



Memorandum of Understanding

between

Essential Services Commission

and

Australian Energy Regulator

November 2022

Contents

Preamble	1
A. Introduction	2
1. Definitions	2
2. Interpretation	3
3. Nature of MoU	3
4. Term	3
B. Purposes	4
5. Purposes of MoU	4
C. Consultation and meetings	4
6. Consultation	4
7. Meetings	5
8. Contact information	5
D. Information management	5
9. Information management	5
10. Process for information sharing	6
E. Information Sharing Arrangement	7
11. Nature of arrangement	7
12. Information that may be shared	7
F. Referrals	8
13. Process for referrals	8
G. Management of MoU	8
14. Contact Officers	8
15. Dispute resolution	9
16. Review of MoU	9
17. Variation of MoU	9
18. Termination of MoU	10
H. General	10
19. Publication	10
20. Counterparts	10

MEMORANDUM OF UNDERSTANDING dated 17 November 2022

between

ESSENTIAL SERVICES COMMISSION

and

AUSTRALIAN ENERGY REGULATOR

(collectively, the "parties")

Preamble

- A. The Essential Services Commission (**commission**) is an independent statutory body established under the *Essential Services Commission Act 2001* (Vic) (**ESC Act**). The commission's primary objective is to promote the long-term interests of Victorian consumers having regard to the price, quality and reliability of essential services. Its functions relevantly include regulating the electricity and gas industries in Victoria in accordance with the *Electricity Industry Act 2000* (Vic) and the *Gas Industry Act 2001* (Vic).
- B. The Australian Energy Regulator (**AER**) is a statutory authority established under the *Competition and Consumer Act 2010* (Cth). The AER regulates wholesale and retail energy markets, and energy networks, under national energy legislation and rules.
- C. The parties have entered into this memorandum of understanding (**MoU**) to promote effective communication, coordination and information management between them in performing their respective statutory roles.
- D. The parties have also, by way of Part E of this MoU, entered into an information sharing arrangement in accordance with section 60E of the ESC Act.
- E. This MoU supersedes the MoU dated 13 November 2017 between the parties.

The parties agree to the following:

A. Introduction

1. Definitions

In this MoU, unless the context requires otherwise:

- (a) **AER** means the Australian Energy Regulator;
- (b) **AER Chairperson** means the person holding the position, from time to time, of the chairperson of the AER, or their nominee(s);
- (c) **business day** means any day that is not a Saturday, Sunday or a public holiday;
- (d) **commission** means the Essential Services Commission;
- (e) **Contact Officers** means the persons notified by each party to the other party, at least annually, as being the first-mentioned party's Contact Officers for the purposes of this MoU;
- (f) **ESC Act** means the *Essential Services Commission Act 2001* (Vic);
- (g) **ESC Chairperson** means the person holding the position, from time to time, of the chairperson of the commission, or their nominee(s);
- (h) **ESC Commissioner** means a person holding the position, from time to time, of Commissioner of the commission, or their nominee(s);
- (i) **ISA** means the information sharing arrangement set out in Part E;
- (j) **MoU** means this memorandum of understanding, as amended from time to time in accordance with its terms;
- (k) **party** means a party to this MoU;
- (l) **receiving party** has the meaning given to it in clause 13.1;
- (m) **referring party** has the meaning given to it in clause 13.1;
- (n) **regulated industry** has the meaning given to it in section 3 of the ESC Act; and
- (o) **requesting party** means a party that issues a written request under clause 10.1(b).

2. Interpretation

In this MoU, unless the context requires otherwise:

- (a) words in the singular include the plural and vice versa;
- (b) headings are for convenience only and do not affect the interpretation of this MoU;
- (c) reference to a clause or Part is a reference to a clause or Part of this MoU (as the case may be);
- (d) subject to clause 3.1, the ISA is part of this MoU; and
- (e) a reference to a statute or regulation refers to Victorian legislation unless indicated otherwise, and includes an amendment or re-enactment to that legislation and subordinate instruments enacted under it.

3. Nature of MoU

3.1 This MoU is not intended to be legally binding on the parties or to create any legally enforceable obligations between the parties, save that:

- (a) the ISA is an information sharing arrangement within the meaning of section 60E of the ESC Act; and
- (b) this MoU is not intended to interfere with any statutory powers, rights, or obligations of either party, including those that may arise under section 60E of the ESC Act.

3.2 Nothing in this MoU should be construed as preventing or inhibiting either party from acting in the proper performance of their statutory functions or restricting their statutory powers.

3.3 This MoU is a public document and communicates in a transparent way to all stakeholders, the administrative arrangements that operate between the commission and the AER.

4. Term

4.1 This MoU is effective from the last date on which this MoU is signed by a party and continues in force until it is terminated in accordance with clause 18.

