

# Auditors Panel Handbook

Retailer Reliability Obligation

August 2024

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## Contents

<b>1</b>	<b>Introduction .....</b>	<b>1</b>
<b>2</b>	<b>Appointment to the Auditors Panel.....</b>	<b>3</b>
2.1	Criteria for appointment .....	3
2.2	Applications for Auditors Panel Membership.....	3
2.3	Submitting an application.....	6
2.4	Processing applications .....	6
2.5	Date from which appointment takes effect .....	6
<b>3</b>	<b>Duties of an Independent Auditor .....</b>	<b>8</b>
3.1	Scope of work undertaken by an Independent Auditor .....	8
3.2	Use of historical performance data when assessing and approving a liable entity's bespoke firmness methodology .....	9
<b>4</b>	<b>Information flows between Independent Auditors and the AER .....</b>	<b>11</b>
4.1	General information to be provided to the AER.....	11
4.2	Information and updates provided to Independent Auditors by the AER .....	12
<b>5</b>	<b>Conflicts of Interest.....</b>	<b>13</b>
5.1	Types of conflict.....	13
5.2	Principles of conflict of interest management.....	14
5.3	Management of conflicts .....	14
<b>6</b>	<b>Withdrawal from the Auditors Panel .....</b>	<b>16</b>
6.1	Permanent withdrawal .....	16
6.2	Temporary withdrawal .....	16
<b>7</b>	<b>Auditors Panel Membership .....</b>	<b>17</b>
7.1	Reviewing the composition of the Auditors Panel.....	17
7.2	Removal from the Auditors Panel .....	17

# 1 Introduction

The Retailer Reliability Obligation (RRO) requires liable entities (relevant Market Customers, Integrated Resource Providers and registered opt-in customers) to report their net contract position for a forecast reliability gap period to the AER.<sup>1</sup> Reports must be submitted in accordance with the National Electricity Rules (NER),<sup>2</sup> and lodged in accordance with, and in the form specified by, the [AER's Contracts and Firmness Guidelines](#) (Guidelines).<sup>3</sup>

Contracts contributing towards a net contract position are adjusted based on their relative 'firmness'.<sup>4</sup> Standard qualifying contracts are to be adjusted using a default firmness methodology, and non-standard qualifying contracts are to be adjusted using a bespoke firmness methodology developed by the liable entity.<sup>5</sup>

Liable entities are required to have all bespoke firmness methodologies and firmness factors, and their application in a net contract position report, approved by an Independent Auditor.<sup>6</sup> The NER require the AER to establish and maintain an Auditors Panel, from which a liable entity's Independent Auditor must be appointed.<sup>7</sup> The AER may add new members to the Auditors Panel or remove an Independent Auditor from the Auditors Panel at its discretion.<sup>8</sup>

Information about standard and non-standard qualifying contracts, the development and application of firmness methodologies, and the content of an Independent Auditor's report and approval for the purposes of net contract position reports are set out in the Guidelines.

This Handbook specifies arrangements for appointments to, and the AER's oversight of, the Auditors Panel, including:<sup>9</sup>

- the requirements for an application to join the Auditors Panel;
- information that Independent Auditors should provide to the AER for the purposes of the AER's monitoring and oversight of the Auditors Panel;
- factors relevant to our review of the composition of the Auditors Panel, which we must complete at least every four years;
- factors that may be taken into account by the AER in considering whether to remove an Independent Auditor from the Auditors Panel;
- general principles for the identification and management of conflicts of interest; and

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<sup>1</sup> See National Electricity Law, ss. 14K(4)(b)(i) and 14P(1).

<sup>2</sup> NER, cl. 4A.E.6.

<sup>3</sup> See NER, cl. 4A.E.6(c)(2), and Interim Contracts and Firmness Guidelines, section 9 and appendices A to E.

<sup>4</sup> NER, cl. 4A.E.3(a).

<sup>5</sup> NER, cl. 4A.E.4.

<sup>6</sup> NER, cl. 4A.E.5(b).

<sup>7</sup> NER, cl. 4A.E.5(a), (b).

<sup>8</sup> NER, cl. 4A.E.5(d).

