



MEMORANDUM OF UNDERSTANDING

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

and

ESSENTIAL SERVICES COMMISSION

**Regarding their respective roles and functions in the Australian water
industry**

July 2012

1. Objectives

- 1.1. This memorandum of understanding (MOU) sets out arrangements to promote effective communication, cooperation and coordination between the Victorian Essential Services Commission (ESC) and the Australian Competition and Consumer Commission (ACCC) in performing their respective roles and functions in relation to Australia's water industry. The ESC and the ACCC both have price approval and determination functions under the Water Charge Infrastructure Rules 2010 (WCIR).
- 1.2. This MOU is a public document and communicates, in a transparent way to all stakeholders, the administrative arrangements that operate between the ESC and the ACCC.

2. Parties to the Understanding

Australian Competition and Consumer Commission

- 2.1. Under the *Water Act 2007* Cth (Water Act) the ACCC has responsibility for monitoring compliance with and enforcing the Water Market Rules and the Water Charge Rules including the WCIR. In the absence of the accreditation of state agencies the ACCC is responsible under the WCIR for approving or determining the regulated charges of certain infrastructure operators.
- 2.2. The ACCC also has broad responsibility for enforcing consumer protection and fair trading laws and promoting competition in the market place. It does this by promoting compliance with and enforcing the provisions of the *Competition and Consumer Act 2010* Cth (CCA). The role of the ACCC is to facilitate and encourage compliance with the laws it enforces, to take appropriate action in response to contraventions of those laws, to determine certain competition and access issues and to educate the community in relation to such matters.

Victorian Essential Services Commission

- 2.3. The ESC is Victoria's independent economic regulator of prescribed essential services supplied by the electricity, gas, energy, water and transport industries.
- 2.4. The Essential Services Commission is an independent statutory authority established under the *Essential Services Commission Act 2001*.
- 2.5. The Commission's primary objective in performing its functions is to promote the long-term interests of Victorian consumers having regard to the price, quality and reliability of essential services.
- 2.6. The ESC's legislative obligations set out a number of matters that the ESC must have regard to when performing its functions which include:

- a. efficiency in the industry and incentives for long term investment
- b. the financial viability of the industry
- c. the degree and scope for competition within the industry including countervailing market power and information asymmetries
- d. the relevant health, safety, environmental and social legislation applying to the industry
- e. the benefits and costs of regulation (including externalities and the gains from competition and efficiency) for:
 - i. consumers and users of products or services (including low income and vulnerable consumers)
 - ii. regulated entities
 - iii. consistency in regulation between States and on a national basis
- f. any other matters specified in empowering instruments.

2.7. The ESC has had accreditation arrangements approved under part 9 of the WCIR which allow it to approve or determine regulated charges for certain Victorian infrastructure operators in accordance with the WCIR. Details of the accreditation can be found at www.accc.gov.au/water.

3. Notification and Consultation

3.1. The ESC and ACCC recognise the importance of mutual consultation when their responsibilities in relation to water overlap, but also recognise that decisions must be made independently. Where appropriate, the ESC and ACCC will endeavour to:

- a. notify each other of any activities that may be relevant to the other party, and keep each other informed of the progress of those matters. This could include:
 - i. compliance and enforcement activities concerning part 6 of the WCIR, relevant to infrastructure operators and their customers in Victoria
 - ii. approval or determination of the regulated charges of infrastructure operators
 - iii. changes to regulatory instruments such as guidelines
- b. provide each other with copies of publications that may be relevant to the other agency. It may also be appropriate to provide an advance copy of, and briefing on, the publication, prior to its general release

- c. provide the other party with the opportunity to comment on a publication (such as a report or a webpage) where it contains a reference to the other party. This will occur prior to the finalisation and general release of the publication.

- 3.2. Where appropriate, the ESC and ACCC will consider inviting staff from the respective agencies to attend consumer and industry education and outreach activities.
- 3.3. In developing education and guidance materials in relation to their respective roles under the WCIR, the ESC and ACCC will, to the extent possible, develop consistent materials.
- 3.4. Where appropriate, the ESC and ACCC will each provide information forums for staff of the other agency covering topics such as roles and responsibilities, to support the operation of this MOU.

4. Regular meetings

- 4.1. The liaison officers nominated under clause 7.1 of this MOU will meet as necessary to discuss matters of common interest. Meetings in accordance with this clause will occur at least yearly or as otherwise agreed. Issues to be covered at the meetings may include:
 - a. updates, particularly at key stages, on their respective price approval or determination processes under the WCIR
 - b. updates and reports on relevant consumer complaints that may demonstrate systemic issues or emerging trends
 - c. updates on existing or proposed activities that may be of interest to the other party
 - d. referral of complaints or inquiries between the parties
 - e. opportunities for joint activities or the sharing of information
 - f. other developments that may impact on the other party.

5. Special requests and referrals

- 5.1. The liaison officers may contact each other outside the scheduled regular meetings to request information or advice within the responsibility of their agencies.
- 5.2. When such a request is made, the party that receives the request will respond as soon as possible.

6. Information management

- 6.1. The parties recognise the value of sharing information. Where appropriate, the ESC and ACCC will facilitate the exchange of information.
- 6.2. The parties also recognise that they each have statutory obligations in relation to the protection of information and will take reasonable steps to protect any confidential information from any unauthorised use or disclosure. Where this information is protected, the ESC and ACCC recognise that they are bound respectively by provisions of the ESC Act and the CCA in the way in which information may be shared. Where such information is shared:
- a. the agency providing the information will identify the relevant part of the information that is protected
 - b. the receiving agency will only use or disclose that information to the extent permitted by law, for example, an FOI request or where required by a court
 - c. the receiving agency will use its best endeavours to inform the agency that provided the information prior to disclosing that information to third parties under clause 6.2(b).
- 6.3. The ESC acknowledges that, as set out in the ACCC/AER's Information Policy, if the ACCC has obtained information in the course of one matter which is relevant to another matter, the ACCC will, in general, use that information in the context of the other matter subject to any specific legal requirement to the contrary. Information obtained by the ACCC may also be shared with other agencies as provided by the CCA.

7. Management of the MOU

- 7.1. The ESC and ACCC will each nominate a liaison officer to serve as a point of contact in relation to matters arising under this MOU and to be responsible for general liaison under this MOU and subsequent co-operation arrangements between the parties.
- 7.2. The Director of the Water Group of the ESC and the General Manager of the Water Branch of the ACCC will meet as necessary to assess the operation of this MOU and to discuss the ongoing relationship between the ESC and the ACCC.
- 7.3. In the event of any disagreement between the parties as to the implementation of this MOU or the performance of their respective functions, powers and duties, the CEOs of the parties (or their delegates) will seek to resolve the matter in accordance with the objectives of this MOU.
- 7.4. This MOU is not intended to be legally binding on the agencies.

Publication

7.5. This MOU may be published by the ESC and the ACCC on their respective web sites.

Dated this 27 day of JUNE 2012


.....

Dr Ron Ben-David
Chair
Essential Services
Commission


.....

Rod Sims
Chair
Australian Competition &
Consumer Commission