



Memorandum of understanding

between the Australian Energy Regulator and
the Independent Competition and Regulatory Commission

December 2021

1. Background

- 1.1. This memorandum of understanding (MOU) sets out arrangements to promote effective communication, cooperation and coordination between the Independent Competition and Regulatory Commission (Commission) and the Australian Energy Regulator (AER) in performing their roles and functions in Australia's energy industry.
- 1.2. This MOU is a public document and communicates, in a transparent way to all stakeholders, the arrangements that operate between the AER and the Commission.
- 1.3. This MOU is not intended to and does not create legally binding obligations between the parties.

2. Objectives The AER and the Commission recognise the benefits of collaborating and cooperating with each other. The arrangements in this MOU aim to foster a co-operative working relationship between the two agencies, in the interests of promoting effective and efficient regulation of the energy sector.

- 2.3. The MOU also seeks to enhance the understanding of industry and consumer issues in relation to the energy market, and the performance by the Commission and the AER of their respective roles.

3. Parties to the understanding

Australian Energy Regulator

3.1 The AER is Australia's national energy market regulator and is an independent statutory authority established under the *Competition and Consumer Act 2010* (Cth) (CCA) with functions under national energy laws and rules.¹ The AER is funded by the Commonwealth with staff, resources and facilities shared with the ACCC. The AER's functions, as set out in national energy legislation, include:

- a) regulating electricity networks and covered gas pipelines in all jurisdictions except Western Australia. The AER sets the amount of revenue that network businesses can recover from customers using these networks.
- b) enforcing the laws for the National Electricity Market and spot gas markets in southern and eastern Australia. The AER monitors and reports on the conduct of energy businesses and the effectiveness of competition.
- c) protecting the interests of household and small business consumers by enforcing the National Energy Retail Law. The AER's retail energy market functions cover New South Wales, Tasmania, the Australian Capital Territory and Queensland.

Independent Competition and Regulatory Commission

3.2 The Commission is a Territory Authority (ACT) established under the *Independent Competition and Regulatory Commission Act 1997* (ACT). The Commission has responsibilities for a broad range of regulatory and utility matters in the ACT such as regulating and advising government about pricing and other matters for monopoly, near-monopoly and ministerially declared regulated industries, licensing utilities operating in the ACT and making industry codes under the *Utilities Act 2000*, monitoring and reporting on utilities' performance and compliance with licence conditions and legislative obligations, and providing advice on competitive neutrality complaints and government-regulated activities.

¹ *National Electricity Law, National Electricity Rules, National Gas Law, National Gas Rules National Energy Retail Law and National Energy Retail Rules*

4. Notification and consultation

- 4.1 The AER and the Commission recognise the importance of mutual consultation when their responsibilities overlap, but also recognise that decisions must be made independently. Where appropriate, the AER and the Commission will endeavour to:
- a) notify each other of any activities that may be relevant to the other party and keep each other informed of the progress of those matters where they are relevant to the parties. These activities could include:
 - i) the AER's and Commission's compliance and enforcement activities
 - ii) the AER's transmission and distribution determinations and access arrangements for electricity and gas networks
 - iii) the AER's assessment of electricity and gas distributors' annual pricing proposals and approval of tariffs.
 - iv) the AER's and Commission's reports on the energy industry
 - v) the AER's and Commission's changes to regulatory instruments such as codes/guidelines
 - vi) the Commission's investigation and determination of retail electricity prices
 - b) give each other copies of publications they have prepared that may be relevant to the other agency. 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, give that party an opportunity to comment on the reference prior to the finalisation and general release of the publication.
- 4.2 Where appropriate, the AER and the Commission will consider inviting staff from the other agency to participate in consumer and industry education and outreach activities.
- 4.3 In developing education and guidance materials, the AER and the Commission will, where relevant and to the extent possible, develop consistent materials.
- 4.4 Where appropriate, the AER and the Commission 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.

5. Activities reports

- 5.1 The contact officers nominated under clause 8.1 of this MOU will meet from time to time or as otherwise agreed to discuss matters of common interest, including to:
- a) give each other updates and reports on issues 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) identify opportunities for joint activities or the sharing of information
 - d) report on any other developments that may impact on other parties.
- 5.2 Reports may be provided in writing or at the scheduled regular meetings, as agreed between the parties.

6. Special requests and referrals

- 6.1 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 agency
 - 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.

7. Information management

- 7.1 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.
- 7.2 Where appropriate, the AER and the Commission 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 and any conditions attached to its disclosure
 - b) the receiving agency will comply with any confidentiality conditions and will only use or disclose that information to the extent permitted by law, for example, an FOI request or where required by a court
 - c) the receiving agency will use its best endeavours to inform the agency that provided the information prior to disclosing confidential information to third parties under clause 7.2(b).

7.3 The Commission acknowledges that information may be shared between the AER and Australian Competition and Consumer Commission (ACCC) as provided by section 44AAF and section 157A of the *Competition and Consumer Act 2010* (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.

8. Management of the MOU

- 8.1 The AER and the Commission will each nominate a contact officer 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.
- 8.2 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.
- 8.3 This MOU will continue in force until such time as another MOU is agreed and signed between the parties. The AER and the Commission can initiate a review of this MOU where necessary.

Publication

- 8.4 This MOU may be published by the AER and the Commission on their respective web sites.



Chief Executive Officer
Independent Competition and
Regulatory Commission

Date: 7 December 2021



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Australian Energy Regulator

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