4.2 From the effective date of this MoU, the MoU dated 13 November 2017 between the parties is terminated.

B. Purposes

5. Purposes of MoU

- 5.1 Acknowledging the many benefits of information sharing between the commission and the AER, the key purpose of this MoU is to set out arrangements to promote effective communication, coordination, and information management between the parties in performing their respective statutory roles.
- 5.2 Without limiting clause 5.1, the purposes of this MoU are to:
- (a) foster a cooperative working relationship between the parties;
 - (b) avoid unnecessary overlap or conflict between the parties' respective performance of their functions and exercise of their powers;
 - (c) provide for an information sharing arrangement between the parties in accordance with section 60E of the ESC Act; and
 - (d) provide for a process for referrals between the parties.

C. Consultation and meetings

6. Consultation

- 6.1 The parties recognise that while mutual consultation is important where their functions and/or powers overlap, their respective decisions must be made independently of each other.
- 6.2 Wherever possible and appropriate, each party (**first-mentioned party**) will endeavour to:
- (a) provide the other party with prior notice of, and an opportunity to comment on (to the extent relevant to the other party):
 - (i) any activity of the first-mentioned party that is likely to substantially affect the other party's performance of functions or exercise of powers; and
 - (ii) any publication by the first-mentioned party that contains information provided by the other party, or that references the other party, prior to the finalisation and public release of such publication (which may be, for example, a report, media release, guidance material or webpage);
 - (b) ensure that any notification and consultation under this clause 6.2 occurs as early as practicable in any relevant regulatory, advisory, or decision-making processes;

- (c) in consulting with the other party under this clause 6.2, avoid unnecessary overlap or conflict between the parties' respective performance of their functions and exercise of their powers; and
- (d) invite staff from the other party to participate in consumer, industry education and outreach activities.

7. Meetings

- 7.1 The ESC Chairperson (or an ESC Commissioner) and the AER Chairperson will meet quarterly, or as otherwise agreed between them, to discuss:
- (a) matters of strategic importance to the parties;
 - (b) significant issues relevant to the statutory functions of the parties; and
 - (c) any other matter as agreed between the ESC Chairperson (or an ESC Commissioner) and the AER Chairperson.
- 7.2 Each of the ESC Chairperson (or an ESC Commissioner) and the AER Chairperson may invite their staff members or other representatives to attend the meetings described in clause 7.1.
- 7.3 The Contact Officers for the parties will meet quarterly, or as otherwise agreed between them, to discuss the matters arising under this MoU.
- 7.4 The Contact Officers may invite staff members or other representatives of the respective parties to attend the meetings described in clause 7.3.

8. Contact information

Each party will ensure the other party is provided with up-to-date contact information of their Contact Officers.

D. Information management

9. Information management

- 9.1 Each party recognises that:
- (a) it has legal obligations in relation to the collection, use and disclosure of information, which may include the following types of information:
 - (i) personal information or sensitive information under the *Privacy and Data Protection Act 2014* (Vic) or the *Privacy Act 1988* (Cth);

- (ii) health information under the *Health Records Act 2001* (Vic); and
 - (iii) family violence information that constitutes any of the information described in clause 9.1(a)(i) and (ii) above; and
- (b) the provision of any information to it by the other party is subject to restrictions imposed by law or that party's internal policies.

9.2 Each party will:

- (a) use, or disclose to a third party, any information provided to it by the other party only to the extent:
 - (i) required or authorised by law (for example, where required by a court or under the *Freedom of Information Act 1982* (Vic) or the *Freedom of Information Act 1982* (Cth)); or
 - (ii) subject to any relevant law, as agreed with the other party; and
- (b) take reasonable steps to protect any information provided to it by the other party from unauthorised or illegal use and disclosure.

10. Process for information sharing

10.1 Subject to this MoU and any relevant law, each party may:

- (a) voluntarily share information with the other party; and/or
- (b) issue a written request to the other party to obtain information held by that party.

10.2 If a written request made under clause 10.1(b) relates to information that falls within the scope of clause 12, the requesting party will ensure that the written request:

- (a) specifies the precise information requested and explains how that information falls within the scope of clause 12; and
- (a) specifies the purpose of requesting the information and explains why that information is reasonably necessary to assist in the exercise of the requesting party's functions.

10.3 Where a party holds information the subject of a written request made under clause 10.1(b), that party will endeavour to provide the requested information to the requesting party within 15 business days or such other reasonable timeframe required by the first-mentioned party (subject to this MoU and any relevant law).

E. Information Sharing Arrangement

11. Nature of arrangement

- 11.1 The ISA is entered into by the parties under section 60E of the ESC Act for the purpose of sharing or exchanging information held by the parties.
- 11.2 The ISA applies in relation to any sharing or exchanging of information held by the parties, only to the extent that the information falls within the scope of clause 12.
- 11.3 The parties recognise that:
- (a) the ISA does not limit the matters set out in section 60E(8) of the ESC Act, including the giving of information with the written authority of the person to whom the information relates; and
 - (b) without limiting clause 3.2, the ISA does not in any way prevent or inhibit either party from obtaining information by other lawful means.