<sup>9</sup> NER, cl. 4A.E.5(d).

- processes for withdrawal or removal of an Independent Auditor from the Auditors Panel.

The current composition of the Auditors Panel can be found on the [AER's website](#).

Commercial contracts for engagement of Independent Auditors are between the Independent Auditor and the liable entity engaging them. The costs of engagement are borne by the liable entity.<sup>10</sup>

The Handbook supplements the Contracts and Firmness Guidelines (Guidelines). It is intended as a guide only and is not a substitute for the National Electricity Law (NEL), NER or the Guidelines. The AER cannot provide a definitive interpretation of the relevant legislation because that is the role of the Courts. We recommend that you obtain your own legal advice if you are unsure about specific aspects of the NEL or NER and how they may apply to your situation.

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<sup>10</sup> NER, cl. 4A.E.5(c).

## 2 Appointment to the Auditors Panel

### 2.1 Criteria for appointment

In establishing an Auditors Panel, the AER must have regard to:<sup>11</sup>

- the need for a person to have sufficient experience and expertise in energy derivatives and energy contracts to carry out the functions of an Independent Auditor;
- whether the person is an independent person;<sup>12</sup> and
- any other criteria set out in the Guidelines, which currently include:<sup>13</sup>
  - the person’s knowledge of the RRO and the Guidelines;
  - relevant qualifications and affiliations; and
  - written references citing relevant experience and expertise from industry peers, clients and professional bodies.

### 2.2 Applications for Auditors Panel Membership

Applicants should follow the guidance set out below in preparing an application to the AER to join the Auditors Panel.

Collection and disclosure of information received from applicants and their referees will be managed in accordance with the *ACCC and AER information policy: collection and disclosure of information* (ACCC and AER information policy).<sup>14</sup> Please note that the AER and ACCC may amend or replace any part of the information policy from time to time.

#### 2.2.1 Form and content of application

Applications must be submitted in writing, and in addressing the criteria for appointment must include at least the following information.

##### 2.2.1.1 Applicant details

Applications must include:

- name of applicant;
- current employer;
- position/role held at current employer;
- address; and
- contact details (telephone and email).

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<sup>11</sup> NER cl. 4A.E.5(a).

<sup>12</sup> As defined in Chapter 10 Glossary, NER.

<sup>13</sup> AER, Contracts and Firmness Guidelines, June 2021, section 6.1.

<sup>14</sup> ACCC and AER, *ACCC and AER information policy: collection and disclosure of information*, 4 June 2014. Access the document here: <https://www.aer.gov.au/publications/reports/corporate/acccaer-information-policy>.

Applications can be made by an individual or by a firm. Applications made by a firm must:

- nominate and provide details of each employee of the firm who will be involved in the provision of services as an Independent Auditor;
- specify the role each nominated employee will play in the provision of those services, including the individual(s) who will provide final approval as Independent Auditor; and
- include the information in sections 2.2.1.1 to 2.2.1.6 of the Handbook for each nominated employee. References under sections 2.2.1.6 can be provided for individuals and/or the team as a whole.

### **2.2.1.2 Experience and expertise**

Applicants (whether an individual or a firm) should demonstrate their level of experience and expertise in, and understanding of, each of the following areas:

- valuing, buying, selling or advising on energy derivatives and energy contracts;
- forecasting electricity demand and/or generation;
- electricity market operations;
- performing audits or equivalent quality assurance processes, particularly in relation to *liable entities* and/or involving energy derivatives and energy contracts; and
- any other relevant experience.

An application should set out relevant current and prior roles in each of the areas above, including without limitation:

- the length of experience in each of the areas above and currency of any qualifications;
- sufficient detail to provide the AER with an understanding of relevant work completed by the applicant; and
- the level of authority held by the applicant (e.g. whether the applicant was a team member, manager, or project leader).

Firm applicants may demonstrate that multiple individuals within the firm can collectively satisfy this criterion.

