

THIS MEMORANDUM is made on the 20th day of June 2007

PARTIES:

ESSENTIAL SERVICES COMMISSION (“Commission”)

and

DEPARTMENT OF HUMAN SERVICES (the “Department”)

BACKGROUND:

- A. The Commission is an independent statutory authority established by the ESC Act
- B. The Department is a prescribed agency for the purposes of the ESC Act.
- C. The parties have entered into a memorandum of understanding to provide for consultation between the Commission and the Department and the integration and co-ordination of their regulatory and other activities, in accordance with sections 15 and 16 of the ESC Act.
- D. This memorandum is intended to replace the memorandum of understanding entered into by the parties dated 28 November 2003.

OPERATIVE PROVISIONS:

1. Definitions

In this memorandum, including the background:

“**Chairperson**” means the Chairperson of the Essential Services Commission

“**ESC Act**” means the *Essential Services Commission Act 2001*

“**Minister**” means:

- (a) in the context of a specific Act to which reference is made – the Minister administering that Act; or
- (b) in clauses 3.1 (except paragraph (b) and 5.1 – the Minister administering the ESC Act;
- (c) in clause 3.1(b) – the relevant Minister responsible for the legislation which declares the regulated industry;
- (d) in clause 4.3 (c) – the Minister administering the *Safe Drinking Water Act 2003*.

“**prescribed agency**” has the same meaning as in the ESC Act

“**regulated industry**” has the same meaning as in the ESC Act.

2. Objectives and purpose of this memorandum

This memorandum seeks to:

- (a) ensure that the regulatory and decision making processes of the parties in relation to regulated industries are closely integrated and better informed;
- (b) avoid overlap or conflict between regulatory schemes (either existing or proposed) affecting regulated industries;
- (c) provide for sharing information between the parties in the context of their respective roles in relation to regulated industries;
- (d) promote the adoption of a best practice approach to regulation; and
- (e) assist in ensuring that the Commission is in a position to have regard to relevant environmental and public health legislation and regulatory practice in its decision making in relation to regulated industries.

3. The role of the Commission

3.1 The Commission currently has functions relating to the economic regulation of the electricity, gas, ports, grain handling, freight rail, taxi, hire car, tow truck, statutory insurance and water industries. Its specific functions are:

- (a) to perform such functions as are conferred by the ESC Act and the relevant legislation under which a regulated industry operates;
- (b) to advise the relevant Minister on matters relating to the economic regulation of regulated industries, including reliability issues;
- (c) when requested by the Minister to do so, to conduct an inquiry into any systemic reliability of supply issues related to a regulated industry or other essential service specified by the Minister in the request;
- (d) to conduct inquiries and report under the ESC Act on matters relating to regulated industries;
- (e) to make determinations in accordance with the ESC Act;
- (f) to make recommendations to the Minister as to whether an industry which provides an essential service should become a regulated industry or whether a regulated industry should continue to be a regulated industry;
- (g) to conduct public education programs for the purpose of promoting its objectives under the ESC Act and the relevant legislation and in relation to significant changes in the regulation of a regulated industry; and
- (h) to administer the ESC Act.

3.2 The Commission's primary objective in performing those functions is to protect the long-term interests of Victorian consumers with regard to the price, quality and reliability of essential services. In seeking to achieve that primary objective, the Commission must have regard to the following facilitating objectives:

- (a) to facilitate efficiency in regulated industries and the incentive for efficient long-term investment;
- (b) to facilitate the financial viability of regulated industries;
- (c) to ensure that the misuse of monopoly or non-transitory market power is prevented;
- (d) to facilitate effective competition and promote competitive market conduct;
- (e) to ensure that regulatory decision making has regard to the relevant health, safety, environmental and social legislation applying to the regulated industry;
- (f) to ensure that users and consumers (including low-income or vulnerable customers) benefit from the gains from competition and efficiency; and
- (g) to promote consistency in regulation between States and on a national basis.

