



Memorandum of understanding

between the Australian Energy Regulator and
the Essential Services Commission

November 2017

1. Objectives

- 1.1. This memorandum of understanding (MOU) sets out arrangements to promote effective communication, cooperation and coordination between the Essential Services Commission (the Commission) and the Australian Energy Regulator (AER) in performing their roles and functions in Australia's energy industry.
- 1.2. These arrangements aim to foster a co-operative working relationship between the two agencies, in the interests of promoting effective and efficient regulation of the Victorian energy sector.
- 1.3. The MOU also seeks to enhance the understanding of industry and consumer issues in relation to energy market, and the performance by the Commission and the AER of their respective roles.
- 1.4. This MOU is a public document and communicates, in a transparent way to all stakeholders, the administrative arrangements that operate between the AER and the Commission.

2. Parties to the understanding

Australian Energy Regulator

- 2.1 The AER is Australia's national energy market regulator and an independent statutory authority established under the *Competition and Consumer Act 2010* (Cth) (CCA). The AER is funded by the Commonwealth with staff, resources and facilities provided from the ACCC.
- 2.2 The AER is responsible for monitoring and ensuring compliance with national energy laws¹ and enforcement of economic regulation matters prescribed by distribution licences, codes and guidelines published by the Essential Services Commission under the *National Electricity (Victoria) Act 2005* and *National Gas (Victoria) Act 2008*.

Essential Services Commission

- 2.3 The Commission is Victoria's independent economic regulator, responsible for licensing the supply and sale of electricity and gas in Victoria. It also has responsibility for regulating Victoria's energy retail market, and aspects of the energy distribution sector. It is a statutory authority established under the *Essential Services Commission Act 2001*.

¹ *National Electricity Law, National Electricity Rules, National Gas Law, National Gas Rules National Energy Retail Law and National Energy Retail Rules*

3. Notification and consultation

- 3.1 The AER and the Commission recognise the importance of mutual consultation when their responsibilities overlap, but also recognise that decisions must be made independently. Where appropriate, the AER and the Commission will endeavour to:
- a) notify each other of any activities that may be relevant to the other parties, and keep each other informed of the progress of those matters. This could include:
 - i) compliance and enforcement activities relevant to, energy retail, distribution, transmission and generation businesses, exempt persons or consumers in Victoria;
 - ii) transmission and distribution determinations and access arrangements for electricity and gas networks in Victoria;
 - iii) reports on the energy industry; or
 - iv) changes to regulatory instruments such as guidelines.
 - b) provide each other with copies of publications that may be relevant to the other agencies. It may also be appropriate to provide an advance copy of, and briefing on, the publication, prior to its general release;
 - c) where a publication (such as a report or a webpage) by one party refers to another, provide that party with an opportunity to comment on the reference prior to the finalisation and general release of the publication;
- 3.2 Where appropriate, the AER and the Commission will consider inviting staff from participating agencies to participate in consumer and industry education and outreach activities.
- 3.3 In developing education and guidance materials, the AER and the Commission will, to the extent possible develop consistent materials.
- 3.4 Where appropriate, the AER and the Commission will each provide information forums for staff of the other agency covering topics such as roles and responsibilities, to support the operation of this MOU.

4. Activities reports

- 4.1 The contact officers nominated under clause 7.1 of this MOU will meet quarterly or as otherwise agreed to discuss matters of common interest, including to:
- a) provide each other with updates and reports on consumer complaints that may demonstrate systemic issues or emerging trends

- b) inform each other about any existing or proposed activities that may be of interest to the other parties;
- c) co-ordinate, where possible, the timing and structure of audit programs;
- d) review the referral of complaints or inquiries between the parties;
- e) identify opportunities for joint activities or the sharing of information; and
- f) report on any other developments that may impact on other parties.

4.2 Reports may be provided in writing or at the scheduled regular meetings, as agreed between the parties.

5. Special requests and referrals

- 5.1 The liaison officers may contact each other outside the scheduled regular meetings to:
- a) request advice on issues that are within the responsibility of their agencies – for example, the Commission may seek advice where the investigation of a complaint requires consideration of issues that are within the responsibility of the AER
 - b) request additional information outside of the scheduled reporting times.

When such a request is made, the party that receives the request will respond as soon as possible.

6. Information management

- 6.1 The parties recognise the value of sharing information. The parties also recognise that they each have obligations in relation to the protection of information and will take reasonable steps to protect any confidential information from any unauthorised use or disclosure.
- 6.2 Where appropriate, the AER and the Commission will facilitate the exchange of information. Where this information is confidential:
- a) the agency providing the information will identify the relevant part of the information that is confidential;
 - b) the receiving agency will only use or disclose that information to the extent permitted by law, for example, an FOI request or where required by a court; and
 - c) the receiving agency will use its best endeavours to inform the agency that provided the information prior to disclosing confidential information to third parties under clause 6.2(b).
- 6.3 The Commission acknowledges that information may be shared between the AER and Australian Competition and Consumer Commission (ACCC) as provided by the *Competition and Consumer Act 2010* (CCA). As set out in the ACCC and AER's

Information Policy, if the ACCC and AER have obtained information in the course of one matter which is relevant to another matter, the ACCC and AER will, in general, use that information in the context of the other matter subject to any specific legal requirement to the contrary.

7. Management of the MOU

- 7.1 The AER and the Commission will each nominate contact officer in relation to matters arising under this MOU and to be responsible for general liaison under this MOU and subsequent co-operation arrangements between the parties.
- 7.2 In the event of any disagreement between the parties as to the implementation of this MOU or the performance of their respective functions, powers and duties, the CEOs of the parties (or their delegates) will seek to resolve the matter in accordance with the objectives of this MOU.
- 7.3 This MOU will continue in force until such time as another MOU is agreed and signed between the parties. The AER and the Commission can initiate a review of this MOU where necessary.
- 7.4 This MOU is not intended to be legally binding on the agencies.

Publication

- 7.5 This MOU may be published by the AER and the Commission on their respective web sites.

Dated this *13* day of *NOVEMBER* 2017



Dr Ron Ben-David

Chair

Essential Services Commission



Paula Conboy

Chair

Australian Energy Regulator