### **2.2.1.3 Independence**

Liable entities must appoint an Independent Auditor who is independent from the liable entity.<sup>15</sup> In establishing the Auditors Panel, the AER must have regard to whether the person is an 'Independent Person', which is a person who:

- is not a member, employee or member of staff of the AER or the AEMC;
- is not a director or employee of AEMO;
- is not a director or employee of, or partner in, a Registered Participant;
- does not have a direct or indirect financial interest (whether as shareholder, partner or other equity participant) in any Registered Participant or a related body corporate of any

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<sup>15</sup> NER cl. 4A.E.5(b).

Registered Participant, other than an interest of less than 0.1% of the net shareholders' funds of that entity (as determined at the date the relevant person is appointed to carry out a function under the NER); or

- is not a director or employee of a related body corporate of any Registered Participant.<sup>16</sup>

The AER will also consider potential or perceived conflicts of personal or professional interest arising from other work undertaken, or planned to be undertaken, by a prospective Independent Auditor for a liable entity.

Applications must be accompanied by a register disclosing:

- any liable entities for which the applicant is aware that it may not be independent from at the time of application; and
- any other actual, potential or perceived conflicts of interest that the applicant is aware of at the time of the application, and detail how these conflicts will be managed in auditing *liable entities*.

Please note that if the Independent Auditor's application is successful, any declared conflicts of interest will be publicly disclosed on the [Auditors Panel Conflict of Interest Register \(Register\)](#), available on the AER website.

Please see section 5 for more detail on the disclosure and management of conflicts of interest, and the kinds of information the AER expects from Independent Auditors and applicants when disclosing and proposing strategies to manage any conflicts of interest.

#### 2.2.1.4 Knowledge of RRO

Applicants must have knowledge and understanding of:

- the RRO, including Part 2A and Part 3, Division 1C of the National Electricity Law (NEL) and Chapter 4A of the NER; and
- the RRO Guidelines<sup>17</sup> including the Contracts and Firmness Guidelines.

An application must include:

- a statement confirming that the relevant provisions of the NEL and NER and RRO Guidelines, and in particular the Contracts and Firmness Guidelines, have been read and understood; and
- details of any other experience or training that would demonstrate knowledge, or the ability to rapidly acquire knowledge, of the RRO and RRO Guidelines.

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<sup>16</sup> Chapter 10 Glossary, NER.

<sup>17</sup> The RRO Guidelines consist of [AER Opt-in Guidelines](#) under rule 4A.D.13, [Contracts and Firmness Guidelines](#) under rule 4A.E.8, [Forecasting Best Practice Guidelines](#) under rule 4A.B.5, [MLO Guidelines](#) under rule 4A.G.25, [Reliability Compliance Procedures and Guidelines](#) under the NEL and the [Reliability Instrument Guidelines](#) under rule 4A.C.12.



### **2.2.1.5 Relevant qualifications and affiliations**

The AER will consider any tertiary qualifications that in the AER's opinion are relevant to functions performed by an Independent Auditor under the Guidelines. Applications should include details of relevant:

- Bachelor's, Master's or Doctoral degree (or equivalent) from a university or equivalent institution of higher learning; and
- professional accreditations, certifications or memberships.

### **2.2.1.6 References**

An application must be accompanied by at least two written and signed references verifying the expertise and experience submitted in the application. Referees can include industry peers, past clients and professional bodies.

The AER may also choose to contact the provider of a written reference to seek additional information about the applicant.

For each referee, the application must include:

- referee's name;
- relationship to applicant;
- contact details; and
- the applicant's and referee's consent for the AER to contact the referee directly.

## **2.3 Submitting an application**

Applications to join the Auditors Panel can be submitted at any time to [rro@aer.gov.au](mailto:rro@aer.gov.au). No application fees apply.

Applicants should direct any questions about the application process to [rro@aer.gov.au](mailto:rro@aer.gov.au). AER staff will endeavour to respond to any questions within five business days.

## **2.4 Processing applications**

The AER may contact the applicant or nominated referees to seek further information or documents required in order to assess the application.

The AER will endeavour to make its decision on an application within 30 business days of receipt of all required information.

## **2.5 Date from which appointment takes effect**

An appointment to the Auditors Panel will take effect from the date the applicant is notified of the AER's decision to add the Independent Auditor to the Auditors Panel.

Applicants will be notified of the AER's decision in writing, and the name and contact details of the Independent Auditor published on the AER website.

