

THIS MEMORANDUM is made on the 18th day of April 2007

PARTIES:

ESSENTIAL SERVICES COMMISSION ("Commission")

and

ENERGY AND WATER OMBUDSMAN (VICTORIA) LIMITED ("EWOV")

BACKGROUND:

- A. EWOV operates a customer dispute resolution scheme approved by the Commission involving energy and water businesses (amongst others) regulated by the Commission (regulated scheme members).
- B. The parties have entered into a memorandum of understanding to provide for consultation between them and the integration and co-ordination of their regular activities, in the same spirit as memoranda of understanding entered into between the Commission and "prescribed agencies" under the ESC Act.
- C. This memorandum does not deal with constitutional, governance or scheme operational issues for which the Commission has regulatory responsibility under EWOV Constitution or Charter.

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*

"regulated industry" means the electricity, gas or water industry.

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) provide for sharing information between the parties in the context of their respective roles in relation to regulated industries;
- (c) promote the adoption of a best practice approach to regulation and customer dispute resolution; and
- (d) 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 EWOV

4.1 The EWOV scheme has been established by means of a company limited by guarantee, Energy and Water Ombudsman (Victoria) Limited ("EWOV Limited"). The Constitution and Charter of the company establishes:

- a Board of Directors, composed of directors appointed by the members, directors appointed from groups representing customers of electricity, gas or water services or raising public interest issues relevant to electricity, gas or water services, and one independent Chairperson; and
- an Energy and Water Ombudsman vested with authority under this Charter to receive, investigate and facilitate the resolution of complaints.

4.2 The mission of EWOV Limited is to receive, investigate and facilitate the resolution of complaints and disputes between consumers of electricity, gas and water services in Victoria and entities participating in the EWOV scheme. The mission is founded on principles of independence, natural justice, access, equity, effectiveness and community awareness.

4.3 The functions of the Ombudsman are to receive, to investigate and to facilitate the resolution of:

- (a) complaints as to the provision or supply of (or the failure to provide or supply) electricity, gas or water services by a Participant to a customer as required by a licence or agreement, under legislation or under an applicable industry code;
- (b) billing disputes;
- (c) the administration of credit and payment services in the circumstances of a particular customer;
- (d) disconnection, restriction and refundable advance complaints;
- (e) complaints from owners or occupiers of land or other property about the way in which a Participant has exercised its statutory powers in relation to that particular land or other property or in relation to neighbouring land or other property;
- (f) complaints referred by the Essential Services Commission in relation to the conduct of a Participant's electricity, gas or water services business; and
- (g) such other complaints as may, by agreement with the Ombudsman and the complainant, be referred to the Ombudsman by a Participant.

4.4 The Ombudsman, in handling complaints, must pursue them in a fair, reasonable, just, informal and expeditious manner having regard to the law and licences, industry codes, deemed contracts and good industry practice applicable to the relevant Participant.

4.5 After completion of an investigation and in the absence of a conciliated settlement of a complaint, the Ombudsman shall resolve a complaint by making a determination provided that the total value does not exceed \$20,000; or with the consent of all parties, does not exceed \$50,000. The Ombudsman may also dismiss the complaint.

5 How the parties will consult

5.1 Where relevant, the Commission will, as early as practicable, consult with EWOV:

- (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 EWOV 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 will notify the other of complaints by energy or water consumers to the extent allowed by each organisation's enabling instruments and privacy laws in accordance with agreed arrangements.

5.4 By way of specific commitment:

- (a) representatives of the Commission and EWOV will meet monthly to discuss matters of mutual interest and, in particular, the regulatory or systemic issues related to EWOV complaints;
- (b) to enable the Commission to deal with any systemic complaints or other matters that may need to be addressed by way of licence, code or guideline amendment or by way of action under the ESC Act, EWOV will provide to the Commission reports concerning emerging, systemic or regulatory complaints issues;
- (c) EWOV will, prior to the release of its complaints reports, provide to the ESC and the ESC's Customer Consultative Committee confidential briefings on those reports including advance copies of the reports;
- (d) if participating on ESC committees, either as an observer or member, provide reports on those committees as relevant;
- (e) the Commission will, prior to the release of its relevant industry customer service indicators reports, provide to EWOV confidential briefings on these reports including advance copies of the reports;
- (f) the Commission will accord EWOV observer status on the Commission's Customer Consultative Committee and EWOV will provide written reports to these committee meetings;
- (g) the Commission and EWOV will co-operate in relation to the preparation and distribution of the material for the guidance of the regulated scheme members and their customers –
 - such material prepared by the Commission which has implications for EWOV will be referred to EWOV for consideration and comment prior to its publication; and
 - EWOV will likewise refer to the Commission, for its consideration and comment, any such material to be published by the Ombudsman.
- (h) the Commission and EWOV will, from time to time, consider whether there is a need for public seminars or workshops in relation to their respective roles and, where a need is identified, may organise joint seminars or workshops; and
- (i) the Commission and EWOV will, from time to time, consider whether there is a need for joint research of issues of mutual interest with their respective functions and, if so, undertake such research, and will otherwise co-operate on research projects and share the results of research undertaken by either of them.

- 5.5 Without limiting clause 5.4, 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 relevant information or advice on industries or industry issues for which both parties have some responsibility;
 - (d) promptly inform the other of any material changes to its role or to the regulatory arrangements it administers;
 - (e) exchange details of annual work programs to the extent that they are relevant to the role of the other;
 - (f) 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;
 - (g) identify opportunities to coordinate strategic planning and undertake knowledge sharing initiatives to optimise material understanding of roles and strategic directions;
 - (h) identify relevant project officers to allow for the coordination of particular regulatory projects; and
 - (i) 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, and the contact officer for EWOV is Ms Janine Young. 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 the Chairperson and EWOV's Ombudsman 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 EWOV's Ombudsman (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 EWOV's Ombudsman (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 16th day of April 2007)



Greg Wilson

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Greg Wilson
Chairperson

THE COMMON SEAL of ENERGY)
AND WATER OMBUDSMAN)
(VICTORIA) LIMITED was affixed)
pursuant to the constitution of EWOV)



Fiona McLeod

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Fiona McLeod
Ombudsman