



Memorandum of Understanding

between

Essential Services Commission

and

Victorian Energy Safety Commission

September 2022

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MEMORANDUM OF UNDERSTANDING dated 29 September 2022

between

ESSENTIAL SERVICES COMMISSION

and

VICTORIAN ENERGY SAFETY COMMISSION also known as **ENERGY SAFE VICTORIA**

(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), and administering the Victorian Energy Upgrades program in accordance with the *Victorian Energy Efficiency Target Act 2007* (Vic).
- B. Energy Safe Victoria (**ESV**) is an independent statutory body established under the *Energy Safe Victoria Act 2005* (Vic). ESV is the safety regulator for electricity, gas and pipelines in Victoria. Its functions relevantly include monitoring and enforcing the *Electricity Safety Act 1998* (Vic), the *Gas Safety Act 1997* (Vic) and the *Pipelines Act 2005* (Vic).
- 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 functions.
- 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 19 December 2013 between the parties.

The parties agree to the following:

A. Introduction

1. Definitions

In this MoU, unless the context requires otherwise:

- (a) **business day** means any day that is not a Saturday, Sunday or a public holiday (being a public holiday appointed as such under the *Public Holidays Act 1993* (Vic)) in Melbourne;
- (b) **commission** means the Essential Services Commission;
- (c) **Contact Officers** means the persons holding the respective positions, from time to time, specified in item 1 of the Schedule, or their respective nominee(s);
- (d) **ESC Act** means the *Essential Services Commission Act 2001* (Vic);
- (e) **ESC Chairperson** means the person holding the position, from time to time, of the chairperson of the commission, or their nominee(s);
- (f) **ESC Commissioner** means a person holding the position, from time to time, of Commissioner of the commission, or their nominee(s);
- (g) **ESV** means Energy Safe Victoria;
- (h) **ESV Chairperson** means the person holding the position, from time to time, of the chairperson of ESV, or their nominee(s);
- (i) **ESV Commissioner** means a person holding the position, from time to time, of Commissioner of ESV, or their nominee(s);
- (j) **Information Sharing Arrangement** means the information sharing arrangement set out in Part E;
- (k) **Liaison Officers** means:
 - (i) in respect of compliance and enforcement matters or the Information Sharing Arrangement, the persons holding the respective positions, from time to time, specified in item 2 of the Schedule;
 - (ii) in respect of energy reform matters, the persons holding the respective positions, from time to time, specified in item 3 of the Schedule; and

- (iii) in respect of safety matters relating to the VEU Program, the persons holding the respective positions, from time to time, specified in item 4 of the Schedule;
or their respective nominee(s);
- (l) **MoU** means this memorandum of understanding, as amended from time to time in accordance with its terms;
- (m) **party** means a party to this MoU;
- (n) **receiving party** has the meaning given to it in clause 14.1;
- (o) **referring party** has the meaning given to it in clause 14.1;
- (p) **regulated industry** has the meaning given to it in section 3 of the ESC Act;
- (q) **relevant legislation** has the meaning given to it in section 3 of the ESC Act;
- (r) **requesting party** means a party that issues a written request under clause 11.1(b);
and
- (s) **VEU Program** means the Victorian Energy Upgrades program.

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, Part or Schedule is a reference to a clause or Part of, or Schedule to, this MoU (as the case may be);
- (d) a Schedule is part of this MoU;
- (e) subject to clause 3.1, the Information Sharing Arrangement is part of this MoU; and
- (f) 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 Information Sharing Arrangement 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 ESV.

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 19.

4.2 From the effective date of this MoU, the MoU dated 19 December 2013 between the parties is terminated.

5. Relevant functions of the parties

5.1 The commission's functions relevantly include to:

(a) licence the activities of sale, distribution, transmission and generation of electricity, and sale and distribution of gas, in Victoria;

(b) make, amend and revoke Codes of Practice under Part 6 of the ESC Act in relation to regulated industries;

(c) monitor and report on compliance with, and to investigate and commence proceedings in relation to contraventions of, the ESC Act, *Electricity Industry Act 2000 (Vic)*, *Gas Industry Act 2001 (Vic)* and civil penalty requirements; and

(d) administer the Victorian Energy Upgrades program and to regulate the program participants.