12. Information that may be shared

- 12.1 The information to which the ISA relates is limited to:
- (a) information obtained by the commission under section 37 of the ESC Act and any other information concerning investigations, law enforcement, assessment of complaints, licensing or disciplinary matters;
 - (b) any other information affecting the interests of consumers of goods and services in regulated industries; and
 - (c) any other information of a prescribed kind (as described in section 60E(2)(c) of the ESC Act).
- 12.2 The parties recognise that any disclosure of information by the AER under the ISA will be subject to the operation of relevant law including the *Competition and Consumer Act 2010* (Cth) and national energy legislation and rules.
- 12.3 The parties recognise that the commission:
- (a) may request, receive, or disclose information under the ISA only to the extent that the information is reasonably necessary to assist in the exercise of the statutory functions of the commission or that of the AER; and
 - (b) must not share the types of information set out in section 60E(7) of the ESC Act, including:

- (i) any confidential or commercially sensitive information which must not be shared by the commission under section 60C of the ESC Act; and
- (ii) any information that is obtained by the commission under section 36(1) or 39K of the ESC Act, section 23A of the *Electricity Industry Act 2000* (Vic) or section 33 of the *Gas Industry Act 2001* (Vic).

F. Referrals

13. Process for referrals

- 13.1 Subject to this MoU and any relevant law, a party (**referring party**) may refer to the other party (**receiving party**) a matter that the referring party considers would be more appropriately managed by the receiving party (having regard to the receiving party's statutory functions).
- 13.2 The referring party will ensure that a referral under clause 13.1:
- (a) specifies the subject matter of the written request; and
 - (b) specifies any information that would assist the receiving party to determine whether to accept the written request.
- 13.3 This clause 13 does not prevent either party from taking any action on its own initiative (subject to this MoU and any relevant law) based on information provided to it by the other party.
- 13.4 For the avoidance of doubt, this Part F does not form part of the ISA set out in Part E.

G. Management of MoU

14. Contact Officers

- 14.1 Each party will appoint Contact Officers for the purposes of this MoU.
- 14.2 The Contact Officers are responsible for liaison in relation to the matters arising under this MoU.
- 14.3 Each party will ensure that its Contact Officers:
- (a) address any questions or concerns arising out of the operation of this MoU, which may be raised by a Contact Officer of the other party, within a reasonable timeframe;

- (b) together with the other party's Contact Officers, instigate the review of this MoU in accordance with clause 16 below; and
- (c) together with the other party's Contact Officers, arrange the meetings specified in clause 7.1.

15. Dispute resolution

- 15.1 If there is a dispute between the parties arising out of the operation of this MoU, each party will ensure that its Contact Officers use all reasonable endeavours to resolve that dispute with the other party's Contact Officers.
- 15.2 If a dispute cannot be resolved by the Contact Officers under clause 15.1 within two months, or such other timeframe as agreed between the parties, the ESC Chairperson (or an ESC Commissioner) and the AER Chairperson will use all reasonable endeavours to resolve that dispute.
- 15.3 This MoU remains in effect notwithstanding the existence of a dispute.

16. Review of MoU

The parties will:

- (a) review this MoU once every three years, or at such other time as agreed between the parties; and
- (b) in reviewing this MoU, consider:
 - (i) the potential for improving the MoU's terms, operation and effectiveness;
 - (ii) the effect (if any) of regulatory change on the MoU's terms, operation or effectiveness; and
 - (iii) any other matter as agreed between the parties.

17. Variation of MoU

- 17.1 This MoU may be varied by written agreement between the parties or replaced by another MoU in writing that is duly signed by the parties.
- 17.2 If any legislative provision is amended or repealed such that any provision of this MoU is no longer operational or consistent with legislation, that provision of this MoU will be deemed to be deleted and the remaining provisions of this MoU will remain in effect (subject to clause 18).

18. Termination of MoU

- 18.1 Either party may terminate this MoU by giving at least two months' written notice to the party.
- 18.2 This MoU may be terminated at any time by written agreement between the parties.

H. General

19. Publication

This MoU may be published on the parties' respective websites.

20. Counterparts

This MoU may be executed in any number of counterparts, all of which together shall constitute one instrument.

EXECUTED AS A MEMORANDUM OF UNDERSTANDING

THE COMMON SEAL of the **ESSENTIAL SERVICES COMMISSION** was affixed pursuant to the authority of the commission on the 17th day of November 2022



A handwritten signature in blue ink, appearing to be "Kate Symons".

.....
Kate Symons
Chairperson

A handwritten signature in black ink, appearing to be "Clare Savage".

Clare Savage
Chair
Australian Energy Regulator
Date: 17 November 2022