

THIS MEMORANDUM is made on the 11th day of April 2007

PARTIES:

ESSENTIAL SERVICES COMMISSION (the "Commission")

and

DIRECTOR OF MARINE SAFETY (the "Director")

BACKGROUND:

- A. The Commission is an independent statutory authority established by the ESC Act.
- B. The Director of Marine Safety 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 Director 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:

"**Chairperson**" means the Chairperson of the Essential Services Commission

"**ESC Act**" means the *Essential Services Commission Act 2001*

"**Marine Act**" means the Marine Act 1988 (Vic).

"**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 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 Director

4.1 The Director is responsible for Victoria's marine safety and for the administration of the Marine Act and Marine Regulations 1999.

4.2 The specific functions of the Director are set out in the Marine Act, which include responsibility for the following:

- (a) to develop appropriate standards for the construction, crewing, equipment and operations of vessels and to take steps to ensure that those standards are maintained;
- (b) to issue certificates and to develop appropriate standards for the training of crews and to take step to ensure that those standards are maintained;
- (c) to investigate incidents adequately in order to identify deficiencies in operational procedures, vessel standards or crew training;
- (d) to advise the Minister on the operation and administration of the Marine Act, the Marine Regulations, marine pollution legislation and marine safety matters and any other matters referred for advice by the Minister;
- (e) to provide guidance and information on marine safety matters;
- (f) to commission and sponsor research into marine safety matters;
- (g) to promote education and training in marine safety;
- (h) to ensure the adequate means exist in ports to enable an effective response to marine pollution incidents within ports;
- (i) to take action to deal with marine pollution incidents occurring in State waters that are not port waters;
- (j) to provide vessel survey and consultancy services;
- (k) to manage resources in the most effective manner;
- (l) to determine the fitness of a person to hold a licence or a certificate of competency;

- (m) to licence pilots and to develop appropriate standards for the training of pilots and pilot exempt masters and to ensure that those standards are maintained;
- (n) to register pilotage service providers;
- (o) to approve appropriate alternative safety standards for the provision of pilotage services by pilotage service providers;
- (p) to determine and enforce standards and procedures for navigation and maritime safety on State waters;
- (q) to develop appropriate standards for the provision and maintenance of navigation aids for State waters;
- (r) to develop appropriate standards for the dredging and maintenance of channels in State waters;
- (s) to direct the removal of implements or obstructions to navigation on State waters;
- (t) after consultation with the Environment Protection Authority, to develop, review, co-ordinate and administer the Victorian Marine Pollution Contingency Plan;
- (u) to determine the parts of State waters in which a licensed pilot is required to be engaged;
- (v) to determine the parts of State waters (other than port waters of the Port of Melbourne, the Port of Geelong, the Port of Portland or the Port of Hastings) with respect to which a licensed harbour masters is required to be engaged;
- (w) to licence harbour masters and determine standards for the training of harbour masters;
- (x) to test, approve the testing and licence operators of regulated recreational vessels;
- (y) to train or approve courses or persons for the purposes of training or operators of regulated recreational vessels;
- (z) to register recreational vessels;
- (aa) to investigate alleged breaches of the Marine Act or the Marine Regulations and to prosecute for them; and
- (bb) any other function that is conferred on the Director by or under the Marine Act or any other Act.

5 How the parties will consult

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

- (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 Director 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 Andrew Chow, and the contact officer for the Director is Ms Di Bates. 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 16th day of April 2007)



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Greg Wilson
Chairperson

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Brian Riches
DIRECTOR OF MARINE SAFETY