5.2 ESV's functions relevantly include to:

(a) licence electrical workers and lineworkers and register electrical contractors;

(b) assess, accept, monitor and enforce compliance with safety cases for electricity, gas and pipeline infrastructure, networks and installations;

(c) administer the gas appliance acceptance schemes for Type B gas appliances and complex gas installations;

(d) participate in the Electrical Equipment Safety Scheme (EESS) for electrical equipment certification;

- (e) inspect, test and audit installations, equipment and appliances;
- (f) educate industry and the community on energy safety issues;
- (g) investigate energy safety incidents and complaints; and
- (h) monitor and enforce compliance with energy safety laws, including general safety duties applying to specified categories of regulated entities in the energy sector.

B. Purposes

6. Purposes of MoU

- 6.1 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 functions.
- 6.2 Without limiting clause 6.1, the purposes of this MoU are to:
 - (a) foster a cooperative working relationship between the parties;
 - (b) ensure that the regulatory and decision-making processes of the parties are closely integrated and better informed;
 - (c) avoid conflict between the parties' respective performance of their functions and exercise of their powers;
 - (d) provide for an information sharing arrangement between the parties in accordance with section 60E of the ESC Act; and
 - (e) provide for a process for referrals between the parties.

C. Consultation and meetings

7. Consultation

- 7.1 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.
- 7.2 Where 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 (including, for example, any changes to regulatory instruments proposed to be made by that 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 7.2 occurs as early as practicable in any relevant regulatory, advisory, or decision-making processes;
 - (c) in consulting with the other party under this clause 7.2, avoid 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.

8. Meetings

- 8.1 The ESC Chairperson (or an ESC Commissioner) and the ESV Chairperson (or an ESV Commissioner) will meet quarterly, or as otherwise agreed between them, to discuss:
- (a) matters of strategic importance to the parties; and
 - (b) significant issues impacting regulated industries relevant to the regulatory functions of the parties; and
 - (c) any other matter as agreed between the ESC Chairperson (or an ESC Commissioner) and the ESV Chairperson (or an ESV Commissioner).
- 8.2 Each of the ESC Chairperson (or an ESC Commissioner) and the ESV Chairperson (or an ESV Commissioner) may invite their staff members or other representatives to attend the meetings described in clause 8.1 (subject to them providing prior notice to the other party).
- 8.3 The Liaison Officers will meet as agreed between the relevant Liaison Officers to discuss the respective subject matters set out in the Schedule.
- 8.4 The Liaison Officers may invite staff members or other representatives of the respective parties to attend the meetings described in clause 8.3.

9. Contact information

Each party will ensure the other party is provided with up-to-date contact information of their Contact Person and Liaison Persons.

D. Information management

10. Information management

10.1 Each party recognises that:

- (a) it has legal obligations in relation to the collection, use and disclosure of information, including in relation to the following types of information:
 - (i) personal information or sensitive information under the *Privacy and Data Protection Act 2014* (Vic);
 - (ii) health information under the *Health Records Act 2001* (Vic); and
 - (iii) family violence information that constitutes any of the information described in clause 10.1(a)(i) and (ii) above;
- (b) the provision of any information to it by the other party is subject to any reasonable restrictions (for the purpose of compliance with law or internal policies) notified to it by that party;
- (c) it may request, receive or disclose information under the Information Sharing Arrangement only to the extent that the information is reasonably necessary to assist in the exercise of the commission's functions under the ESC Act or relevant legislation or the ESV's statutory functions;
- (d) the commission must not share the types of information set out in section 60E(7) of the ESC Act under the Information Sharing Arrangement, including:
 - (iv) any confidential or commercially sensitive information which must not be shared by the commission under section 60C of the ESC Act; and
 - (v) 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);
- (e) the Information Sharing Arrangement 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
- (f) without limiting clause 3.2, the Information Sharing Arrangement does not in any way prevent or inhibit either party from obtaining information by other lawful means.

