



# AER Board Charter

March 2024

## DOCUMENT CONTROL

Document number: #16702370

Version	Date	Author	Change description
1.0	March 2024	AER Board	Created

# Board Charter

## Introduction

This Charter applies to all members of the AER Board, including the AER Chair.

The AER is an independent decision-making body responsible for regulating wholesale and retail energy markets, and energy networks, under national energy legislation and rules. The AER focuses on ensuring a secure, reliable and affordable energy future for Australia as it transitions to net zero emissions.

Standards of conduct applicable to members are drawn from several enactments (including the *Competition and Consumer Act (CCA)*). As statutory office holders, members are legally bound by the “Australian Public Sector (APS) Code of Conduct” as set out in section 13 of the *Public Service Act 1999 (PSA)*. Accordingly, members should familiarise themselves with section 44AY of the CCA and the APS Code of Conduct.

The *Public Governance, Performance and Accountability Act 2013 (PGPA)* also requires that officials:

- (a) act with care and diligence,
- (b) act honestly, in good faith and for a proper purpose,
- (c) not improperly use their position or information to gain a benefit, advantage or to cause detriment, and
- (d) disclose material public interests.

Based on advice from the Department of Finance, where members comply with the requirements of the CCA and PSA, they will also comply with the PGPA. Members are encouraged to consult with the AER Chair and/or the AER General Counsel regarding any specific standards of conduct arising from members’ individual instruments of appointment and delegations.

Conduct not in accordance with these standards may, in certain circumstances, call into question the validity of any decisions made by the respective member, including the resolutions or outcomes of meetings or hearings in which that member was involved, and any procedural decisions made by the member in the course of arriving at the decision in question. It may also, in certain circumstances, constitute official “misbehaviour” and provide grounds for the termination of members’ appointments under section 44AAB of the CCA. Further detail on the management of conflicts of interest are detailed below.

## AER Purpose and Vision

**Purpose:** Energy consumers are better off, now and in the future.

**Vision:** We will be a high performing regulator that is – independent, open and accountable; builds trust in Australia’s energy system; takes considered risks; ensures regime is fit for purpose; and engages actively with stakeholders.

## Role of Board and responsibilities

The Board has four core functions:

- Provide early guidance and direction for staff/committees on issues of strategic importance with the development of the detail often to be guided by committees;
- Make decisions under statutory powers including to initiate proceedings or issue infringement notices;
- Set high-level culture, strategy, risk appetite and approach to stakeholder engagement; and
- Oversee AER performance including financial management within AER's budget, adequacy of internal controls, internal audit and CEO/agency performance.

The Board has a number of key responsibilities:

- Make decisions under the National Electricity Law, National Electricity Rules, National Gas Law, National Gas Rules, the National Energy Retail Law, the National Energy Retail Rules and any other AER powers and duties.
- Set the AER's high-level strategy and priorities and review progress against them.
- Set the AER's risk appetite, and identify and monitor strategic risks to the AER.
- Oversee financial management of the agency and ensure adequate internal controls are in place.
- Provide direction on the approach to be taken for significant pieces of the AER's work program.
- Set the AER's high-level Stakeholder Engagement Framework and consider overarching communication strategies.
- Review the performance of the AER CEO.
- Make decisions to delegate the Board's functions and powers to an individual Board member or SES/acting SES staff.
- Approve the Terms of Reference for Board Committees and receive minutes from their meetings.
- Consider AER papers for the ACCC Corporate Governance Board and Audit Committee.
- Participate in any ACCC Committees (for example Energy Markets Board) as agreed with the ACCC Chair.

AER committees support the AER Board to perform its statutory decision-making functions. The role and functions of each AER committee is detailed in its Terms of Reference. Committees tend to be where informal workshops of ideas can occur prior to taking an outline of an approach to the Board for their early engagement and input and/or a place for more detailed development of decisions once the Board has provided direction on a piece of work.

The Board has established four Committees: Enforcement & Compliance, Markets, Networks and Renewable Energy Zones (REZ). The Board has not delegated any of its powers or functions to the Committees. Minutes of Committee meetings and decisions are reported at the AER Board meetings.

