed.

Overwhelmingly, consumers do not switch even when a materially better offer exists. In this context, the assumption that consumers will 'shop around' to obtain a fair and efficient price for access to real-time data (a small component of their energy services) is frankly fanciful.

Consumers assume all the risk of any failure to 'get a good deal' on data

Even were we to assume consumers could be willing and able to shop around for the best deal on data alone, the proposal inappropriately puts the onus on consumers to do so. Put differently, the proposal allows retailers or MSPs to charge inefficient or unfair prices and assumes that consumers, as rational, self-interested, and utility-maximising actors, will effectively manage this risk by identifying them and acting to access a 'better deal'.

The proposal to shift this risk onto consumers implicitly accepts that those who are or unwilling or otherwise unable to make such assessments should bear the poor outcomes which result. Considering the level of information and understanding required, and the nature of the services as a small component of the overall cost of their electricity service, this is both unreasonable and likely to raise the risk of poor outcomes for most consumers.

Data prices confuse or obscure scope for other service comparison

The proposal neglects the possibility that the provider with the most attractive price for real-time data is not necessarily the provider with the most attractive rates or offerings more broadly. The danger inherent in this is already seen with solar feed in tariffs (FiTs). For example, it is common for retailers to offer attractive FiT rates which obscure assessment of the fixed and usage charges of the offer. In many cases consumers can end up substantially worse off through their mistaken (if reasonable) focus on one aspect of their deal.

In the case of data, the proposal would place a substantial additional burden on the consumer to assess the interaction of data with multiple aspects of their services and potentially switch multiple times as part of an effort to access the best price for real-time data. This expectation is

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4 See AER State of the Energy Market 2024, pp. 280-281

5 See ACCC Inquiry into the National Electricity Market Report – December 2024

completely unrealistic and, again, likely to simply result in generally high prices for data services through ineffective competition.

All of this should serve as a reminder that the reality of energy markets does not reflect economic theory. As such, the Commission would do well to dispense with (or at minimum, carefully scrutinise) such assumptions and formulate decisions with a view to the actual experience of consumers. This is particularly relevant where there are years of established evidence of relevant consumer behaviour and the resulting outcomes, to draw on.

In place of a reporting requirement, we reiterate our strong recommendation that the Commission collaborate with the AER, industry, and other stakeholders to develop a cost schedule reflecting the expected expenses associated with enabling access to real-time data. This schedule should be updated periodically, with retailers and MSPs limited to charging regulated prices as set out therein.

If a regulated approach is not taken, then the Commission should consider alternative options which ensure the management of risks associated with the price of data access are placed with MSPs or retailers, rather than left to consumers.

5. Disclosure of existing meter capability is required

Under the proposed approach a consumer that wants to access their real-time data (or a service which requires it) has no way of knowing whether their smart meter supports this functionality. The Paper asserts that a proportion of installed meters have existing capability to provide a real-time data stream, while others will require upgrades to do so, which would be available at consumer expense. This presents significant problems that must be addressed through ensuring metering upgrades proceed within a determined timeframe, and/or providing more transparent and consistent consumer information regarding the capability of their meter.

As proposed, should the MSP assert they need to modify or replace the meter to enable data functionality, the consumer has no way of knowing whether the proposed upgrade is efficient or even necessary. Should the consumer proceed with the upgrade, they have no way of knowing whether the fee charged by their retailer is fair (even if it is necessary).

This information asymmetry shifts risks and costs onto consumers, which they are not well-placed to manage. As with energy pricing more broadly, consumers simply want confidence that, irrespective of their provider or ability to engage with the market, they are charged fair and efficient prices for the services and utility they are provided.

Retailers and MSPs could benefit from the information asymmetry in the proposed approach given their inherent incentive to charge consumers the highest price they are willing to bear. In theory, competition and the provision of more and better information would mitigate this risk. However, as we argue above, the preponderance of evidence and observations of consumer behaviour in navigating retail energy markets strongly suggests otherwise.

Consumers who already have a meter capable of providing real-time data should be notified of this capability (both directly, and as part of their regular billing and account information from their

retailer). Initially this would be much like the notification they receive when upgrading from a basic to a smart meter.

