



Memorandum of Understanding

between

Essential Services Commission

and

Sustainability Victoria

February 2023

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This **MEMORANDUM OF UNDERSTANDING** is made on the 10th day of February 2023

between

ESSENTIAL SERVICES COMMISSION

and

SUSTAINABILITY 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. The commission is responsible for monitoring and ensuring compliance with the Victorian energy and water regulatory frameworks. The commission is also responsible for the administration of the Victorian Energy Upgrades Scheme and administers the rate-capping system for the local government sector.
- B. Sustainability Victoria is a statutory authority established under the *Sustainability Victoria Act 2005* (Vic) (**SV Act**). Its objective is to facilitate and promote environmental sustainability in the use of resources in Victoria. The specific functions of Sustainability Victoria are set out in section 7 of the SV Act.
- 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. This MoU supersedes the MoU dated 4 July 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 Officer** means:
 - (i) in the case of the commission, the person holding the position, from time to time, of Executive Director, VEU; and
 - (ii) In the case of SV, the person holding the position, from time to time, of Director, Industry & Infrastructure,or their respective nominee(s);
- (d) **ESC Act** means the *Essential Services Commission Act 2001* (Vic);
- (e) **MoU** means this memorandum of understanding, as amended from time to time in accordance with its terms;
- (f) **party** means a party to this MoU;
- (g) **regulated industry** has the meaning given to it in section 3 of the ESC Act;
- (h) **relevant legislation** has the meaning given to it in section 3 of the ESC Act;
- (i) **SV** means Sustainability Victoria;
- (j) **SV Act** means the *Sustainability Victoria Act 2005* (Vic);
- (k) **VEET Act** means the *Victorian Energy Efficiency Target Act 2007* (Vic);
- (l) **VEU** means Victorian Energy Upgrades; and
- (m) **VEU program** means the Victorian Energy Efficiency Target *scheme* established by the VEET Act.

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) a reference to a clause or Part is a reference to a clause or Part of this MoU (as the case may be); and
- (d) 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, and is not intended to interfere with any statutory powers, rights, or obligations of either party.
- 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 SV.

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 4 July 2013 between the parties is terminated.

5. Relevant functions of the commission

- 5.1 The commission's functions relevantly include:
 - (a) to licence the activities of sale, distribution, transmission and generation of electricity, and sale and distribution of gas, in Victoria;
 - (b) to make, amend and revoke Codes of Practice under Part 6 of the ESC Act in relation to regulated industries; and

- (c) to monitor and report on compliance with, and to investigate and commence proceedings in relation to, the ESC Act and other relevant legislation; and
- (d) to administer the VEU program, which includes the accreditation of persons who may create Victorian Energy Efficiency Certificates.

5.2 In performing its functions and exercising its powers, the objective of the commission is to promote the long term interests of Victorian consumers.

5.3 The commission must also perform its functions and exercise its powers in a manner that the commission considers best achieves any objectives specified in the relevant empowering instruments.

6. Relevant functions of SV

6.1 The objective of SV is to facilitate and promote environmental sustainability in the use of resources in Victoria. The specific functions of SV are set out in section 7 of the SV Act.

- (a) facilitate the implementation of environmentally sustainable measures in all sectors of the Victorian economy, including local government, business and households;
- (b) provide information and advice on issues relating to environmental sustainability;
- (c) encourage and promote the development and use of environmentally sustainable practices, markets, technologies and industries, including resource efficiency, energy efficiency, renewable energy and water;
- (d) facilitate the uptake of fledgling technologies, industries, markets and practices in environmental sustainability, including demonstration projects;
- (e) work in conjunction with the Department and, where appropriate, in conjunction with other Government Departments, on environmental sustainability policies and strategies;
- (f) provide advice to the Minister on issues concerning environmental sustainability and environmentally sustainable markets, including issues relating to resource efficiency, renewable energy, greenhouse gases and waste management.

B. Purposes

7. Purposes of MoU

- 7.1 The key purpose of this MoU is to set out arrangements to promote effective communication, coordination, collaboration and information management between the parties in performing their respective functions and responsibilities.
- 7.2 Without limiting clause 7.1, 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 overlap or conflict between the parties' respective performance of their functions and exercise of their powers; and
 - (d) provide for a process for referrals between the parties.

C. Consultation and meetings

8. Consultation

- 8.1 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.
- 8.2 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 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) where requested by the other party, provide that party with advice on regulatory matters for which the first-mentioned party is responsible;
- (c) ensure that any notification and consultation under this clause 8.2 occurs as early as practicable in any relevant regulatory, advisory, or decision-making processes;
- (d) in consulting with the other party under this clause 8.2, avoid overlap or conflict between the parties' respective performance of their functions and exercise of their powers;
- (e) invite staff from the other party to participate in consumer, industry education and outreach activities; and
- (f) identify opportunities to coordinate strategic planning and undertake knowledge sharing initiatives to optimise mutual understanding of roles and strategic directions.

9. Meetings

- 9.1 The Contact Officers will meet quarterly, or as otherwise agreed between them, to discuss:
- (a) matters of strategic importance to the parties (with a particular focus on matters relating to the VEU program); and
 - (b) any other matter as agreed between the Contact Officers.
- 9.2 The Contact Officers may invite staff members or other representatives of the respective parties to attend the meetings described in clause 8.1.

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, which may include 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
 - (b) the provision of any information to it by the other party is subject to any reasonable restrictions imposed by that party to comply with law or internal policies.

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 any relevant 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; and
- (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.

11. Process for information sharing

11.1 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 (**disclosing party**) to obtain information held by the disclosing party.

11.2 Subject to this MoU and any relevant law, the disclosing party will endeavour to provide the requested information to the requesting party within a reasonable timeframe.

E. Referrals

12. Referrals

12.1 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).

12.2 The referring party will ensure that a referral under clause 11.1:

- (a) specifies the subject matter of the written request;
- (b) specifies any information that would assist the receiving party to determine whether to accept the written request; and
- (c) is directed to the attention of the Contact Officer of the receiving party.

- 12.3 This clause 12 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.

F. Management of MoU

13. Contact Officers

- 13.1 Each party will provide up-to-date contact information of its Contact Officer to the other party.
- 13.2 The Contact Officers are responsible for general liaison in relation to the subject matters of this MoU.
- 13.3 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 other party's Contact Officer, within a reasonable timeframe;
 - (b) together with the other party's Contact Officer, instigates the review of this MoU in accordance with clause 14 below; and
 - (c) together with the other party's Contact Officer, arrange the meetings specified in clause 8.1.

14. Dispute resolution

- 14.1 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.
- 14.2 If a dispute cannot be resolved by the Contact Officers under clause 14.1 within two months or such other timeframe that may be agreed between the parties, the Chief Executive Officer of the commission and the Chief Executive Officer of Sustainability Victoria will use all reasonable endeavours to resolve that dispute.
- 14.3 This MoU remains in effect notwithstanding the existence of a dispute.

15. Review of MoU

The parties will:

- (a) review this MoU once every three years, or at such other time that may be 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.

16. Variation of MoU

- 16.1 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.
- 16.2 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 16).

17. Termination of MoU

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

G. General

18. Publication

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

19. 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 duly affixed pursuant to the authority of)
the Commission on the 10th day of February 2023)
)



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

.....
Kate Symons
Chairperson

Signed for and on behalf of SUSTAINABILITY VICTORIA)
by its duly authorised representative on the 9th day of)
February 2023)
)

A handwritten signature in black ink, appearing to read "Matt Genever".

.....
Matt Genever
Interim CEO
Sustainability Victoria