## Board composition

The AER Board is an independent statutory entity, comprising five members appointed under Part IIIAA of the Competition and Consumer Act 2010, following a process outlined in the Australian Energy Market Agreement.

Current Members: Clare Savage (Chair), Jim Cox (Deputy Chair), Justin Oliver, Jarrod Ball and Lynne Gallagher.

The Board is supported by the CEO and other members of the Senior Management Forum; and relevant staff attend to support discussions.

The Board may, by resolution, delegate all or any of its functions and powers to a Board member or to an SES employee or acting SES employee.

## Role of individual Members (all)

Compliance with this Charter requires that members exercise their statutory powers and functions as set out in the Introduction to this Charter.

If any doubt exists as to the propriety of any course of action, members should consult with the AER Chair at the earliest opportunity. In the case of the AER Chair, they should consult with the Deputy Chair where appropriate.

Where the propriety of any course of action involves or raises legal issues or consequences, members should consult with the AER General Counsel at the earliest opportunity.

### *Expectations of all Board members*

AER Board members will come prepared to meetings and actively participate. Board members will bring their expertise to the consideration of issues and exercise judgement. Members commit to having an 'engaged culture' which is characterised by candour and a willingness to challenge.

Board members are honest yet constructive. Members are ready to ask questions and willing to challenge leadership.

Members actively seek out other members' views and contributions. Members spend appropriate time on important issues.

Board members are personally accountable for what goes on in the AER, and for maintaining the organisation's stature in the energy sector and general community through their decision making; stakeholder engagement; and when acting as spokesperson for the organisation.

Board members respect each other and AER staff.

## Role of Chair

The role of the Chair is to:

- Lead the Board, preside at Board meetings and foster a culture that enables the members to function as an effective team

- Promote constructive and effective relations within the Board and between the Board and senior management
- Set the Board's agenda and ensure key issues are discussed and ensure there are no potential conflicts of interest
- Ensure interactive participation by all members and that all members feel heard
- Tease out consensus, where possible, summarise discussion and reflect agreement
- Ensure the efficient organisation and conduct of the Board's functions
- Establish an effective and constructive working relationship with the CEO
- Manage the performance evaluation of the CEO (in concert with the Deputy Chair) and the Board
- Represent the Board to external parties as the lead spokesperson for the AER

## **Role of Deputy Chair**

The role of the Deputy Chair is to:

- Act as the AER Chair when the AER Chair is absent
- Assist the AER Chair in the governance and operation of the organisation. This may include chairing the Governance Committee of the AER (depending on relative workloads and other responsibilities)
- Contribute to the performance evaluation of the CEO (in concert with the Chair)
- Represent the AER in key engagements such as Parliamentary Committees or Hearings

## **Role of Chief Executive Officer**

The day-to-day management of the AER is the responsibility of the CEO, supported by the Leadership Team.

The key responsibilities of the CEO are to:

- manage and administer the day-to-day operations of the AER in accordance with the purpose, values, strategy, business plans and policies approved by the Board
- develop the AER's annual budget and conduct the AER's activities within the approved annual budget
- provide leadership to and assign responsibilities clearly to the Leadership Team, and supervise and report on their performance to the Board
- maintain regular contact with the Chair and keep the Chair informed of developments which might require the Chair to take action on the Board's behalf
- oversee planning, including identifying aims and objectives and the strategies required to achieve the AER's approved strategic plan
- recommend to the Board significant operational changes as required

- ensure the Board is provided with accurate, timely and clear information and materials, such that the Board is fully informed to discharge its responsibilities effectively
- implement the policies, processes and codes approved by the Board
- instil and reinforce the AER's purpose and values to support a culture that promotes ethical and responsible behaviour
- represent the AER and its role to provide a strong, positive image to stakeholders
- set the standards of behaviour for the AER's staff by example
- articulate the AER's culture and create the right internal climate for staff
- attract, recruit and retain high performing staff.

## **Board meetings**

The Board will meet most weeks and out of session as required. Meetings are usually held every Friday.

## **Quorum and voting**

The AER Chair must preside at all meetings of the AER Board. A quorum for a meeting is three Board members, including the Chair.

If the Chair is unavailable, the Deputy Chair will act as Chair.

