

THIS MEMORANDUM is made on the 18<sup>th</sup> day of MARCH 2007

**PARTIES:**

**ESSENTIAL SERVICES COMMISSION** (the "Commission")

and

**ENVIRONMENT PROTECTION AUTHORITY** (the "Authority")

**BACKGROUND:**

- A. The Authority is a prescribed agency for the purposes of the ESC Act.
- B. The parties have entered into this memorandum of understanding to provide for consultation between them and the integration and co-ordination of their regulatory and other activities, in accordance with sections 15 and 16 of the ESC Act.

**OPERATIVE PROVISIONS:**

**1. Definitions**

In this memorandum, including the background:

"EP Act" means the *Environment Protection Act 1970* (Vic);

"ESC Act" means the *Essential Services Commission Act 2001* (Vic);

"Legislation" includes primary and subordinate legislation (eg State Environment Protection Policy (Waters of Victoria), Waste Management Policies, Regulations),

"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 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;
- (h) to advise the Minister in relation to any other matter referred to the Commission by the Minister; and
- (i) 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.

#### **4. The role of the Authority**

4.1 The Authority has broad powers in relation to protecting and improving the quality of the environment for all Victorians. Among other things, it is responsible for the implementation and enforcement of the EP Act and the regulations and policies under that Act, which apply to and have implications for regulated industries.

Key aims of the Act include sustainable use and holistic management of the environment, ensuring consultative processes are adopted so that community input is a key driver of environment protection goals and programs and encouraging a co-operative approach to environment protection.

4.2 The specific functions of the Authority are set out in the EP Act and include:

- (a) administration of the EP Act and any regulations and Orders made under that Act;
- (b) responsibility for and co-ordination of all activities relating to the discharge of wastes into the environment and the generation, storage, treatment, transport and disposal of industrial waste and the emission of noise and for preventing or controlling pollution and noise and protecting and improving the quality of the environment;

- (c) development of economic measures for the purpose of providing an economic incentive to avoid or minimise harm to the environment or any portion or segment of the environment by a particular activity;
- (d) promotion of continuing improvement in the efficiency with which resources are used, having regard to the principles of environment protection in general, and in particular in industrial enterprises and processes (refer to Appendix 1);
- (e) promotion of continuing reductions in the ecological impacts of industrial enterprises and processes;
- (f) issue of works approvals, licences, permits, pollution abatement notices, minor works pollution abatement notices, research development and demonstration approvals and notices, to control the volume, types, constituents and effects of waste discharges, emissions, deposits or other sources of pollutants and of substances which are of danger or a potential danger to the quality of the environment or any segment of the environment and the generation, storage, treatment, transport and disposal of industrial waste and to control the volume, intensity and quality of noise;
- (g) specification of standards and criteria for the protection of beneficial uses and the maintenance of the quality of the environment having regard to the ability of the environment to absorb waste without detriment to its quality and other characteristics and having regard to the social and economic development of Victoria;
- (h) imposition and collection of an environment protection levy in accordance with the EP Act; and
- (i) promotion, encouragement, co-ordination and the carrying out of long range planning in environment sustainability and management, waste management and pollution control.

## **5 How the parties will consult**

- 5.1 Where relevant, the Commission will, as early as practicable, consult with the Authority:
- (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 Authority 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<sup>1</sup>;
  - (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.
- 5.4 Each party having regard to their respective roles in relation to the water sector will:
- (a) meet annually to discuss issues related to the performance of the water businesses in delivering outcomes identified in Water Plans
  - (b) develop and maintain appropriate processes to ensure that issues related to periodic price reviews are considered in a timely manner

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<sup>1</sup> For example, the Commission proposes to give the Authority the opportunity to sit on the Commission's working groups in conducting major reviews or inquiries.

