

# Memorandum of Understanding

Essential Services Commission and the Energy and Water Ombudsman  
(Victoria)

September 2019

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# Memorandum of Understanding

## 1. Purpose and objectives

- 1.1. This Memorandum of Understanding ('memorandum') sets out arrangements to promote effective communication, information sharing, cooperation and coordination between the Essential Services Commission ('the commission') and the Energy and Water Ombudsman (Victoria) ('EWOV') in performing their respective roles and functions in Victoria's energy and water industries.
- 1.2. This memorandum is a public document and communicates in a transparent way to all stakeholders, the administrative arrangements that operate between the commission and EWOV.
- 1.3. This memorandum does not deal with governance or other arrangements that are detailed in EWOV's Charter and Constitution or in the commission's Energy Compliance and Enforcement Policy.

## 2. Parties to the Memorandum of Understanding

- 2.1. The commission and EWOV are the parties to this memorandum.
- 2.2. The commission is Victoria's regulator for the energy and water industries and is an independent statutory authority established under the Essential Services Commission Act 2001 (Vic), funded by the Victorian Government. The commission is responsible for monitoring and ensuring compliance with the Victorian energy and water regulatory frameworks and has responsibility under regulatory instruments to, among other things:
  - promote the long-term interests of Victorian consumers having regard to the price, quality and reliability of essential services
  - exercise its powers to best achieve any objectives specified in legislation relevant to the regulated industries,
  - consider and review the market conduct of the energy industry, predominantly in relation to concerns about systemic misconduct.
- 2.3. EWOV receives, investigates and facilitates the resolution of consumer complaints about electricity, gas and water companies operating in Victoria. EWOV's purpose is to independently and efficiently resolve energy and water disputes in Victoria and reduce their occurrence. EWOV is an industry-based external dispute resolution scheme. This means EWOV is not government related and does not report to a government minister. However, as part of their licence obligations and exemption conditions, energy and water companies

are required to participate in the scheme. EWOV is fully industry-funded, so the cost of resolving complaints is met by the companies in the scheme, not taxpayers.

### **3. Information management**

- 3.1. The commission and EWOV recognise the value of sharing information. Both 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 unauthorised use and disclosure.
- 3.2. Where appropriate, the commission and EWOV will facilitate the exchange of information. Where this information is confidential:
  - the party providing the information will identify the relevant part of the information that is confidential
  - the party receiving the information will only use or disclose that information to the extent required by law, for example a freedom of information request or where required by a court
  - the party receiving the information will use its best endeavours to inform the party that provided the information before disclosing confidential information to third parties.
- 3.3. With respect to all information concerning or relating to a complaint, EWOV will act in accordance with privacy laws and EWOV's Privacy Policy.

### **4. Information sharing**

- 4.1. Staff of the commission and EWOV will meet quarterly or as otherwise agreed to discuss matters of common interest and that support the performance of both organisations. The parties will:
  - provide each other with updates and reports on consumer complaints that may demonstrate systemic issues or emerging trends
  - discuss appropriate consumer complaints where regulatory advice or referral to the commission may be required
  - inform each other about any existing or proposed activities that may be of interest to the other party
  - review the referral of complaints or enquiries between the parties
  - develop protocols for requests and use of information
  - identify opportunities for joint activities or the sharing of information

- report on any other developments that may have an impact on the other party
  - provide reports to each other.
- 4.2. In addition to the quarterly meetings, senior commission and EWOV staff will meet to discuss matters of strategic importance to both organisations, including:
- areas of consumer complaint where a working group may be required to clarify regulatory guidance
  - additional information sharing and cooperation between the commission and EWOV required to support the performance of their respective roles.

## **5. Special requests and referrals**

- 5.1. The commission and EWOV may request advice on issues that are within the responsibility of their organisation or request additional information, for example the commission may seek consumer complaint data to assist in its compliance and enforcement work and EWOV may seek advice where the investigation of a complaint requires consideration of issues that are within the responsibility of the commission. When such a request is made, the party that receives the request will respond as soon as practicable.
- 5.2. In addition to ad hoc special requests and referrals, EWOV may refer matters to, or seek guidance from, the commission in relation to:
- disconnection disputes
  - systemic issues
  - regulatory guidance, particularly regarding codes and guidelines administered by the commission.

### **Disconnection dispute referrals**

- 5.3. EWOV conducts assessments on the applicability of compensation when a consumer lodges a relevant actual disconnection complaint. In conducting these assessments, EWOV will:
- handle complaints about actual disconnections in accordance with EWOV's usual policy and processes
  - seek guidance from the commission on any questions of interpretation of the relevant energy law, including the Energy Retail Code, or an energy retailers' terms and conditions of sale and supply
  - refer a dispute to the commission for decision where EWOV is unable to resolve the dispute regarding payment of compensation between the retailer and consumer.

## Systemic issue referrals

5.4. EWOV's role includes the identification and investigation of systemic issues. When reviewing potential systemic issues, EWOV will:

- carry out initial analysis and investigation regarding the nature and extent of the systemic issue, including escalations to higher level management at the relevant energy or water business where necessary to progress investigation
- where possible, investigate and resolve the systemic issue, obtaining redress for affected consumers
- refer a dispute to the commission for action where EWOV is unable to resolve a systemic issue with the energy or water business, or where regulatory intervention is required.

## Regulatory guidance referrals

5.5. In the course of dispute investigation and resolution, EWOV has regard to relevant laws and regulatory instruments. EWOV may seek guidance from the commission, on the interpretation of regulatory instruments administered by the commission.

## 6. Notification and consultation

6.1. The commission and EWOV recognise the importance of mutual consultation and information sharing when their responsibilities overlap, but also recognise that decisions must be made independently. Where appropriate, the commission and EWOV will endeavour to:

- Notify each other of any activities that may be relevant to the other party, this could include:
  - compliance and enforcement decisions made by the commission which are relevant to energy and water businesses or consumers in Victoria
  - reports on the energy and water industries, including reports on consumer complaint trends, market practices and conduct and the consumer impacts of policy and regulation
  - changes to regulatory instruments such as codes and guidelines.
- Ensure notification and consultation occurs as early as practicable in any relevant regulatory, advisory or decision making processes.
- Provide the other party with prior notice and an opportunity to comment prior to the finalisation and public release of publications where relevant and appropriate,

particularly where the publication (such as a report, media report or webpage) prepared by one party refers to the other.

- Ensure consistency in the development of materials where possible, especially when developing education and guidance materials.
- Consider inviting staff from the respective organisations to participate in consumer, industry education and outreach activities where appropriate.

## 7. Management of the Memorandum of Understanding

- 7.1. The Chairperson of the commission (or their delegates) and the Ombudsman (or their delegates) will meet as necessary to assess the operation of the memorandum and to discuss the ongoing relationship between the commission and EWOV.
- 7.2. In the event of any disagreement between the parties as to the implementation of this memorandum or the performance of their respective functions, powers and duties, the Chairperson of the commission and the Ombudsman (or their delegates) will seek to resolve the matter in accordance with the objectives of this memorandum.
- 7.3. The commission and EWOV will review this memorandum every four years, or earlier as required.
- 7.4. This memorandum is not intended to be legally binding on the organisations.

### Publication

This memorandum will be published by the commission and EWOV on their respective websites.

Dated this 9<sup>th</sup> day of September 2019



**Kate Symons**

**Chairperson**

**Essential Services Commission**



**Cynthia Gebert**

**Energy and Water Ombudsman**

**Energy and Water Ombudsman (Victoria) Limited**

