



## **MEMORANDUM OF UNDERSTANDING**

**AUSTRALIAN ENERGY REGULATOR**

**and**

**AUSTRALIAN COMPETITION AND CONSUMER COMMISSION**

**and**

**ACT CIVIL & ADMINISTRATIVE TRIBUNAL**

**JULY 2015**

## **1. Objectives**

- 1.1. This memorandum of understanding (MOU) sets out arrangements to promote effective communication, cooperation and coordination between the ACT Civil and Administrative Tribunal (ACAT), the Australian Energy Regulator (AER) and the Australian Competition and Consumer Commission (ACCC) in performing their roles and functions in Australia's energy industry. These arrangements aim to enhance the understanding of industry and consumer issues in relation to the national energy market, and the performance by the ACAT, the AER and the ACCC of their respective roles.
- 1.2. This MOU is a public document and communicates, in a transparent way to all stakeholders, the administrative arrangements that operate between the AER, ACCC and ACAT.

## **2. Parties to the Understanding**

### ***Australian Energy Regulator (AER)***

- 2.1. The AER is Australia's national energy market regulator and an independent statutory authority established under the *Competition and Consumer Act 2010* (Cth) (CCA). The AER is funded by the Commonwealth with staff, resources and facilities provided from the ACCC. The AER is responsible for monitoring and ensuring compliance with national energy laws.<sup>1</sup>

### ***Australian Competition and Consumer Commission (ACCC)***

- 2.2. The ACCC is responsible for enforcing consumer protection and fair trading laws and promoting competition in the market place. It does this by promoting compliance with and enforcing the provisions of the CCA. The role of the ACCC is to facilitate and encourage compliance with the laws it enforces, to take appropriate action in response to contraventions of those laws, to determine certain competition and access issues and to educate the community in relation to such matters.

### ***ACT Civil and Administrative Tribunal (ACAT)***

- 2.3. The ACAT is established under the ACT Civil and *Administrative Tribunal Act 2008* and is the jurisdictional ombudsman for energy and water complaints in the ACT.
- 2.4. The ACAT investigates and determines complaints by consumers against energy and water utilities operating in the Australian Capital Territory. These complaints may include complaints about a contravention of the Utilities Act, the National Energy Consumer Framework, a Code or a customer contract by a utility, breaches of privacy by an employee or agent of a utility and problems arising from network operations. The ACAT also considers requests for protection from disconnection from consumers who will suffer hardship if their supply of a utility service is restricted or withdrawn because of customer debt.
- 2.5. Under section 174 of the Utilities Act, the ACAT is required to advise the relevant ACT Minister and the regulator about any systemic problems which it identifies in relation to the operation of the Act.

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<sup>1</sup> *National Electricity Law, National Electricity Rules, National Gas Law and National Gas Rules.*

### **3. Notification and Consultation**

3.1. The AER, ACCC and ACAT recognise the importance of mutual consultation when their responsibilities overlap, but also recognise that decisions must be made independently. Where appropriate, the AER, ACCC and ACAT will endeavour to:

- (a) notify each other of any activities that may be relevant to the other parties, and keep each other informed of the progress of those matters. This could include:
  - (i) compliance and enforcement activities relevant to energy retail, distribution and transmission businesses or consumers in the ACT;
  - (ii) transmission and distribution determinations and access arrangements for electricity and gas networks in the ACT;
  - (iii) reports on the energy industry; or
  - (iv) changes to regulatory instruments such as guidelines.
- (b) provide each other with copies of publications that may be relevant to the other agencies. It may also be appropriate to provide an advance copy of, and briefing on, the publication, prior to its general release;
- (c) where a publication (such as a report or a webpage) by one party refers to another, provide that party with an opportunity to comment on the reference prior to the finalisation and general release of the publication;

3.2. Where appropriate, the AER, ACCC and ACAT will consider inviting staff from participating agencies to participate in consumer and industry education and outreach activities.

3.3. In developing education and guidance materials, the AER, ACCC and ACAT will, to the extent possible develop consistent materials.