Decisions can be made by a majority vote. The AER Chair has a deliberative vote and, in the event of a tied vote, a casting vote.

If all Board members authorise a statement that they are in favour of a resolution, then a resolution in those terms is taken to have been passed at the next Board meeting.

## **Board meeting agendas**

Board meetings will commence with an in-camera session for the Board and the CEO to raise key issues and concerns for the day's agenda. The in-camera sessions will not be used to reach decisions but rather to aid the efficient operation of the meeting.

Board meetings will have items for decision; for direction and for noting.

## **Board papers**

Each item for Board decision will generally include a cover paper of not more than ten pages in length that canvases all of the key issues and options for consideration. The expectation of the Board is that this cover paper can be relied upon for decision making by itself.

Attachments to the cover paper can also be included where further information may assist the Board's understanding of an issue or where determination documents need to be reviewed and approved.

## **Board secretariat and minutes**

The CEO is responsible for ensuring the Board is provided with appropriate secretariat services.

Board minutes and actions will be circulated as soon as possible following meetings, and Committee minutes will be reported to the Board.

## **Board calendar**

A forward calendar of all Board meetings and proposed agendas along with committee meetings and proposed agendas will be developed and maintained.

The forward calendar for the coming month will be included in the papers for every Board meeting. The forward calendar for the balance of the year will be included in the papers for the first Board meeting of the month.

## **Committees**

The Board may from time to time establish committees, under Terms of Reference, to assist it in carrying out its responsibilities.

The Board is responsible for approving and reviewing the Terms of Reference and membership of each committee established by the Board. The performance of each committee is to be reviewed by the Board, which will also consider whether any amendments to the relevant Terms of Reference are necessary.

The Board has established the following committees:

- Governance Committee
- Markets Committee
- Enforcement & Compliance Committee
- Networks Committee
- Renewable Energy Zones Committee

## **Board evaluation**

The Board will evaluate its performance, collectively and individually, every 18-24 months.

## **General conduct**

### **Conflicts of interest**

Members should perform their official duties without fear or favour and regardless of any expectation that they (or persons associated with them) will benefit or suffer as a consequence.

Section 44AY of the CCA requires members to disclose at an AER meeting any interest that could conflict with the proper performance of the member's functions in relation to a matter

being considered, or about to be considered, by the AER. The disclosure and any decision made in that regard must be recorded in the minutes of the meeting.

Conflicts of interests can arise in various ways. A potential conflict of interest may arise where a member holds another public office (at either the State or the Federal level) and a decision must be made that overlaps with the subject area of that other office. Similarly, a conflict may arise where a member must make a decision concerning a company or industry for which that member has previously acted as a consultant. Members should, as a matter of good administrative practice, raise any such potential conflicts of interest with the AER Chair. In the case of the AER Chair, they should raise any such potential conflicts with the Deputy Chair.

Full-time members should normally avoid holding relevant financial instruments directly. However, where the relevant financial instrument relates to AER regulated institutions or the energy sector or any other matter that is or is likely to be under active consideration by the AER, the relevant Member must also seek prior approval to trading in the financial instrument from the AER Chair (or the AER Deputy Chair in the case of proposed trading by the AER Chair). Where such additional approval is sought, the AER Chair or AER Deputy Chair will apply the same approval process as set out in the ACCC policy that is to be followed by the ACCC Chair or ACCC Deputy Chair (as the case requires).

AER Board Members will also comply with the requirements that apply to them as ACCC Associate Members.

In assessing conflict of interest issues, members should have regard to their own financial and non-financial interests, personal and professional relationships (past or present) and the financial and non-financial interests of their immediate family to the extent that members know such interests.

Members should declare any relevant interests on an annual basis.

Members should be aware that a conflict of interest may arise in the period immediately after their appointment concludes and should take this into consideration in making decisions about future work opportunities. A conflict of interest may arise, for example, where a member makes a decision in relation to a company for which he or she is proposing to work post appointment.

### **Personal benefit**

Members should not seek to use their position, or information received in the course of their official duties with the AER, in aid of any personal or professional interest.

