



ASIC
Australian Securities &
Investments Commission

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
AND THE
AUSTRALIAN ENERGY REGULATOR

This memorandum of understanding (MOU) sets out a framework for cooperation between the Australian Securities and Investments Commission (ASIC) and the Australian Energy Regulator (AER) (the agencies) to facilitate liaison, co-operation, assistance, joint enquiries and the exchange of confidential information between the agencies in accordance with the relevant statutory provisions.

This Memorandum of Understanding between ASIC and the AER is separate to the Memorandum of Understanding between the ASIC and the Australian Competition and Consumer Commission (ACCC).

1. PURPOSE

- 1.1 The agencies recognise that co-operation between them is desirable to discharge their respective functions and maximise the effectiveness of their powers in relation to the regulation of the gas and electricity markets (by AER) and (gas and electricity) derivatives traded on the financial markets (and regulated by ASIC).
- 1.2 The agencies agree to assist each other in the exchange of information where appropriate, the referral of matters, and co-operation in compliance, education and enforcement activities within the framework of this MOU and consistent with all relevant laws.
- 1.3 This MOU does not create legally binding obligations, nor does it confer any legal rights on third parties.

2. ASIC

- 2.1 ASIC was established by section 7 of the *Australian Securities and Investments Commission Act 1989* and is continued in existence by section 261 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act). ASIC is a regulatory and law enforcement agency for, company, financial services, markets and consumer credit laws, and has the function of monitoring and promoting market integrity and consumer protection in relation to the Australian financial system.

3. AER

- 3.1 AER is an independent statutory authority established under Part IIIAA of the *Competition and Consumer Act 2010* (Cth) (the CCA). The AER has an independent board and shares staff, resources and facilities with the ACCC. The ACCC and AER share many common objectives, both working to protect, strengthen and supplement competitive market processes.
- 3.2 The AER has a range of functions, including regulating electricity and gas transmission and distribution networks under the National Electricity Law and Rules and the National Gas Law and Rules, monitoring of the wholesale electricity and gas markets and the compliance monitoring and enforcement of the National Electricity Law and Rules, National Gas Law and Rules and the National Energy Retail Law and Rules.

4. LIAISON

- 4.1 The agencies agree that there will be regular liaison meetings between the agencies as follows:
- 4.1.1 meetings at Commissioner or Senior Management level twice yearly, or as otherwise agreed between the agencies;
 - 4.1.2 meetings at agency officer level on a regular basis as agreed between the agencies to provide information on current matters which may be of interest to each agency.
- 4.2 The agencies agree that, where appropriate, they will consult with each other in relation to recent judgments, current law reform, policy issues, media releases and other matters of mutual interest.
- 4.3 The agencies agree that, where appropriate, they will consult with each other in relation to arrangements for joint publications and joint contact with stakeholder groups.
- 4.4 Each agency will appoint liaison contact officers for the purposes of liaison, communication and exchange of information between the agencies under this MOU. The list of liaison contact officers is at Appendix A. Each agency may change its liaison contact officers as necessary and will provide the other agency with an amended list.

5. EXCHANGE OF INFORMATION

- 5.1 The agencies agree that, subject to applicable laws, information in the possession of one agency, which is relevant to the responsibilities of the other agency, may be disclosed to the other agency, if requested, and if compliance with the request will not compromise the proper functioning of the complying agency.
- 5.2 Each agency will use its best endeavours to provide requested information to the other agency in a timely manner.

6. UNSOLICITED ASSISTANCE

- 6.1 Each agency recognises that in the course of carrying out its functions and exercising its powers, it may come into possession of information which would, if provided to the other agency, be likely to assist that other agency in administering or enforcing the particular laws for which it is responsible.
- 6.2 Each agency agrees, subject to applicable laws, to use reasonable endeavours to notify the other agency in a timely manner of the existence of any information of a kind referred to in clause 6.1 above, notwithstanding that it may not have received a request from the other agency for such information.