3.4. Where appropriate, the AER, ACCC and ACAT will each provide information forums for staff of the other agency covering topics such as roles and responsibilities, to support the operation of this MOU.

### **4. Activities reports**

4.1. The liaison officers nominated under clause 7.1 of this MOU will meet annually or as otherwise agreed to discuss matters of common interest, including to:

- (a) provide each other with updates and reports on consumer complaints that may demonstrate systemic issues or emerging trends
- (b) inform each other about any existing or proposed activities that may be of interest to the other parties;
- (c) review the referral of complaints or inquiries between the parties;
- (d) identify opportunities for joint activities or the sharing of information; and

- (e) report on any other developments that may impact on other parties.

4.2. Reports may be provided in writing or at the scheduled regular meetings, as agreed between the parties.

#### ***ANZEWON***

4.3. Contact between the AER, ACCC and ACAT will also be maintained through meetings of the Australia and New Zealand Energy and Water Ombudsman Network (ANZEWON).

### **5. Special requests and referrals**

5.1. The liaison officers may contact each other outside the scheduled regular meetings to:

- (a) request advice on issues that are within the responsibility of their agencies – for example, ACAT may seek advice where the investigation of a complaint requires consideration of issues that are within the responsibility of the AER or ACCC
- (b) request additional information outside of the scheduled reporting times.

When such a request is made, the party that receives the request will respond as soon as possible.

### **6. Information management**

6.1. The parties recognise the value of sharing information. The parties also recognise that they each have obligations in relation to the protection of information and will take reasonable steps to protect any confidential information from any unauthorised use or disclosure.

6.2. Where appropriate, the AER, ACCC and ACAT will facilitate the exchange of information. Where this information is confidential:

- (a) the agency providing the information will identify the relevant part of the information that is confidential;
- (b) the receiving agency or agencies will only use or disclose that information to the extent permitted by law, for example, an FOI request or where required by a court; and
- (c) the receiving agency or agencies will use its best endeavours to inform the agency that provided the information prior to disclosing confidential information to third parties under clause 6.2(b).

6.3. ACAT acknowledges that information may be shared between the AER and ACCC as provided by the CCA. As set out in the ACCC and AER's Information Policy, if the ACCC and AER have obtained information in the course of one matter which is relevant

to another matter, the ACCC and AER will, in general, use that information in the context of the other matter subject to any specific legal requirement to the contrary.

6.4. With respect to all information concerning or relating to a complaint, ACAT will act in accordance with privacy laws.

## 7. Management of the MOU

7.1. The AER, ACCC and ACAT will each nominate a liaison officer to serve as a point of contact in relation to matters arising under this MOU and to be responsible for general liaison under this MOU and subsequent co-operation arrangements between the parties.

7.2. The Ombudsman and the respective Chief Executive Officers of the AER and ACCC will meet as necessary to assess the operation of this MOU and to discuss the ongoing relationship between the AER, ACCC and ACAT.

7.3. In the event of any disagreement between the parties as to the implementation of this MOU or the performance of their respective functions, powers and duties, the CEOs of the parties (or their delegates) will seek to resolve the matter in accordance with the objectives of this MOU.

7.4. This MOU will continue in force until such time as another MOU is agreed and signed between the parties. The AER, ACCC and ACAT can initiate a review of this MOU where necessary.

7.5. This MOU is not intended to be legally binding on the agencies.

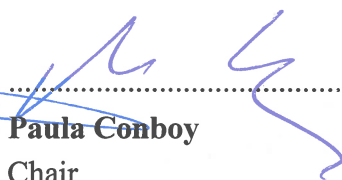
### *Publication*

7.6. This MOU may be published by the AER, ACCC and ACAT on their respective web sites.

Dated this 17<sup>th</sup> day of August 2015



**Linda Crebbin**  
General President  
ACT Civil &  
Administrative Tribunal



**Paula Conboy**  
Chair  
Australian Energy Regulator



**Rod Sims**  
Chair  
Australian Competition and  
Consumer Commission

