

## Statement of Expectations for the Australian Energy Regulator

This Statement of Expectations communicates the expectations of Energy Ministers for the operation and performance of the Australian Energy Regulator (AER), supported by measurable, outcomes-based performance indicators drawn from the Strategic Energy Plan (SEP) and its metrics. It also communicates Energy Ministers' understandings of the AER's key roles under the national energy laws and rules, the Australian Energy Market Agreement (AEMA), the National Electricity Market and in supporting Australia's international obligations.

Similar Statements have been prepared for the Australian Energy Market Commission (AEMC) and Australian Energy Market Operator (AEMO), as well as Terms of Reference for the Energy Security Board (ESB) to emphasise shared accountability, as market bodies need to work collaboratively to pursue whole-of-system performance objectives. Market bodies should also collaborate in relation to market development work conducted by the ESB and to provide advice to Energy Ministers on strategic issues.

Energy Ministers are issuing this Statement of Expectations to the AER consistent with regulatory best practice, the recommendations of various reviews into energy sector governance and relevant legislative frameworks, while taking into account its statutory independence.

Energy Ministers expect the AER will respond with a Statement of Intent within three months from the date of this Statement of Expectations. The AER is also required to release a bi-annual report against achievement of the Statement of Intent and an Annual Report.

This Statement of Expectations applies from the date of receipt until otherwise amended. The Statement of Expectations will be refreshed every three years, or as required by Energy Ministers.

### Context

The AER is established as an independent entity under the *Competition and Consumer Act 2010* (the Act). The AER regulates wholesale and retail energy markets and energy networks, mainly across southern and eastern Australia, under national energy laws<sup>1</sup> and rules.

The AER's Strategic Plan 2020-2025 sets out how the AER works to make all Australian energy consumers better off, now and in the future. The key objectives are to:

- Protect vulnerable consumers while enabling consumers to participate in energy markets.
- Effectively regulate competitive markets primarily through monitoring and reporting, and enforcement and compliance.
- Deliver efficient regulation of monopoly infrastructure while incentivising networks to become platforms for energy services.
- Use our expertise to inform debate about Australia's energy future and support the energy transition.

The AER performs these roles in accordance with processes set out in the national energy laws. The AER regulates electricity networks and covered gas pipelines, in all jurisdictions except Western Australia. It sets the amount of revenue network businesses can recover from customers for using these networks. It must perform its economic regulatory functions in a manner that will, or is likely to, contribute to the achievement of the national energy objectives – the central focus

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<sup>1</sup> National Energy Law, National Gas Law and National Energy Retail Law and their associated Rules.

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of which is the long-term interests of consumers.

The AER enforces the laws for the National Electricity Market and spot gas markets in southern and eastern Australia. It monitors and reports on the conduct of market participants and the effectiveness of competition.

The AER protects the interests of household and small business consumers by enforcing the National Energy Retail Law. Its retail energy market functions cover New South Wales, South Australia, Tasmania, the ACT and Queensland. Under the Act, it also sets standing offer prices, through the Default Market Offer, for small business and residential customers in areas where there is no other retail price regulation – South Australia, New South Wales and south-east Queensland (Energex).

The AER works with Energy Ministers, the ESB and their partners – the other market bodies, state-based regulators, Energy Consumers Australia and energy ombudsmen schemes – on emerging issues and regulatory strategies.

Additionally, they assist the Australian Competition and Consumer Commission (ACCC) with energy-related issues arising under the Act, including enforcement and mergers.

The Energy Ministers Meeting is a forum for collaboration between the Commonwealth, State and Territory governments on matters of national significance requiring joint action in relation to energy. Energy Ministers have oversight of national energy policy, as well as the governance and associated institutional arrangements and regulatory frameworks, including the development of policies to enhance the security, reliability and affordability of energy supplies.

Energy Ministers released a Strategic Energy Plan (SEP) in November 2019 to ensure a clear strategic focus for Energy Ministers' work and to provide clarity of direction to market bodies and market participants. The SEP communicates Energy Ministers' desired outcomes and provides a framework of accountability for coordinated action and monitoring against the stated outcomes and objectives. The SEP informs this Statement of Expectations.