- (c) identify opportunities to coordinate consultation between the parties and water businesses on periodic water price reviews where appropriate

## **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 Sean Crees and the contact officer for the Authority is Mr Chris Bell. Each party will give notice of any change to its contact officer to the other, 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 respective Chairpersons of the parties 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 party's Chairperson (or a nominee of the party's Chairperson) of details of the relevant dispute; and
  - (b) arrange with the other's contact officer for a meeting of the Chairpersons of the parties (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 BY:

**THE COMMON SEAL** of the **ESSENTIAL SERVICES** )  
**COMMISSION** was affixed pursuant to the authority of the )  
Commission on the *15<sup>th</sup>* day of *MARCH* 2007 )



.....  
Greg Wilson  
Chairperson

**THE COMMON SEAL** of the **ENVIRONMENT** )  
**PROTECTION AUTHORITY** is duly affixed by the )  
Chairman on the *26* day of *March* 2007 )

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MICHAEL JOHN BOURKE  
CHAIRMAN



## **APPENDIX 1**

### **Extract from *Environment Protection Act 1970 Act No, 8056/1970* Part 1-Introduction**

#### **1A. Purpose of Act**

- (1) The purpose of this Act is to create a legislative framework for the protection of the environment in Victoria having regard to the principles of environment protection.
- (2) The principles of environment protection are set out in sections 1B to 1L.
- (3) It is the intention of Parliament that in the administration of this Act regard should be given to the principles of environment protection.

#### **1B. Principle of integration of economic, social and environmental considerations**

- (1) Sound environmental practices and procedures should be adopted as a basis for ecologically sustainable development for the benefit of all human beings and the environment.
- (2) This requires the effective integration of economic, social and environmental considerations in decision making processes with the need to improve community well-being and the benefit of future generations.
- (3) The measures adopted should be cost-effective and in proportion to the significance of the environmental problems being addressed.

#### **1C. The precautionary principle**

- (1) If there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
- (2) Decision making should be guided by—
  - (a) a careful evaluation to avoid serious or irreversible damage to the environment wherever practicable; and
  - (b) an assessment of the risk-weighted consequences of various options.

#### **1D. Principle of intergenerational equity**

The present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

#### **1E. Principle of conservation of biological diversity and ecological integrity**

The conservation of biological diversity and ecological integrity should be a fundamental consideration in decision making.

#### **1F. Principle of improved valuation, pricing and incentive mechanisms**

- (1) Environmental factors should be included in the valuation of assets and services.
- (2) Persons who generate pollution and waste should bear the cost of containment, avoidance and abatement.
- (3) Users of goods and services should pay prices based on the full life cycle costs of providing the goods and services, including costs relating to the use of natural resources and the ultimate disposal of wastes.
- (4) Established environmental goals should be pursued in the most cost effective way by establishing incentive structures, including market mechanisms, which enable persons best placed to maximise benefits or minimise costs to develop solutions and responses to environmental problems.

#### **1G. Principle of shared responsibility**

- (1) Protection of the environment is a responsibility shared by all levels of Government and industry, business, communities and the people of Victoria.
- (2) Producers of goods and services should produce competitively priced goods and services that satisfy human needs and improve quality of life while progressively reducing ecological degradation and resource intensity throughout the full life cycle of the goods and services to a level consistent with the sustainability of biodiversity and ecological systems.

#### **1H. Principle of product stewardship**

Producers and users of goods and services have a shared responsibility with Government to manage the environmental impacts throughout the life cycle of the goods and services, including the ultimate disposal of any wastes.

#### **1I. Principle of wastes hierarchy**

Wastes should be managed in accordance with the following order of preference—

- (a) avoidance;
- (b) re-use;
- (c) re-cycling;
- (d) recovery of energy;
- (e) treatment;
- (f) containment;
- (g) disposal.

#### **1J. Principle of integrated environmental management**

If approaches to managing environmental impacts on one segment of the environment have potential impacts on another segment, the best practicable environmental outcome should be sought.

#### **1K. Principle of enforcement**

Enforcement of environmental requirements should be undertaken for the purpose of—

- (a) better protecting the environment and its economic and social uses;
- (b) ensuring that no commercial advantage is obtained by any person who fails to comply with environmental requirements;
- (c) influencing the attitude and behaviour of persons whose actions may have adverse environmental impacts or who develop, invest in, purchase or use goods and services which may have adverse environmental impacts.

**1L. Principle of accountability**

- (1) The aspirations of the people of Victoria for environmental quality should drive environmental improvement.
- (2) Members of the public should therefore be given—
  - (a) access to reliable and relevant information in appropriate forms to facilitate a good understanding of environmental issues;
  - (b) opportunities to participate in policy and program development.