3.3 The Commission must also perform its functions and exercise its powers in such a manner as the Commission considers best achieves any objectives specified in the relevant legislation under which a regulated industry operates.

3.4 The Commission has a specific role in determining matters at the request of the Department in the formulation of Community Service Arrangements between the Department and energy retailers (section 49 of the *Electricity Industry Act 2000* and section 51 of the *Gas Industry Act 2001*).

4. The role of the Department

4.1 The Department currently has a number of functions which are relevant to regulated industries and regulatory activities of the Commission:

- (a) through its Concessions Unit, the Department administers legislation and funding arrangements for the provision of concessions and grants to improve the affordability of energy and water services to low income households;
- (b) through its Public Health Group, the Department administers legislation relating to the safety and quality of drinking water supplies in Victoria in conjunction with the Environment Protection Authority, public health aspects of water discharged to the environment, reclaimed water schemes and water reuse schemes; and
- (c) through its Public Health Branch, the Department administers legislation in relation to licensing of persons who are in the business of a pest control operator and apply pesticides for certain purposes, including pest control.

- 4.2 The Department's function in relation to concessions and grants include:
- (a) development and monitoring of Community Services Agreements being agreements for the provision of community services within the meaning of Part 2 Division 7 of the *Electricity Industry Act 2000* and section 49 of the *Gas Industry Act 2001*;
 - (b) administration of Orders made under water legislation; and
 - (c) promoting awareness of concessions and grant entitlements.
- 4.3 The Department's functions in relation to the safety and quality of drinking water supplies in Victoria include:
- (a) administering the (*Health Fluoridation Act 1973*) in relation to the optimum levels of fluoride for drinking water supplies for the protection of dental health;
 - (b) administering the *Food Act 1984* in relation to water carting activities, the use of water for food manufacturing (including bottled water) and in relation to the safety of drinking water supplies in Victoria;
 - (c) administering the *Safe Drinking Water Act 2003* and its regulations, including:
 - i. monitoring and enforcing compliance with the Act and regulations;
 - ii reporting on the performance of water supply bodies in relation to drinking water quality issues;
 - iii investigating and reporting on any aspect of drinking water quality;
 - iv making recommendations to the Minister on any matter relating to drinking water quality;
 - v promoting awareness and understanding of drinking water quality issues; and
 - vi maintaining a register of variations, exemptions and undertakings.
- 4.4 In conjunction with the Environment Protection Authority, the Department's functions in relation to the public health aspects of water discharged into the environment, reclaimed water schemes and water reuse schemes in Victoria include:
- (a) considering measures to ameliorate the public health risks associated with reclaimed water schemes and water reuse schemes; and
 - (b) Assessing the merits of works approval submissions, in particular those relating to water reuse schemes and to public health aspects of discharges from water treatment facilities and wastewater treatment plants.

- 4.5 The Department's functions in relation to health and safety aspects of grain handling in Victoria include licensing of persons who are in the business of a pest control operator and apply pesticides for certain purposes, including domestic pests control (such operators may sometimes also apply pesticides in relation to pests that eat grain and/or be involved in the treatment of grain).

5 How the parties will consult

- 5.1 Where relevant, the Commission will, as early as practicable, consult with Department:
- (a) in the making of a determination;
 - (b) in the conduct of an inquiry or investigation, after first consulting with the Minister; and
 - (c) in preparing and reviewing the Commission's Charter of Consultation and Regulatory Practice.
- 5.2 The Department will, if requested in writing by the Commission to do so, consult with the Commission:
- (a) in relation to any matter specified by the Commission which is relevant to its objectives or functions; and
 - (b) in respect of a matter specified by the Commission which may impact on a regulated industry.
- 5.3 Each party having regard to their respective roles in relation to each regulated industry will:
- (a) consult with and involve the other in the performance of any function that has or is likely to have material implications for the other;
 - (b) ensure that such consultation occurs as early as practicable in the parties' regulatory, advisory or decision making processes;
 - (c) on request, provide the other with timely advice on regulatory matters for which it is responsible;
 - (d) provide the other with timely relevant information on industries or industry issues for which both parties have some responsibility;
 - (e) promptly inform the other of any material changes to its role or to the regulatory arrangements it administers;
 - (f) exchange details of annual work programs to the extent that they are relevant to the role of the other;
 - (g) provide the other with advance notice of its intention to undertake a major review or activity that will or may have material implications for the other;
 - (h) identify opportunities to coordinate strategic planning and undertake knowledge sharing initiatives to optimise material understanding of roles and strategic directions;
 - (i) identify relevant project officers to allow for the coordination of particular regulatory projects; and

(j) publish this memorandum on its website.