In August 2022, Energy Ministers agreed to establish a new National Energy Transformation Partnership to support the smooth transformation of Australia's energy sector to net zero by 2050 or earlier. As the framework for national alignment and cooperative action across governments, delivery of reforms under the Partnership will be informed by expert advice and requires close collaboration with all energy market bodies.

While all Energy Ministers have joint responsibility for the Australian energy market, the AER resides within the portfolio responsibilities of the Commonwealth Minister for Climate Change and Energy.

## *Accountability*

The AER is accountable to the Australian Parliament and to Energy Ministers through this Statement of Expectations and reporting requirements including an annual Statement of Intent and an Annual Report.

## **Expectations of the AER**

The Australian Government and Energy Ministers expect the AER to:

- perform its roles and functions as defined in the Act, and as set out in national energy laws and rules and other laws and agreements as referenced in Schedule 1.

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- support, through its work, the achievement of
  - the National Electricity Objective<sup>2</sup>, the National Gas Objective<sup>3</sup>, and the National Energy Retail Objective<sup>4</sup>
  - the outcomes and objectives of the SEP
- effectively regulate competitive markets primarily through monitoring and reporting, and compliance and enforcement.
- deliver efficient regulation of monopoly infrastructure, while incentivising networks to become platforms for energy services.
- protect vulnerable consumers, while enabling consumers to participate in energy markets.
- inform debate about Australia's energy future and support the energy transition.
- be a high-performing, proactive and consultative regulator that takes into account government policy and risk management frameworks.
- act independently and objectively in performing its functions and exercising its powers in accordance with the requirements of the *Competition and Consumer Act 2010* (the Act) and the national energy laws and in accordance with good corporate governance and best regulatory practice.
- regulate in a way that is flexible, fosters innovation and supports efficient investment so consumers and the energy sector can meet future challenges.

## *Energy Ministers' Strategic Energy Plan (SEP) and equivalent documents*

Energy Ministers expect the AER, through its work and governance arrangements, will prioritise the achievement of the SEP outcomes and objectives (listed in Appendix A) and address how it has done so in its reporting to Ministers.

The SEP's reporting and assessment framework and performance indicators map out a clear pathway for the AER to self-assess, report on and receive feedback on performance, as outlined below:

1. The AER develops performance indicators, self-assesses and publicly reports via their Statement of Intent and annual report.
2. The ESB provides a high-level assessment of market performance as part of their annual Health of the NEM report to Energy Ministers.
3. Based on the ESB's assessment, or any other matter as agreed to by Energy Ministers, Energy Ministers may decide to provide the AER with feedback on their performance.
4. The Health of the NEM report informs the evolution of the SEP (over a 5 year cycle), highlighting progress against objectives and identification of current and emerging issues that might impact on work programs.

Should Energy Ministers deem it necessary to replace or amend the SEP or equivalent document, the AER is expected to continue to self-assess, report on and receive feedback on its performance against the goals and objectives of such a document.

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<sup>2</sup> Section 7 of the Schedule – National Electricity Law in the *National Electricity Act 1996 (SA)*

<sup>3</sup> Section 23 of the Schedule – National Gas Law in the *National Gas Act 2008 (SA)*

<sup>4</sup> Section 13 of the Schedule – National Energy Retail Law of the *National Energy Retail Law Act 2011 (SA)*

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## *Statement of Intent*

Energy Ministers expect the AER to develop a Statement of Intent for each financial year, to be published before the start of that year following approval by Energy Ministers. The Statement of Intent will outline how the AER will meet the expectations set out in this Statement of Expectations.

The Statement of Intent must include measurable and quantifiable outcomes-based performance indicators based on the SEP and must outline how the AER will meet the expectations set out in this Statement of Expectations and associated performance indicators.

The indicators will provide a standard to enable a meaningful assessment of the performance of the AER:

- a) in meeting its statutory obligations and for assessing its contributions to achievement of the (relevant) SEP outcomes and objectives; and
- b) with respect to its efficiency and effectiveness, both in the exercise of its statutory functions and in its organisational and financial management.