Independent Auditors and liable entities are reminded that:

- an Independent Auditor must be approved as a member of the Auditors Panel **before** commencing any engagement with a liable entity for the purposes of reviewing and approving a bespoke firmness methodology and firmness factor for a liable entity's net contract position report under the NER; and
- an Independent Auditor's report, if required under the NER, must be submitted with a liable entity's net contract position report on or before the relevant contract reporting day.

An Independent Auditor's report will not be accepted on a provisional basis while the auditor's application for appointment to the Auditors Panel remains open.

Reliance by a liable entity on an auditor who is not on the Auditors Panel, including one whose application has been submitted but not yet approved by the AER, will not meet the liable entity's reporting requirements under the NEL, NER and Guidelines.

## 3 Duties of an Independent Auditor

### 3.1 Scope of work undertaken by an Independent Auditor

Independent Auditors have the sole duty of approving any bespoke firmness methodology and firmness factor which a liable entity, who contracts their services, uses in relation to a non-standard qualifying contract. Independent Auditors must assess proposed methodologies and provide their approval in accordance with the firmness principles of the Guidelines. Within the Guidelines, Independent Auditors will find:

- definitions of key RRO terms (section 2, pages 9 to 13);
- guidance on the principles for firmness adjustment (section 3, pages 14 to 18)
- guidance for developing bespoke firmness methodologies (section 5, pages 28 to 48); and
- required form and content of the Independent Auditors report (section 9.1.3, pages 58 to 59).

In carrying out this work in accordance with the NER, Independent Auditors do not (and should not be asked to) provide financial advice, or undertake financial services, for liable entities. There is no expectation that Independent Auditors hold any licence that would qualify them to provide financial services in order to carry out their duties as an Independent Auditor. The Independent Auditor's obligation is to decide whether to approve methodologies for regulatory purposes, not advise participants on how they should structure their contracts or other arrangements to maximise financial returns or minimise regulatory exposure.

Independent Auditors are under no obligation under the RRO framework to provide services to a liable entity if requested. Independent Auditors are therefore free to decline a request from a liable entity to assess and approve their bespoke firmness factors and methodologies.

However, it is the AER's expectation that the Independent Auditor provides a response to the request to the liable entity in a timely manner, whether positive or negative. This will enable the liable entity to allocate appropriate time for the approval of their bespoke methodology, and the timely submission of their net contract position report to the AER.

#### 3.1.1 Independent auditors should not develop bespoke firmness methodologies for or on behalf of liable entities

Liable entities may seek external assistance in developing bespoke firmness methodologies and factors. This should not involve the Independent Auditor who will approve them, as it would compromise the independence of the Independent Auditor. It is, however, open to the Independent Auditor to make necessary corrections to those factors and methodologies before approving them.

The AER expects Independent Auditors to maintain sufficient records to verify and substantiate any completed assessments and approvals of any bespoke firmness methodologies or factors relied upon by a liable entity in relation to a non-standard qualifying contract, and provide those records to the AER on request.

To assist the AER in assessing the validity of the bespoke methodologies and factors, liable entities should be prepared to provide information to the AER about the process for the development and approval of the relevant firmness methodologies and factors. Section 5 of the AER's [Reliability Compliance Procedures and Guidelines](#) sets out what information the AER may seek from a liable entity in this regard.

In addition to this, the AER may also carry out (or require a regulated entity to carry out) an audit of a regulated entity's activities relating to its compliance with the Guidelines.<sup>18</sup> Section 6 of the Guidelines provides more information about the purpose and form of these compliance audits.

