ESSENTIAL SERVICES COMMISSION

ENERGY AND WATER OMBUDSMAN
Victoria Listen Assist Resolve

Memorandum of Understanding

between

Essential Services Commission

and

Energy and Water Ombudsman Victoria

November 2023

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This **MEMORANDUM OF UNDERSTANDING** is made on the 21st day of November 2023

between

ESSENTIAL SERVICES COMMISSION

and

ENERGY AND WATER OMBUDSMAN 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). 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 making economic regulatory decisions and determinations, and monitoring and ensuring compliance with the Victorian energy regulatory frameworks and water regulatory frameworks. The commission is also responsible for the administration of the Victorian Energy Upgrades Scheme and administering components of the rate-capping system for the local government sector.

B. The Energy and Water Ombudsman Victoria (**EWOV**) resolves consumer complaints about electricity, gas and water companies operating in Victoria, with the further aim of reducing the occurrence of such disputes. EWOV is the dispute resolution scheme approved by the commission under section 28 of the *Electricity Industry Act 2000*, section 36 of the *Gas Industry Act 2001* and section 122ZG of the *Water Act 1989*. EWOV is also part of the complaints escalation process for water businesses as set out in water industry standards made under section 4F of the *Water Industry Act 1994*, for signatories to the Victorian LPG Retail Code and for embedded networks.

C. EWOV is an independent external dispute resolution scheme. EWOV is not a government organisation and does not report to a government minister. However, as part of electricity and gas licence obligations, by reference to obligations in the *Water Act* and in water industry standards made under the *Water Industry Act*, orders, or other relevant standards and codes made by the commission, regulated energy and water businesses are required to participate in the scheme. As EWOV is industry-funded, the cost of resolving complaints is met by the participants in the scheme, not taxpayers.

D. 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.

E. This MoU does not deal with governance or other arrangements that are detailed in the Energy and Water Ombudsman Victoria's Charter and Constitution or in the commission's Compliance and Enforcement Policy.

F. This MoU supersedes the MoU dated 9 September 2019 between the parties.

The parties agree to the following:

A. Introduction

1. Definitions

In this MoU, unless the context requires otherwise:

(a) **approved dispute resolution scheme** means where EWOV has been approved as the dispute resolution scheme by the commission under the relevant statute, licence condition, standard, code, order or other instrument.

(b) **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;

(c) **Charter** means the Energy and Water Ombudsman (Victoria) Charter dated 14 March 2018, as amended from time to time;

(d) **commission** means the Essential Services Commission;

(e) **Contact Officer** means the person nominated under clause 14;

(f) **Constitution** means the constitution of Energy and Water Ombudsman (Victoria) Limited ACN 070 516 175 dated 14 March 2018, as amended from time to time;

(g) **ESC Act** means the *Essential Services Commission Act 2001* (Vic);

(h) **EWOV** means the Energy and Water Ombudsman Victoria;

(i) **Electricity Industry Act** means the *Electricity Industry Act 2000*;

(j) **Gas Industry Act** means the *Gas Industry Act 2001*;

(k) **MoU** means this memorandum of understanding, as amended from time to time in accordance with its terms;

(l) **party** means a party to this MoU;

(m) **regulated industry** has the meaning given to it in section 3 of the ESC Act;

(n) **relevant legislation** has the meaning given to it in section 3 of the ESC Act;

(o) **systemic issue** has the meaning as described in section 109C(1) of the Electricity Industry Act and section 225(1) of the Gas Industry Act;

(p) **Water Act** means the *Water Act 1989*, and

(q) **Water Industry Act** means the *Water Industry Act 1994.*

2. Interpretation

2.1 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 EWOV.

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 9 September 2019 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 price determinations for the regulated Victorian water industry and for standing offers made available within Victoria's retail electricity industry;

(c) to approve or specify standards and conditions of service and supply which regulated water entities are obliged to comply;

(d) to make, amend and revoke water industry standards for the regulated water industry;

(e) to undertake performance monitoring, reporting and auditing for the regulated water industry;

(f) to make, amend and revoke guidelines under section 13 of the ESC Act in relation to regulated industries;

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

(h) to monitor and report on compliance with, and to investigate and enforce, including commencing proceedings in relation to, the ESC Act and other relevant legislation; and

(i) to approve the customer dispute resolution scheme under relevant industry legislation, codes and standards.

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. 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 ESC Act, relevant legislation and relevant empowering instruments.

6. Relevant functions of EWOV

6.1 EWOV handles complaints about electricity, gas and water services in Victoria. The specific functions of EWOV are set out in EWOV's Charter and Constitution, available on EWOV's website. EWOV's Charter provides that, when handling complaints or making procedures for handling complaints, EWOV will consider:

(a) relevant laws, licences, industry codes, industry standards and good practice;

(b) the *Benchmarks for Industry-based Customer Dispute Resolution* and principles (accessibility, independence, fairness, accountability, efficiency and effectiveness); and

(c) what is fair and reasonable.

6.2 EWOV aims to handle complaints in a fair, reasonable, independent, economical, informal and timely way.

6.3 EWOV also aims to uphold principles of natural justice, access, effectiveness and community awareness.

6.4 In addition, EWOV may:

(a) report to the commission when it considers a schemes participant's policy or practices are resulting in complaints or making it harder to resolve complaints; and

(b) refer a matter to the commission that EWOV considers may constitute a systemic issue.

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, and achieving their related shared goals and outcomes.