The performance indicators must be informed by the agreed metrics of the SEP and should be focused on outcomes rather than processes. Once developed, the performance indicators must be agreed to by Energy Senior Officials prior to the submission of the Statement of Intent to Energy Ministers.

The AER is expected to monitor progress, assess and report against the Statement of Intent and performance indicators on a bi-annual basis (six monthly report to Ministers), and as a component of, or with, the Annual Report for that year.

## *Publication of Statement of Expectations and Statement of Intent*

Transparent processes are crucial to good governance and accountability of government and government institutions. While the AER is not expected to table its annual Statement of Intent in the Australian Parliament, the AER is expected to publish and maintain the Statement of Expectations and the AER's annual Statement of Intent and Annual Report on the AER website.

The AER is also expected to release a bi-annual report (six monthly report to Ministers) against its achievement of the Statement of Intent.

## *Engagement and communication*

The Australian Government and Energy Ministers also expect the AER will work closely and collaboratively with the Australian Government, Energy Ministers, the Energy Security Board (ESB), the Australian Energy Market Commission (AEMC), the Australian Energy Market Operator (AEMO), the Australian Competition and Consumer Commission (ACCC), Energy Consumers Australia (ECA) and jurisdictional governments and stakeholders.

## *Relationship with Energy Ministers*

Energy Ministers expect the AER will support them by providing:

- high quality and evidence-based advice on
  - developing issues relevant the AER's role and to the Energy Ministers priorities; and
  - other issues as requested by Energy Ministers
- clear communications on how the AER's work program supports the Energy Ministers' SEP
- clear and timely communications on any other relevant matters

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- produce an annual Statement of Intent, in response to this Statement of Expectations, which will include measurable and quantifiable outcomes-based performance measures.

Noting all statutory timeframes will prevail, the Australian Government and Energy Ministers expect that the AER will otherwise prioritise its tasks having regard to the SEP and according to its resources and capacity.

## *Relationship with the Energy Security Board*

Energy Ministers expect the Chair of the AER to actively participate in the ESB.

The ESB is a co-ordination and advisory body, which at a high level is intended to provide:

- a single, coherent voice providing advice to Energy Ministers to assist them provide leadership and strategic policy direction
- ensure a co-ordinated and consistent approach to matters of strategic importance across the market bodies.

The relationship between the ESB and the AER is set out in the ESB terms of reference as approved by Energy Ministers.

As a member of the ESB, and together with the AEMC and the AEMO, the AER Chair will:

- provide coordination and advice to Energy Ministers on strategic issues, including energy security and reliability, as well as through an annual report on the state of overall health of energy markets
- work collaboratively with other market bodies to pursue any relevant whole of system performance objectives
- coordinate activities with each other to achieve greater efficiency and timeliness and to reduce duplication, in line with the statutory powers and functions of its members
- align and coordinate work programs to meet the outcomes expected of it by Energy Ministers, including the SEP.

As stated in the SEP, Energy Ministers will use the annual *Health of the NEM report* to monitor progress of the market towards the SEP's objectives and outcomes. Energy Ministers may use the report to facilitate discussion with the AER on opportunities for improvement to support the SEP outcomes and objectives where necessary.

The AER is expected to report on performance against requirements of the Act and this is done as part of the combined ACCC and AER reporting framework.

## *Relationship with energy market institutions*

The relationships between the AER, the ESB and other market institutions are set out in relevant legislation and various Terms of Reference (TOR) and Memoranda of Understanding (MOU) as set out in Schedule 1 and Schedule 2 of this document, along with the ESB TOR as approved by Energy Ministers.

The AER is expected to interact with the ESB and other market institutions in accordance with the relevant legislative framework and any TOR or MOU in place.

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Energy Ministers expect the AER to work collaboratively with the ESB and other market bodies to pursue any whole of system performance objectives.

## *Relationship with other stakeholders*

The AER is expected to have an open and consultative relationship with its stakeholders and the entities it regulates. It is important stakeholders, including governments, are encouraged and given sufficient opportunity to communicate considered and candid views to the AER, in order to enhance the regulatory framework and outcomes, and minimise compliance costs.

