

THIS MEMORANDUM is made on the 30th day of April 2010

PARTIES:

ESSENTIAL SERVICES COMMISSION (the "Commission")

and

VICTORIAN REGIONAL CHANNELS 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:

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

"PS Act" means the *Port Services Act 1995* (Vic);

"port waters" means the port waters of Geelong, Hasting and Portland as declared by Order in Council made under section 5(2) of the PS Act;

"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, 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 incentives 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;

- (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.

4. The role of the Authority

- 4.1 The Authority is to ensure that port waters and channels in port waters are managed safely for use on a fair and reasonable basis.
- 4.2 The Authority owns channels associated navigation aids and other plant and equipment relevant to its operations.
- 4.3 The specific functions of the Authority are set out in the PS Act and is responsible for ensuring that the following functions are carried out in relation to port waters and channels in port waters in commercial trading ports:
 - (a) the establishment, management and, in accordance with the standards developed by the Director of Marine Safety, the dredging and maintenance of channels in the port waters;
 - (b) the provision and maintenance, in accordance with the standards developed by the Director of Marine Safety, of navigation aids in connection with navigation in the port waters;
 - (c) the general direction and control of the movement of vessels within the port waters in accordance with the *Marine Act 1988*;
 - (d) the provision of technical advice and support to port managers about the management and operations of port waters and channels in port waters;
 - (e) at the request of the port manager and with the approval of the Minister, the assistance to a port manager with integrated planning, development, management and promotion activities for the port; and
 - (f) such other functions as are conferred on the Authority by the PS Act or any other Act.

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 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;
- (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 Ms Natalia Southern, and the contact officer for the Authority is Mr Peter McGovern. 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 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.

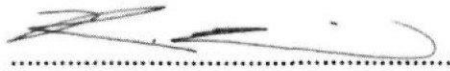
7. Use and disclosure of information

- 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

THE COMMON SEAL of the ESSENTIAL SERVICES)
COMMISSION was affixed pursuant to the authority of the)
Commission the 30 day of April 2010)

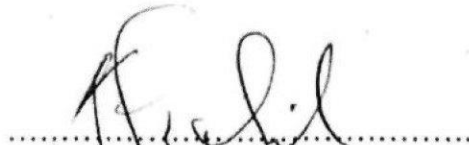




Ron Ben-David
Chairperson

For and on behalf of the VICTORIAN)
REGIONAL CHANNELS AUTHORITY)
in the presence of:)





Signature of Witness

Kas Szakiel

Name of Witness



Signature of Authorised Person

Peter McGovern

Name of Authorised Person