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 well informed;

(c) avoid overlap or conflict between the parties' respective performance of their functions and exercise of their powers; and

(d) provide a process for referrals and guidance between the parties.

C. Consultation and meetings

8. Co-operation

8.1 The parties recognise that, so far as is consistent with their independent roles, they will:

(a) encourage ongoing engagement across issues that may arise at an operational level;

(b) assist one another, where appropriate, in the exercise of their respective functions;

(c) seek to achieve a complementary and consistent approach to common issues; and

(d) seek to reduce any potential for confusion and misunderstanding about their different roles.

9. Consultation

9.1 The parties recognise that while mutual consultation is important, where their functions and/or powers overlap or are inter-related, their respective decisions must be made independently of each other.

9.2 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 matters for which the first-mentioned party is responsible;

(c) ensure that any notification and consultation under this clause 9 occurs as early as practicable in any relevant regulatory, advisory, or decision-making processes;

(d) in consulting with the other party under this clause 9, avoid overlap or conflict between the parties' respective performance of their functions and exercise of their powers or functions;

(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.

10. Meetings

10.1 The parties will meet and communicate regularly – at appropriate levels of seniority – to discuss matters of mutual interest.

10.2 The commission Chairperson and EWOV Ombudsman will meet regularly, as agreed between them, to;

(a) provide commission oversight to the approved dispute resolution scheme;

(b) discuss matters of shared and/or strategic importance to the parties;

(c) consider any additional information sharing and cooperation required between the commission and EWOV to support the performance of their respective roles; and

(d) any other matters as agreed.

10.3 The parties anticipate regular meetings between senior staff of EWOV and the commission to:

(a) provide each other with updates and reports on consumer complaints that may demonstrate issues or emerging trends;

(b) discuss appropriate consumer complaints where regulatory guidance or referral to the commission may be required or has occurred;

(c) inform each other about any existing or proposed activities that may be of interest to the other party;

(d) identify opportunities for joint activities or the sharing of information;

(e) report on any other developments that may have an impact on the other party; or

(f) any other matter as agreed.

10.4 Further meetings may occur between commission and EWOV staff in order to facilitate consultation, information sharing and referrals as outlined in this document.

D. Information management

11. Information management

11.1 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);

(iii) personal information or sensitive information under the *Privacy Act 1988* (Cth);

(b) the provision of any information to it by the other party is subject to any reasonable restrictions imposed by that party to preserve confidentiality and to comply with law or internal policies.

11.2 Each party will:

(a) 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 *Privacy Act 1988* (Cth)); or

(ii) subject to any relevant law, as agreed with the other party;

(b) use their best endeavours to inform the other party if disclosure under (a) is required, prior to such disclosure occurring;

(c) take reasonable steps to protect any information provided to it by the other party from unauthorised or illegal use and disclosure; and

(d) comply with any reasonable request of the other party relating to the management or protection of information to comply with law or internal policies.

12. Process for information sharing

12.1 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 provide information held by the disclosing party.

12.2 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.

12.3 Each party may report or refer information, complaints and insights to the other party for the other parties' functions and process, including policy, and potential compliance and enforcement matters which may be considered under the commission's Compliance and Enforcement Policy.

12.4 Reports or referrals under 12.3 will occur between senior staff of EWOV and the commission or as otherwise agreed.

E. Systemic Issue Referrals

13. Systemic Issue Referrals

13.1 As outlined in the Electricity Industry Act and Gas Industry Act, EWOV may refer systemic issues to the commission.

13.2 Prior to referring a possible systemic issue to the commission, EWOV staff will:

(a) carry out initial analysis and investigation regarding the nature and extent of the possible systemic issue, including escalation to higher level management at the relevant energy or water business where necessary to progress the investigation;

(b) where possible and appropriate, investigate and resolve the systemic issue, obtaining redress for affected consumers;

(c) discuss with the commission Contact Officer.

13.3 EWOV will ensure that a referral under clause 13:

(a) specifies the subject matter of the written request, including details of the potential number of customers affected and reasons why it is considered a systemic issue;

(b) specifies any information that would assist the receiving party in considering the written request; and

(c) be addressed to the commission Chairperson from the Ombudsman of EWOV.

13.4 Referrals by EWOV to the commission on systemic issues will have regard to the definition of systemic issue including scope of potential harm.

13.5 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.

Guidance

13.6 In the course of developing a referral, EWOV may seek guidance from the commission on the interpretation of regulatory instruments administered by the commission.

13.7 Requests for guidance under clause 13.6 will have regard to the potential harm and scope of the relevant conduct.

F. Management of MoU

14. Contact Officers

14.1 Each party will nominate a Contact Officer and provide up-to-date contact information of its Contact Officer to the other party.

14.2 The Contact Officers are responsible for general liaison in relation to the subject matters of this MoU.

14.3 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 16 below; and

(c) together with the other party's Contact Officer, arrange the meetings and discuss possible referrals specified in clause 10 and 13.

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 Officer uses all reasonable endeavours to resolve that dispute with the other party's Contact Officer.

15.2 If a dispute cannot be resolved by the Contact Officers under clause 15.1 within two months or such other timeframe that may be agreed between the parties, the commission Chairperson and the EWOV Ombudsman 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 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.

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 other party.

G. General

19. Publication

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

20. Counterparts

20.1 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 21st day of November 2023)
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Kate Symons

Chairperson

Signed for and on behalf of Energy and Water Ombudsman (Limited) Victoria by its duly authorised representative on the 21st day of November 2023)
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Catherine Wolthuizen

Ombudsman and CEO