10.2 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
 - (ii) subject to law, as agreed with the other party;
- (b) take reasonable steps to protect any information provided to it by the other party from unauthorised or illegal use and disclosure;
- (c) comply with any reasonable request of the other party relating to the management or protection of information to comply with law or internal policies; and
- (d) to the extent that there is any legal barrier preventing the sharing of information under the Information Sharing Arrangement, use all reasonable endeavours to overcome the barrier by lawful means (for example, by seeking consent from the entity to whom the information relates if such consent would enable the information to be shared in accordance with law).

11. Process for information sharing

11.1 Subject to this MoU and any 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.

11.2 If a written request under clause 11.1(b) relates to information that falls within the scope of clause 13, 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 13; and
- (b) 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.

11.3 A party that receives a written request under clause 11.1(b):

- (a) has the discretion to accept or refuse the written request;
- (b) will provide a written response to the requesting party, as to whether it accepts the written request, within 10 business days of the date of the written request (or such other timeframe as agreed between the parties); and

- (c) will endeavour to provide the requested information to the requesting party within a reasonable timeframe (subject to this MoU and any law) if it accepts the written request.

E. Information Sharing Arrangement

12. Nature of arrangement

- 12.1 The Information Sharing Arrangement 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.
- 12.2 The Information Sharing Arrangement 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 13.

13. Information that may be shared

The information to which the Information Sharing Arrangement 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).

F. Referrals

14. Process for referrals

- 14.1 Subject to this MoU and any 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).
- 14.2 The referring party will ensure that a referral under clause 14.1:
 - (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.

- 14.3 This clause 14 does not prevent either party from taking any action on its own initiative (subject to this MoU and any law) based on information provided to it by the other party.

G. Management of MoU

15. Contact Officers

- 15.1 Each party will appoint a Contact Officer for the purposes of this MoU.
- 15.2 The Contact Officers are responsible for general liaison in relation to the subject matters of this MoU.
- 15.3 Each party will ensure that its Contact Officer:
- (a) addresses any questions or concerns arising out of the operation of this MoU, which may be raised by the Contact Officer of the other party, within a reasonable timeframe;
 - (b) together with the other party's Contact Officer, instigates the review of this MoU in accordance with clause 17 below; and
 - (c) together with the other party's Contact Officer, arrange the meetings specified in clause 8.1.

16. Dispute resolution

- 16.1 If there is a dispute between the parties arising out of the operation of this MoU, each party will ensure that its Contact Officer uses all reasonable endeavours to resolve that dispute with the other party's Contact Officer.
- 16.2 If a dispute cannot be resolved by the Contact Officers under clause 16.1 within two months, or such other timeframe as agreed between the parties, the ESC Chairperson (or an ESC Commissioner) and the ESC Chairperson (or an ESV Commissioner) will use all reasonable endeavours to resolve that dispute.
- 16.3 This MoU remains in effect notwithstanding the existence of a dispute.

17. 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.

18. Variation of MoU

- 18.1 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.
- 18.2 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 19).

19. Termination of MoU

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

H. General

20. Publication

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

21. 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 29th day of September 2022)



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

.....

Kate Symons
Chairperson

SIGNED for and on behalf of the
VICTORIAN ENERGY SAFETY
COMMISSION by its authorised delegate

A handwritten signature in black ink, appearing to read "Leanne Hughson".

.....

Leanne Hughson
Chief Executive Officer
Date: 26/09/2022

Schedule

| Item No. | Role | Subject matter | Commission | ESV |
|----------|-------------------------|--|--|--|
| 1. | Contact Persons | General liaison | Senior Regulatory Manager, Analysis and Reform (Energy) | Head of Legal Services |
| 2. | Liaison Officers | Compliance and Enforcement and Information Sharing Arrangement | Senior Regulatory Manager, Compliance and Enforcement (Energy) | Head of Legal Services |
| 3. | Liaison Officers | Energy Reform | Senior Regulatory Manager, Analysis and Reform (Energy) | Head of Strategy and Risk or, for matters relating to legislative reform only, Head of Regulatory Policy |
| 4. | Liaison Officers | Safety matters relating to VEU Program | Manager, Audit and Compliance (VEU) | Head of Electrical Installation Safety |