It would also be necessary for this information to be easily accessible on an ongoing basis. This could be accomplished by adding information to that required to be attached to the NMI of the connection point. This would ensure that any bill produced for that NMI would list that NMI as a real-time data enabled meter (or not). This would ensure consumers who are able to do so, can avail themselves of the services a real-time data stream enables, and can more easily procure other services which may require it. Alternatively, it would alert other consumers of the need for further upgrades to their meter to enable real-time data capability.

Data access and ongoing cost

The AER highlights[6] that providing automatic access to real-time data for all consumers is more equitable and effective in enabling the desired individual and collective benefits, compared to providing data on a 'by request' basis. This is because it would ensure all consumers are afforded the opportunities associated with its use, whilst not limiting access to only the more engaged consumers. The 'market creation' impact of automatic access should also be recognised as promoting the interests of consumers.

We strongly recommend measures to ensure *all* consumers receive automatic access and disagree with the proposal for an 'opt-in' model.

Should the AEMC proceed with an opt-in model we recommend that notification provisions ensure that consumers with capable meters are advised of this functionality and their option to receive this service free of charge. This should include ensuring that the 'real-time data enabled' notice is attached to relevant NMIs and required to be included on bills. This would help promote broader access to real-time data and the development of market for real-time data products and services.

The Paper states the ongoing costs to support access to real-time data 'are likely to be immaterial when spread across all consumers, and on balance the benefits of real-time data would outweigh these costs.' The ongoing cost of providing automatic access to consumers with real-time data capable meters is negligible given most costs associated with enabling this functionality stem from the need to retrofit or replace the meter. We agree there is no demonstrated need to enable ongoing costs to be recovered from consumers, and that automatic provision to all consumers would better align with the vision underpinning the CER work program.

6. CDR must be used to manage third-party data access

The JEC consider there to be no reasonable justification for creating an alternative pathway to manage third party access to real-time data and strongly disagree with much of the reasoning presented in the Paper.

The CDR is a consistent data management and protection framework. It was developed and is being implemented through extensive consultation and with detailed consideration of the full

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6 See AER Submission to AEMC Real-time data for consumers consultation paper, p. 2.

range of consumer rights and protections issues and mechanisms. Notwithstanding any flaws it has, it is understood to be the default framework for managing consumers rights to access and authorise the use of their data. It is already applied to historic energy data and is in the process of ongoing implementation and expansion.

Extending the CDR to include real-time data is the only reasonable and rational approach. Doing so would avoid duplication of data access frameworks, provide for robust and consistent data privacy and security protections, and enable effective consent management (and withdrawal). It would also ensure that ongoing developments and reforms to CDR are consistently applied to real-time data, without requiring complex consideration of changes to energy frameworks.

We do not agree with claims expressed in the Paper that doing so is not feasible because it would require amending the CDR framework to include MSPs as designated data holders. We do agree that consistently applying the CDR to real-time data will involve significant changes to existing arrangements and some complications. However, this is not sufficient or appropriate justification to pursue an option that is demonstrably not in the consumer interest.

The proposal to create a separate framework to manage access and use of real-time data undermines the value of the CDR and produces unnecessary duplication and ongoing costs and complications for consumers. At the same time, given the direction of this process we are seriously concerned that consumers real-time data will be inadequately protected and controlled, and will be subject to weaker and less effective protections than is applied to their historical metering data.

It is both inefficient and contrary to the consumer interest to have discrete (inconsistent and unequal) frameworks and access arrangements for real-time and historical metering data. We maintain our view that the CDR should be utilised to ensure it fulfils its purpose as the data sharing interface between consumers and third parties. Carving real-time data out of the CDR diminishes its usefulness and fragments consumer protections.

The Paper proposes third parties secure consumer consent to access their real-time data through either a retailer-centred or MSP-centred approach – the key difference between the two approaches being the party that is responsible for verifying consumer consent.

Under no circumstances should an MSP-centred approach be pursued. To do so would place consent control and verification responsibility (and the inherent consumer protection duties) in the hands of an unregulated party with which consumers have no existing relationship and no scope for direct legal redress. This pathway adds unnecessary complexity to the consumer experience as it requires them to manage relationships with multiple parties with which they already have low trust, or no relationship at all.