### 3.2 Use of historical performance data when assessing and approving a liable entity's bespoke firmness methodology

As the RRO is focused on reliability during the forecast reliability gap period, historical data relevant to the forecast reliability gap period (time of year and trading intervals) should be used when accounting for the firmness of the relevant generation or demand response. Section 5.3.2 of the Guidelines provides examples in relation to solar and wind Power Purchase Agreements. For example, for solar power the Guidelines state:

*Historical information relevant to the time of day of each trading interval in the forecast reliability gap period should be used. For a gap trading interval after sunset, a firmness of zero should be used. For gap trading intervals in daylight hours, a historical sample should be used. This should include an average of historical generation data for the relevant trading intervals and the relevant time of year. For example, if the gap trading interval is for 18.30 on 31 January, the liable entity may consider historical data for 18.30 for days around 31 January (e.g. they may consider data from 21 January to 10 February to be indicative and provide a large enough sample). If available, we consider at least three years of historical data should be used.*

This example indicates the Independent Auditor may consider historical generation data for days around or during the forecast reliability gap period in relation to the relevant trading intervals (including both type of day (i.e. weekday or weekend) and time of day). The sample does not need to be restricted to historical observations where demand is the same as (or higher than) AEMO's one-in-two year peak demand forecast for the forecast reliability gap period.

Overall, the Independent Auditor must consider whether the proposed bespoke firmness methodology accurately represents the volume of electricity that is likely to be available during the forecast reliability gap period. This includes, for example, forming a view in relation to assessing the historical performance of other types of assets than those set out in the Guidelines, but the AER considers that a similar approach should be taken in terms of

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<sup>18</sup> Section 18ZA(2) of the NEL defines 'regulated entity' as a liable entity and any other person prescribed by the NER.

examining similar types of day and times of day, and informed by other parts of the Guidelines.

## 4 Information flows between Independent Auditors and the AER

### 4.1 General information to be provided to the AER

On appointment to the Auditors Panel, it is the responsibility of Independent Auditors to:

- provide and keep up to date:
  - contact details for use by the AER, for the purposes of communications and of monitoring the composition and performance of the Auditors Panel; and
  - contact details for use by liable entities wishing to contact the Independent Auditor with a view to engagement (which will be published on the AER's website);
- promptly inform the AER of any material change to information relied upon by the AER in appointing an Independent Auditor to the Auditors Panel (e.g. a change to employment);
- if an application was made by a firm, advise the AER of any additions to, or loss of, specified personnel from the team nominated and relied upon by the AER in approving the application;
- advise the AER of any conflict of interest or change to the Independent Auditor's status as an independent person<sup>19</sup> to be declared in the Register. The AER will then update the [Register](#) on the AER website, and publish a communication noting that the Register has been updated. See section 5 for more information on disclosing conflicts of interest to the AER;
- maintain—for five years from the end of the year in which the Independent Auditor's report for a Net Contract Report was submitted to the AER—records sufficient to verify and substantiate any completed assessments and approvals of a bespoke firmness methodology or firmness factor relied upon by a liable entity in a Net Contract Position Report, and provide those records on request by the AER or in cooperation with a compliance audit required or carried out by the AER under section 18ZE or 18ZF of the NEL. These records should provide an understanding of how the audit was conducted, what procedures were performed and how the conclusion was reached, including, at a minimum:
  - summary and record of procedures undertaken;
  - data used to verify the firmness methodology;
  - reasons for reaching audit opinion;
  - evidence of testing calculations, assumptions and inputs of the firmness methodology and firmness factor;
  - any relevant additional detailed information of the procedures performed; and
  - errors and corrections made to firmness methodologies and calculations of firmness.

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<sup>19</sup> As defined in Chapter 10 Glossary, NER.

## **4.2 Information and updates provided to Independent Auditors by the AER**

The AER will provide updates to Independent Auditors of key upcoming events relating to the creation of RRO instruments, and relevant reporting deadlines. These updates will be sent in the form of emails to the Independent Auditors' preferred email address.

In particular, the AER will promptly notify Independent Auditors if:

- either a state or territory minister, or the AER (following an instrument request from AEMO) has made a T-3 reliability instrument;
- the AER has received a request to make a T-1 reliability instrument from AEMO. The AER will also ask Independent Auditors to confirm their availability in this email; or
- the AER has made a T-1 reliability instrument (which will set the reporting deadlines to which liable entities must adhere).

In addition to these emails, we will also provide ad hoc updates as and when they are required, and respond to any specific queries raised by Independent Auditors.

## 5 Conflicts of Interest

This section outlines the framework we expect Independent Auditors and Auditors Panel applicants to use when engaging with conflicts of interest that may impact their Auditors Panel work.