Full-time members are not permitted to engage in any paid employment outside the duties of their office without the consent of the Minister.<sup>1</sup>

Benefits in the form of gifts, sponsored travel or hospitality (including the promise or inference of future benefit for a member or their immediate family) should only be accepted in accordance with the principles of this Charter and the ACCC's policy (or the AER's policy if one exists). Beyond this requirement, members should not accept any benefit where acceptance might give an appearance that they may be subject to improper influence. Where gifts, benefits, travel or hospitality are accepted, this should be disclosed on an internal register.

---

<sup>1</sup> Section 44AX(1) of the CCA.



## Contact with interest groups

Members may become the target of interest groups seeking to influence the AER on a variety of issues.

Dealings with interest groups should be conducted in a manner that does not give rise to any appearance of improper influence or conflict of interest. It is advisable for members to ascertain what company or interests each interest group represents so that informed judgements may be made about the appropriateness or level of dealings.

Where representations are being made on behalf of a foreign government or the agency of a foreign government, special care needs to be exercised as foreign policy or national security considerations may apply. In such cases, members should advise the AER Chair of the representation who may refer the matter to the Department of Foreign Affairs and Trade (DFAT). The AER Chair may refer matters in which they are directly involved to DFAT where appropriate.

## Interaction with members of the Australian Public Service

Members interact with AER staff on a daily basis. All AER staff are currently employed by the ACCC under the PSA by the Australian Public Service (APS), with the notable exception of consultants engaged by the AER. Unlike private employees, APS employees are governed by the PSA which requires them to adhere (as a matter of law) to principles including:

- honesty and integrity;
- equitable service to the public;
- provision of frank and comprehensive advice to ministers (“members” in the case of the AER);
- a strong emphasis on responsiveness to the government, the Parliament and the community;
- party-political impartiality; and
- staffing based on merit.

Accordingly, members should be scrupulous in avoiding asking APS employees to do anything that these principles do not permit and should not ask them to engage in activities which could call into question their political impartiality.

As statutory office holders, members are bound by the APS Code of Conduct as set out in section 13 of the PSA when acting in relationship to the exercise of direct or indirect supervisory duties in relation to APS employees and should be mindful to treat APS staff with respect and courtesy.<sup>2</sup>

## Confidentiality

Except in the course of official duties, members should not give or disclose, directly or indirectly, any information they acquire by virtue of their position.<sup>3</sup>

---

<sup>2</sup> Section 14 of the PSA and regulation 8 of the Public Service Regulations 2023.

<sup>3</sup> Section 44AAF of the CCA. Section 70 of the *Crimes Act 1914* prohibits the publication or communication of such information; section 155AAA of the CCA prohibits the disclosure of certain ‘protected’ information except in limited circumstances.

## Decision-making

Members may have to account for the exercise of their statutory powers to the Parliament (or one of its committees), the Auditor-General, the Ombudsman and the courts.

The general grounds for challenging administrative decisions made under legislation are set out in the *Administrative Decisions (Judicial Review) Act 1977*. In essence the basic requirements for decision-making include:

- each decision needs to be within the scope of the power provided by the legislation;
- the procedure for reaching the decision needs to meet basic standards of fairness, allowing all sides to present their cases, and must also comply with any special requirements set by the legislation;
- each decision needs to be made on the merits of the case, with the decision-maker unbiased and acting in good faith; and
- conclusions must be soundly based in reason, in particular they must reflect a proper understanding of the law, draw on reasonable evidence for findings of fact, take account of all relevant considerations and not take account of irrelevant considerations.

## End of Appointment

As noted, members who commence discussions with potential employers should be aware that this can give rise to real or perceived conflicts of interest.

In the interests of maintaining the confidence of the Government and the public in the ability of the AER to conduct itself fairly and impartially on behalf of all sectors of the community, on cessation members will be required to give an undertaking in writing to the following effect:

- They will observe the confidentiality undertaking entered into at the commencement of their appointment;
- They will neither take, nor use, materials and data which are not ordinarily available to the public;
- They will avoid direct involvement in matters with which they were concerned whilst they were still members.

The latter requirement is more complex as it concerns the AER's regulatory functions, and the member and the AER Chair will need to consider the implications of this requirement on a case by case basis.