We strongly disagree with the assessment that a retailer-centred pathway is unnecessarily onerous or inefficient. Retailers are the party responsible for managing the interface between consumers and the energy system. They have been designated the responsible party for consumers historic data and are responsible for designating the MSP to manage the metering and data services required to undertake that role.

Creation of the metering service provider roles was undertaken in a way that clearly intended to make those roles subordinate to the retailer, in effect to act as a 'contractor' to the retailer. As such it is the responsibility of the retailer to ensure their relationships with the MSPs enable them to undertake the roles they are required to perform to manage their relationship with the consumer. This includes effective systems to collect, access, and authorise the use of data by the consumers in compliance with requirements under the CDR (and any energy specific data rules). The responsibility to verify consent falls squarely within their remit.

We strongly disagree with leaving the form of consent to the discretion of third parties. Form of consent should be consistent with that required under the CDR framework, including provisions and limitations on what can be consented to, for how long, and how consent can be withdrawn. Management of third party access through the CDR would be the most efficient and consistent means of ensuring this.

Should the Commission decide to manage third party access to real-time data outside the CDR we strongly recommend accrediting third parties with AEMO. Accreditation would help support compliance with relevant obligations around safety, privacy, and cybersecurity associated with access of real-time data. Under this approach, the Commission should adopt consent provisions and protections which are consistent with (or more robust than) the CDR.

Regardless of the approach taken by the Commission, all MSPs must be required to become members of jurisdictional Ombudsman schemes to ensure they are subject to consistent external dispute resolution and consumer redress.

7. DNSP access to real-time data must be supported

The JEC considers DNSP access to real-time data a relevant consideration in this rule-change and consider the proposals for free DNSP data access to be insufficient to promote and protect the consumer interest.

The Paper does not propose giving DNSPs a separate right to real-time data. Instead, it proposes DNSPs be required to negotiate access with MSPs on commercial terms or seek consumer authorisation as a third party. DNSPs will soon be afforded free access to basic power quality data which provides visibility of voltage, current, and phase angle at a once daily frequency. We disagree with the Commission's view that basic power quality data is sufficient for existing network use cases.

We do not support the Commissions' proposal and are concerned it discounts the legitimate safety, reliability, and efficient utilisation benefits flowing to consumers from DNSP visibility of real-time data. We are deeply concerned this proposal sets a dangerous precedent that MSPs are justified in charging DNSPs for access to data that is not theirs to sell.

Again, we reiterate that all data derived from the meter belongs to the consumer. MSPs have a right to access and provide data to retailers to enable retailers to fulfil their designated functions for consumers (i.e. the defined service for which MSPs are contracted). However, it is not legitimate or acceptable for MSPs to utilise or extract rents for access to consumers data without the consumer's express consent. DNSPs have, like retailers, a legitimate purpose for a range of real-time data and should be designated to receive it, freely, in order to undertake the efficient

operation of their networks in the interests of consumers. DNSP's already dedicate significant expenditure to acquiring metering data from MSPs resulting in consumers paying twice for the privilege of having their data sold back to them[7]. Proceeding as proposed would entrench this and curtail or impede the promotion of the consumer interest.

Given that attention is (rightly) being paid to implementing greater transparency of DNSP's data about their networks (such as voltage, constraints, utilisation, locational capacity), in order to facilitate more efficient third-party access and network utilisation, it is contradictory and unreasonable to implement systems which will make that both more expensive and less possible.

It is unreasonable that MSPs are afforded visibility of metering data that is not related to their designated function simply because of their relationship with the meter (particularly when this has no tangible benefit to consumers), while DNSPs who are positioned to make use of this data to promote the safe, efficient, and reliable operation of the system are required to pay for it.

We regard it as irrational to require the entity (DNSPs) with a regulated obligation to act in the consumer interest, to be subject to unfettered commercial relationships with MSP's, who have little or no regulatory oversight, and no regulatory direction to promote the interest of consumers. We do not consider this to have been the intent of creating the role of metering parties, and if it were, it could never have been reasonably presented as promoting the consumer interest.