A conflict of interest occurs when an individual or organisation has multiple interests or is perceived to have multiple interests, one of which is potentially contrary to the motivation to act for another. In other words, a conflict of interest is a set of circumstances that creates a risk that professional judgement or actions regarding a primary interest will be, or could be perceived to be, unduly influenced by another interest.

Importantly, the existence of a conflict of interest does not mean that some sort of improper conduct has occurred. A conflict of interest can be disclosed and managed to ensure no impropriety in many cases.

### 5.1 Types of conflict

As discussed in section 2.2.1.3 above, clause 4A.E.5(a)(2) of the NER states that the AER must have regard to whether the person applying to join the Auditors Panel is an independent person, as defined in Chapter 10 of the NER.

In addition to this criterion, Independent Auditors and applicants should also be aware more broadly that conflicts of interest can occur in relation to financial, political and personal interests held by the Independent Auditor. In relation to financial interests, a potential conflict of interest may arise regardless of whether payment is actually provided to the Independent Auditor or their employer.

Conflicts of interest fall into three categories.

- An actual conflict of interest arises if there is currently a real or substantial possibility of a conflict of interest. An example may be if an Independent Auditor is also a director of a liable entity, and enters into an engagement with the same liable entity.
- A potential conflict of interest arises if there is a risk of a future conflict of interest occurring, even though currently no such conflict of interest exists.
- A perceived conflict of interest arises if there is no actual or potential conflict, but a reasonable person may perceive that a conflict exists.

The AER recognises that Independent Auditors often work within the National Electricity Market in a capacity outside of the Auditors Panel, such as consulting. As such, there may be circumstances where these separate engagements may create actual, potential or perceived conflicts with the objectives of an independent audit.

The AER's aim is to strike a balance and ensure any such conflicts of interest, if they arise, are appropriately managed through adequate systems and processes. The AER also does not intend to apply a one-size-fits-all approach to conflict of interest management, noting that the nature and circumstances of the conflict of interest will inform what the best strategy for conflict management will be.



## 5.2 Principles of conflict of interest management

Independent Auditors and applicants should have regard to the following principles when managing conflicts of interest in their capacity as Independent Auditors.

**Principle 1: Actual conflict.** An Independent Auditor cannot have commitments, undertake engagements or hold personal material interests that directly influence the manner in which an audit is undertaken for any liable entities that seek the services of that Independent Auditor. When such a conflict appears to have arisen, the AER will consider the nature of the conflict and any conflict management processes proposed by the Independent Auditor. If, at the end of the process, the AER is satisfied that the conflict can be reasonably managed by the Independent Auditor, then the AER will update the Register and list the entities affected by the conflict.

**Principle 2: Management.** Where appropriate, conflicts of interest may be able to be managed.

**Principle 3: Transparency.** All conflicts of interest should be reported.

**Principle 4: Accountability.** An Independent Auditor or applicant will be personally accountable for disclosing conflicts of interest to the AER.

## 5.3 Management of conflicts

The AER considers that conflicts of interest can be classified and managed in the following ways:

- No potential, perceived or actual conflict – No action needs to be taken. However, the Independent Auditor or applicant should keep the AER informed as developments occur which may result in a potential, perceived or actual conflict of interest.
- Potential, perceived or actual conflict which can be managed – the Independent Auditor or applicant should advise the AER and propose a management strategy. This may include public disclosure on the [Register](#) and/or exclusion from engagements either with certain liable entities or for a certain period of time.
- Potential, perceived or actual conflict which, in the Independent Auditor's or AER's view, cannot be appropriately managed – the Independent Auditor or applicant would be conflicted, and may also no longer be an independent person. The AER will not appoint an applicant with such a conflict, and will need to assess whether to remove an existing Independent Auditor in accordance with the process outlined in section 7.2 below.

Most importantly, whatever the nature of the conflict, it should be promptly reported to the AER for consideration of the applicant's suitability, or Independent Auditor's ongoing suitability, for appointment on the Auditors Panel. When disclosing a conflict of interest to the AER, Independent Auditors and applicants must provide the following information:

- the Independent Auditor(s) or applicant(s) affected;
- a description of the conflict;
- the duration of the conflict;

- the liable entity or entities affected by the conflict; and
- the proposed management strategy to be implemented by the Independent Auditor or applicant.

