

THIS MEMORANDUM is made on the 4th day of July 2013

PARTIES:

ESSENTIAL SERVICES COMMISSION ("Commission")

and

SUSTAINABILITY VICTORIA ("Sustainability Victoria")

BACKGROUND:

- A. The Sustainable Energy Authority of Victoria is a prescribed agency for the purposes of section 15 of the *Essential Services Commission Act 2001* ("ESC Act").
- B. Section 21 of the *Sustainability Victoria Act 2005* provides that Sustainability Victoria is the successor in law to the Sustainable Energy Authority Victoria.
- C. This Memorandum of Understanding ("Memorandum") replaces the Memorandum of Understanding dated 12 October 2007.

OPERATIVE PROVISIONS:

1. Definitions

In this Memorandum, including the background:

"Chairperson" means the Chairperson of the Essential Services Commission

"Chief Executive Officer" means the Chief Executive Officer of Sustainability Victoria

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

"prescribed agency" has the same meaning as in the ESC Act

"regulated industry" has the same meaning as in the ESC Act

"SV Act" means the *Sustainability Victoria Act 2005*.

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 regulation of the electricity, natural gas, ports, freight rail, taxi, hire car, tow truck, statutory insurance and water industries. The Commission also has responsibilities in relation to energy efficiency programs and the provision of advice to Government. 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 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;
- (f) 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;
- (g) to advise the Minister in relation to any other matter referred to the Commission by the Minister; and
- (h) to administer the ESC Act.

3.2 The Commission's primary objective in performing those functions is to promote the long-term interests of Victorian consumers having 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 matters to the extent they are relevant in any particular case:

- (a) efficiency in the industry and incentive for long-term investment;
- (b) the financial viability of the industry;
- (c) the degree of, and scope for, competition within an industry;

- (d) the relevant health, safety, environmental and social legislation applying to the industry;
 - (e) the benefits and costs of regulation (including externalities and the gains from competition and efficiency) for—
 - (i) consumers and users of products or services (including low income and vulnerable consumers);
 - (ii) regulated entities;
 - (f) consistency in regulation between States and on a national basis; and
 - (g) any matters specified in relevant statutes.
- 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 will publish this Memorandum on its website.

4. The role of Sustainability Victoria

The objective of Sustainability Victoria is to facilitate and promote environmental sustainability in the use of resources in Victoria. The specific functions of Sustainability Victoria are set out in section 7 of the SV Act.

5 How the parties will consult

- 5.1 Where relevant, the Commission will, as early as practicable, consult with Sustainability Victoria:
- (a) in the making of a determination;
 - (b) in the conduct of an inquiry or investigation, after first consulting with the Minister;
 - (c) developing or updating guidelines published in accordance with the *Electricity Industry Act 2000*; and
 - (d) in preparing and reviewing the Commission's Charter of Consultation and Regulatory Practice.
- 5.2 Sustainability Victoria 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; and
- (i) identify relevant project officers to allow for the coordination of particular regulatory projects;

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. At the date of this Memorandum, the contact officer for the Commission is the Director Energy, and the contact officer for Sustainability Victoria is the Director, Resource Efficiency.
- 6.2 Each party will give notice in writing 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 the Chief Executive Officer no less frequently than annually.
- 6.4 In the event that the parties wish to undertake an activity together which involves the creation of legal rights, responsibilities and liabilities, the parties will enter into a separate agreement to give effect to this relationship, and the separate agreement will reference this Memorandum.

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

7. Use and disclosure of information

7.1 Each party shall keep the information of the other which is by its nature confidential or which is described by the other party to be confidential ("Confidential Information") confidential at all times, and shall not, without the prior consent of the other party:

- (a) make available, communicate or disclose any Confidential Information to any person; or
- (b) use or allow any person to use any of the Confidential Information for any purpose other than the performance of obligations under this MoU,

except where required by law or to make a disclosure to the Auditor General (Vic) upon request or pursuant to the *Freedom of Information Act 1982*.

7.2 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.

7.3 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.

7.4 Where the Commission discloses information to Sustainability Victoria, it will inform Sustainability Victoria if:

- (a) it is confidential or commercially-sensitive information obtained by the Commission during the exercise of a power or the performance of a function under, or in connection with, or the *Victorian Energy Efficiency Target Act 2007*;

- (b) the disclosure or use is made in the exercise of a power or the performance of a function under, or in connection with, the or the *Victorian Energy Efficiency Target Act 2007*;
- (c) the Commission has the consent of the person who supplied the information;
- (d) the disclosure or use is made in legal proceedings at the direction of a court;
- (e) the information is in the public domain at the time it is disclosed; and
- (f) the Commission gives consent for Sustainability Victoria to disclose or use the Confidential Information.

EXECUTED AS A MEMORANDUM:


THE COMMON SEAL of the **ESSENTIAL SERVICES COMMISSION** was affixed pursuant to the authority of the Commission on the 4 day of July 2013)






Dr Ron Ben-David
Chairperson

Signed for and on behalf of **Sustainability Victoria** (ABN 62 019 854 067) by its duly authorised representatives on the day of 2013)


Stan Krpan
Chief Executive Officer
Sustainability Victoria


Derek Jones
Chief Financial Officer
Sustainability Victoria

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