We note that DNSP resumption of responsibility for metering would provide a more consistent and robust incentive to accelerate the transition to real-time data capable meters given the value this data holds for networks, as well as consumers. No such incentive currently exists with retailers and MSPs as the parties responsible for providing metering services.

Indeed, as this process has shown, for these parties this capability is seen merely as an inconvenience or unnecessary cost. While having little expectation of it progressing, we maintain our strong support for reevaluating the fundamental industry structure underpinning metering services and data provision, to improve long term outcomes for consumers.

8. The proposed approach is anti-competitive

We consider the proposed framework entrenches fundamentally anti-competitive arrangements which do not promote the best interests of consumers.

The proposed framework maintains arrangements providing MSPs with unparalleled visibility of real-time data and exclusive control of smart meter functionality channels, with non-transparent scope to recover associated costs from consumers (and any other commercial services they may derive from their role). The Paper concedes these are genuine sources of competitive advantage but suggests they would be eroded 'because under our approach, after 15 years from the commencement of the rule, third parties would access real-time data free of charge.'

This justification is not grounded in any reasonable assessment of the current and likely future state of the market for data and the interaction of MSPs with DNSPs and other service providers.

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7 See JEC Submission to AEMC Real-time data for consumers consultation paper, pp. 6-7.

The key competition concern is not only that third parties are at a disadvantage because they lack free universal access to real-time data, but that MSPs have an unfair advantage due their exclusive ability to build functionality into the meter and control CER integrated with and attached to the meter. That is, their actions can create physical as well as financial barriers to effective competition.

Put differently, the issue is not only that third parties lack means to obtain visibility of real-time data or replicate in-built smart meter functionality, because it may be possible to install parallel devices which can do so. The issue is that MSPs get preferential (and lower cost) access to this visibility and functionality by virtue of their privileged (and unrelated) position and ownership of the relationship between the consumer and the meter. We do not consider that creation of MSP roles to undertake metering services was ever intended to create an unfettered platform for commercial advantage, which the proposed framework would allow and enable.

The Paper also overlooks that access to real-time data only represents one cost for a third party. In contrast, the MSP can leverage bespoke control software, internal relays to control CER, and meter communications to/from the site for their commercial purposes at no additional cost. MSPs also benefit from their ability to spread their CER control costs across all consumers whereas a third party incurs these costs on a per-site basis. Most importantly, MSPs benefit from the fact they can make the decisions to implement capability according to their own terms, with no transparency over how their costs are incurred or recovered from the consumer.

Third party providers cannot access the evolving market that MSPs are creating for themselves using the on-market metering installation that only they can access. As such, the proposed 15-year transition timeframe is less likely to level the playing field than provide MSPs with a guaranteed grace period in which to entrench their position and a strong incentive to maximise the value they extract to capitalise on their inherent advantages in the provision of CER services during that period. This is unequivocally not in the interest of consumers under any reasonable assessment.

These competition concerns should be addressed through changes to the approach:

- limiting the functionality MSPs are permitted to build into the meter,
- ensuring scope for regulated third-party access to meter functionality, and/or
- regulating MSPs and ring-fencing their CER services from the rest of their MSP business.

Where the current approach is retained, we strongly recommend measures to ensure regulated third-party access to meter functionality, combined with closer regulation of MSPs, including measures to restrict or ringfence their metering operations (ostensibly monopoly activities) from any competitive CER services they may provide.

The Paper dismisses all these options suggesting they would respectively prevent the market from unlocking the full value of CER, increase cyber security and consumer privacy risk, and increase costs to consumers. We disagree in the strongest terms. In our view, the Paper rejects these alternatives without giving due consideration to the disadvantages associated with maintaining the existing market structure without sufficient measures to reform it.

We strongly recommend the Commission give further consideration to other options for addressing the concerns outlined above.

9. Continued engagement

We welcome the opportunity to meet with the AEMC project team and other stakeholders to discuss these issues in more depth. Please contact Jan Kucic-Riker at jkucicriker@jec.org.au regarding any further follow-up.