Independent Auditors and applicants should clearly identify any information over which they wish to claim confidentiality. For further information regarding the use and disclosure of information provided to the AER, see the ACCC and AER information policy.<sup>20</sup>

The AER may consult with the Independent Auditor or applicant for further information on the conflict, proposed management strategy or any confidentiality claims. The AER's objective for this process is to ensure that all changes to independent person status and/or conflicts of interest are managed appropriately and as transparently as possible. The AER will approach each circumstance on a case-by-case basis, and engage with the Independent Auditor or applicant as needed.

If the AER is satisfied that the conflict can be managed appropriately, then it will update the Register subject to:

- whether, for an applicant or Independent Auditor, the AER decides to appoint them or maintain their appointment respectively; and
- any considerations around disclosure of confidential information, as informed by the ACCC and AER information policy.

In any case, the AER expects the Independent Auditor to implement the relevant management strategy and advise the AER if the circumstances of the conflict change.

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<sup>20</sup> ACCC and AER, *ACCC and AER information policy: collection and disclosure of information*, 4 June 2014. Access the document here: <https://www.aer.gov.au/publications/reports/corporate/acccaer-information-policy>.

## 6 Withdrawal from the Auditors Panel

An Independent Auditor may withdraw from the Auditors Panel at any time.

### 6.1 Permanent withdrawal

It is the responsibility of the Independent Auditor to advise all liable entities with whom it has a current engagement that it is no longer a member of the Auditors Panel. The Independent Auditor must also advise such liable entities that any approvals of bespoke firmness methodologies or resultant firmness factors for the purposes of any net contract position report, that are given after the Independent Auditor was no longer on the Auditors Panel, will not be accepted by the AER in satisfaction of the NER.

The Independent Auditor must confirm in writing to the AER that it has done so, attaching a list of all liable entities that have been so advised. Upon receipt of this confirmation, the AER will endeavour to remove the Independent Auditor from the Auditors Panel page on the AER website within five business days.

The AER strongly advises both Independent Auditors and liable entities to have arrangements in place to manage an Independent Auditor's potential withdrawal from the Auditors Panel while an engagement is on foot, to minimise any resultant compliance risk to the liable entity if a new Independent Auditor needs to be engaged prior to submission of a Net Contract Position Report.

An Independent Auditor that has withdrawn from the Auditors Panel must still maintain—for five years from the end of the year in which an Independent Auditor's report was submitted in support of a liable entity's Net Contract Report—records as outlined in section 4 above. Former members of the Auditors Panel may still be called on to provide those records on request by the AER or in cooperation with a compliance audit under section 18ZE or 18ZF of the NEL.

### 6.2 Temporary withdrawal

Independent Auditors may also be, or expect to be, temporarily unavailable to undertake the duties of an Independent Auditor. If this is the case, the AER requests the Independent Auditor notify the AER in writing as soon as practicable. When notifying the AER, the Independent Auditor should indicate the expected length of the absence.

Upon receipt of this notification, the AER will endeavour to update the Auditors Panel page on the AER website to reflect the period of absence for the relevant Independent Auditor within ten business days. Following expiration of the period of absence, the AER will contact the Independent Auditor to seek an update on their availability, and either edit or remove reference to the period of absence on the website as relevant.

## 7 Auditors Panel Membership

The AER may review the composition of the Auditors Panel at any time, and must do so at least every four years.<sup>21</sup>

### 7.1 Reviewing the composition of the Auditors Panel

In reviewing the composition of the Auditors Panel, the AER may have regard to:

- the criteria for appointment of an Independent Auditor to the Auditors Panel under the NEL and the Contracts and Firmness Guidelines;
- the depth and diversity of Auditors Panel membership, and its ongoing suitability (e.g. following a change to the NEL or NEL governing the RRO);
- feedback (including but not limited to complaints) received from liable entities or other members of the Auditors Panel in relation to the performance of the Auditors Panel;
- whether amendments to the Auditors Panel Handbook would clarify or otherwise affect the requirements for suitability for Auditors Panel membership; and
- any other matters that the AER considers relevant to the ongoing composition of the Auditors Panel.