6. How the parties will manage their relationship and resolve disputes

6.1 Each party will ensure that, at all times while this memorandum is in force, one of its staff members is designated and known to the other as its contact officer for the purposes of this memorandum.

6.2 At the date of this memorandum, the contact officer for the Commission is Mr Paul Fearon, Chief Executive Officer and the contact officer for the Department is Ms Gill Callister, Executive Director, Office for Children for concessions and grant matters, and Dr Jim Hyde, Acting Director, Public Health for all other matters. Each party will give notice of any change to its contact officer to the other in writing, promptly after the change is made.

6.3 Each party will ensure that its contact officer:

- (a) makes themselves (or an alternate) available at all relevant times to address any questions, concerns or disputes arising out of the operation of this memorandum which are raised by either party;
- (b) instigates periodic (and in any event not less than three yearly) reviews of this memorandum directed, in particular, to the potential for improvement in its terms or operation and to the effect (if any) of regulatory change on its terms, operation or utility; and
- (c) arranges (in conjunction with the other's contact officer) such meetings of appropriate staff of the parties as and when necessary or desirable to facilitate the efficient and effective operation of this memorandum and including, in any event, a meeting of the Chairperson and the Director no less frequently than annually.

6.4 If there is a dispute between the parties as to the terms or operation of this memorandum, each party will ensure that its contact officer endeavours in good faith to resolve that dispute with the other's contact officer. If, however, a contact officer gives notice to the other party's contact officer of the view that the dispute is unlikely to be resolved by discussions between the contact officers, then each party's contact officer must promptly:

- (a) brief the Chairperson or Director (or a nominee of the party's Chairperson or Director) of details of the relevant dispute; and
- (b) arrange with the other's contact officer for a meeting of the Chairperson and the Director (or their respective nominees), with the objective of settling the dispute amicably.

7. Use and disclosure of information

7.1 The capacity of a party to use or disclose information, or take information into account, is or may be (depending on the nature or source of the information) restricted by law.

7.2 If a party discloses information to the other party under this memorandum, the disclosing party may place restrictions on the recipient's use or disclosure of that information, being restrictions it believes in good faith are necessary for compliance with binding restrictions on disclosure. A party receiving

information will observe any such restriction noting, however, that this requirement does not limit:

- (a) any other legal obligation of a party relating to the disclosure or use of information; and
- (b) any right of a party concerning information obtained otherwise than under this memorandum.

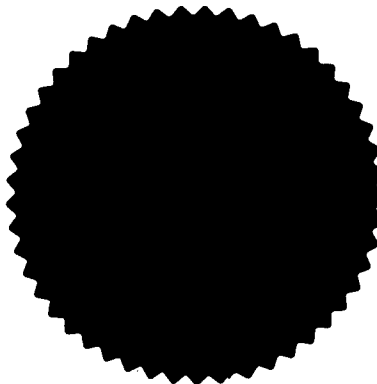
EXECUTED AS A MEMORANDUM:

THE COMMON SEAL of the ESSENTIAL SERVICES)
COMMISSION was affixed pursuant to the authority of the)
Commission on the 20th day of JUNE 2007)



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Greg Wilson
Chairperson

THE CORPORATE SEAL of THE)
SECRETARY TO THE DEPARTMENT)
OF HUMAN SERVICES was affixed in the)
presence of:)



Signature of Fran Thorn Secretary to the
Department of Human Services

Witness

F/05/1632 C/07/1465