7. COST OF PROVISION OF INFORMATION

- 7.1 In general, a providing agency will bear the cost incurred by it in locating and providing information to the requesting agency.
- 7.2 If it appears to the providing agency that it will incur substantial costs in providing the information, it may discuss this with the other agency and the parties may negotiate a cost-sharing arrangement in relation to the provision of that information.

8. REFERRAL OF MATTERS

- 8.1 The agencies recognise that once a complaint is received or an initial investigation has been conducted by an agency, it may become apparent that the matter more appropriately falls within the jurisdiction of the other agency. For example, ASIC may refer matters to the AER where the matter being investigated primarily involves the application of the National Electricity Law and Rules, the National Gas Law and Rules or the National Energy Retail Law and Rules. Similarly, the AER may refer matters to ASIC which primarily involve breaches of the ASIC Act or the Corporations Act or other laws administered by ASIC.
- 8.2 The agencies agree that referral of matters between the agencies will take into account any supplementary administrative arrangements that may be agreed between the agencies from time to time.

- 8.3 The agencies acknowledge that there may be circumstances where matters will also be referred to other specialist Australian or international regulatory or law enforcement agencies. In those circumstances, the agencies will consult each other prior to a referral to another agency.

9. CONFIDENTIALITY

- 9.1 Each agency agrees to:
- 9.1.1 protect the confidentiality and sensitivity of information received from the other agency in accordance with the governing legislation under which it was provided;
 - 9.1.2 take all reasonable steps to ensure that such information is only used or disclosed for the purpose for which it was obtained, or as otherwise authorised by the other agency; and
 - 9.1.3 observe and comply with any express conditions placed upon release of information by the other agency.
- 9.2 The agency providing information may specify the level of confidentiality attached to information it provides to the other, consistent with secrecy and confidentiality provisions in each agency's governing legislation.
- 9.3 The agencies agree not to disclose any confidential information obtained under this MOU to a third party unless prior consent has been obtained from the originating agency, or disclosure is required, authorised or permitted by law.
- 9.4 Where disclosure is required, authorised or permitted by law, the agency disclosing the information will notify the other agency prior to such disclosure to allow the other agency to take all reasonable steps to maintain the confidentiality of the information, including, if necessary and appropriate, making a claim for public interest privilege or requiring confidentiality undertakings from the person or body to whom the information is required to be disclosed.

10. DISPUTES

- 10.1 Where there is conflict or disagreement between the agencies over any issue relating to or covered by this MOU, the agencies will seek to resolve the issue by negotiation between the Chief Executive Officer of the AER and the Executive Director, Markets, ASIC.

11. VARIATION AND REVIEW OF THIS MOU

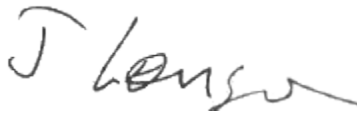
- 11.1 The agencies will keep the operation of this MOU under continuous review and will consult with each other with a view to improving its operation and resolving any matters that may arise.

- 11.2 This MOU may be varied by written agreement of the agencies. Either agency may propose a variation of this MOU by giving the other a notice setting out details of the variation proposal.
- 11.3 The agencies agree that the information contained in the appendix to this MOU may be amended by agreement in writing signed by two authorised officers of each agency.

12. TERMINATION

- 12.1 Either agency may give written notice to the other agency of its intention to terminate this MOU. The MOU will terminate 30 days after the date upon which the notice was received.
- 12.2 The agencies agree that if this MOU is terminated, all information provided under the MOU will continue to be subject to the confidentiality obligations referred to in this MOU.

DATED this 23rd day of December 2021



Joseph Longo
Chair
Australian Securities and Investments
Commission



Clare Savage
Chair
Australian Energy Regulator

APPENDIX A

Liaison contact officers under paragraph 4.4

1. ASIC Contact Officers

- For general liaison, communication and exchange of information the National liaison officer is: Senior Manager, Derivatives Surveillance Market Supervision

2. AER Contact Officers

- For all matters of interest to ASIC, the AER liaison officer is: General Manager, Market Performance Branch