At the conclusion of any review of the composition of the Auditors Panel, the AER will advise members of the current Auditors Panel of any outcomes or recommendations arising out of the review.

### 7.2 Removal from the Auditors Panel

The AER may at any time remove an Independent Auditor from the Auditors Panel, at its discretion.<sup>22</sup> In assessing whether it may be appropriate to remove an Independent Auditor from the Auditors Panel, the AER may consider the following (without limitation):

- Whether information relied upon by the AER in appointing the Independent Auditor to the Auditors Panel (in an application or reference provided in support of that application) remains current, or was false or misleading in a material way.
- Whether the Independent Auditor has maintained the required knowledge and understanding of:
  - energy derivatives and energy contracts, including emerging products and contract models that may be relied upon by a liable entity under the Guidelines; and
  - the RRO, including Part 2A and Part 3, Division 1C of the NEL and Chapter 4A of the NEL, the Guidelines, and any subsequent amendments to the NEL, NEL or Guidelines relevant to the role of the Independent Auditor.
- Whether a report provided by the Independent Auditor to a liable entity for the purposes of its Net Contract Position Report was fraudulent, or included manifest error(s).

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<sup>21</sup> NEL, cl. 4A.E.5(d).

<sup>22</sup> NEL, cl. 4A.E.5(d).

- Whether reports provided by the Independent Auditor have adequately demonstrated consideration of, and adherence to requirements under, the Guidelines.
- Whether the Independent Auditor has, through its own acts or omissions, failed to provide a compliant Independent Auditors report to a liable entity in time for its inclusion in a Net Contract Position Report.
- Whether the Independent Auditor has knowingly accepted or maintained appointments by a liable entity in respect of which:
  - it is not (or is no longer) an independent person for the purposes of the NER, or
  - it has an undisclosed conflict of interest that does not fall within the definition of ‘independent person’

such that the objectivity of an Independent Auditors report submitted to the AER by the liable entity may be compromised. Please see section 5 for more detail on conflicts of interest.

- Feedback (including but not limited to complaints) received from liable entities or other members of the Auditors Panel in relation to the conduct or performance of the Independent Auditor.
- Whether the Independent Auditor has provided the information required in section 4, above.
- Any other conduct that the AER considers inconsistent with the requirements of an Independent Auditor on the Auditors Panel.

If the AER is considering whether an Independent Auditor should be removed from the Auditors Panel, the following process will generally apply:

1. The Independent Auditor will be notified of the nature of the AER's concerns, including any further information the AER needs for its assessment.
2. The Independent Auditor will be given an opportunity to respond to the AER's notice, and to demonstrate that it has addressed, or can address, the AER's concerns.
3. The AER will consider the response provided by the Independent Auditor and:
  - a) if it is satisfied that its concerns have been addressed, will confirm this in writing to the Independent Auditor; or
  - b) if it is not satisfied that all of its concerns have been addressed, such that it concludes the Independent Auditor cannot meet their requirements under the NEL, NER or Guidelines, will provide reasons for this and confirm in writing that the Independent Auditor will be removed from the Auditors Panel.

An Independent Auditor should not accept any new appointment by a liable entity after receiving notice from the AER that the AER considers it has reason to remove the Independent Auditor from the Auditors Panel, until it receives confirmation in writing from the AER that the matter has been resolved and the Independent Auditor will remain on the Auditors Panel.

If an Independent Auditor is removed from the Auditors Panel it must, within one business day:

- advise all liable entities by which it has been appointed that it is no longer a member of the Auditors Panel, and that its approval of bespoke firmness methodologies or resultant firmness factors for the purposes of any net contract position report can no longer be accepted by the AER in satisfaction of the NER; and
- confirm in writing to the AER that it has done so, attaching a list of all liable entities that have been so advised.

The AER will endeavour to update the Auditors Panel information on its website at the conclusion of the business day following its decision.

It is the responsibility of an Independent Auditor and any liable entity engaging that Independent Auditor to ensure that the terms of its appointment by a liable entity make adequate provision for termination of that appointment in the event that the Independent Auditor withdraws, or is removed by the AER, from the Auditors Panel.