Given the increasingly decentralised energy market, in considering and designing stakeholder consultation processes, the AER is encouraged to consider how it can better support a broad variety of stakeholders with varying resources to participate effectively in its processes.

The AER's Strategic Plan 2020-2025 sets out the principles that guide the AER's public engagement with consumers, energy businesses and other stakeholders affected by its work. This provides a structure that allows the AER to consider stakeholders' needs and interests consistently, transparently and meaningfully in its activities. The AER is expected to meet the engagement commitments outlined in the Strategic Plan and to carry out periodic reviews to ensure it remains fit for purpose.

## **Financial Reporting**

The Australian Government expects the AER to adhere to all financial management and reporting requirements in relevant laws.

The AER is expected to provide clear guidance on its expenditure, noting that its financial accounts are consolidated into those of the ACCC.

Energy Ministers also expect the AER to report to them every six months (at the end of each calendar and financial year) on progress against its annual work plan, budget, key priorities and emerging issues.

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## Schedule 1

The Australian Government and Energy Ministers expects the AER to perform its functions as defined in the *Competition and Consumer Act 2010* and in accordance with all relevant legislative requirements and agreements, including the:

- *Australian Energy Market Agreement*
- *National Electricity Act 1996 (SA)*
- *National Electricity Regulations (SA)*
- National Electricity Rules
- *National Gas Act 2008 (SA)*
- *National Gas Regulations (SA)*
- National Gas Rules
- *National Energy Retail Law Act 2011(SA)*
- *National Energy Retail Regulations 2010 (SA)*
- National Energy Retail Rules
- *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019*

This list is not exhaustive and any relevant legislative requirements and agreements that define the AER's function that are not mentioned in this document will also apply and are considered as part of the AER's functions by the Australian Government and Energy Ministers.

In the event of an inconsistency between this Statement of Expectations and the preceding relevant legislation, and any legislation mentioned, the legislative requirements will prevail.

## Schedule 2

MoU between the AER and other market institutions are as follows:

- The Energy Security Board Terms of Reference as approved by Energy Ministers
- The MoU between the AEMC, AER and the ACCC (2014)
- The MoU between the AER and the AEMO (2011)
- The MOU between the AEMC, the AER and AEMO (2017)
- The MoU between the AER, ACCC and the Clean Energy Regulator (2012)
- MoUs with jurisdictional energy regulators and energy ombudsman schemes.

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## Appendix A

| Objective   | Outcomes  |
|---|---|
| Affordable energy and satisfied consumers                                 | <p>Energy is increasingly affordable for all consumers, supported by adequate consumer protections and access to dispute resolution</p> <p>Consumers are empowered to manage their demand and can access distributed energy and energy efficiency solutions</p> <p>Consumers are able to easily identify and secure the best deal for their circumstances</p> <p>Vulnerable consumers are on suitable pricing plans, receiving concessions when needed, and can benefit from distributed energy and energy efficiency schemes</p> |
| Secure electricity and gas system   | <p>Markets operate safely, securely and efficiently, under full range of operating conditions, with minimal intervention</p> <p>System planning and development is informed by clear and transparent rules</p>  |
| Reliable and low emissions electricity and gas supply                     | <p>Electricity and gas sectors efficiently deliver at least their share of emissions reduction target/s while ensuring reliable supply</p> <p>Investors efficiently manage risk to support investment, operation, retirement and innovation decisions</p>   |
| Effective development of open and competitive markets (where appropriate) | <p>Wholesale and retail markets are competitive and deliver efficient outcomes for consumers</p> <p>Deep, liquid and transparent financial markets for electricity and gas and related services</p> <p>Access to efficiently priced fuel and transport</p> <p>Innovation is incentivised and enables value from new technologies</p>  |
| Efficient and timely investment in networks                               | <p>Investment solutions are optimal across all resources</p> <p>Efficient regulation of monopoly infrastructure</p> <p>Networks incentivised to be efficient platforms for energy services</p>  |
| Strong but agile governance   | <p>Governance arrangements support the achievement of the national energy objectives, and emerging issues are addressed in a coordinated, timely and consultative manner.</p>   |