



Memorandum of Understanding

between

Essential Services Commission

and

The Secretary of the Department of Energy, Environment and Climate Action (in relation to administration of Solar Victoria)

February 2023

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MEMORANDUM OF UNDERSTANDING dated 21 February 2023

between

ESSENTIAL SERVICES COMMISSION

and

**THE SECRETARY OF THE DEPARTMENT OF ENERGY, ENVIRONMENT AND CLIMATE
ACTION (IN RELATION TO THE ADMINISTRATION OF SOLAR 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 also the scheme administrator of the Victorian Energy Upgrades Program under section 7 of the Victorian Energy Efficiency Target Act 2007 (Vic) and administers the rate-capping system for the local government sector. The commission occasionally reviews other sectors and provide advice at the request of the Victorian Government.
- B. The Victorian Government, through the Department, has established a group Solar Victoria to administer the Solar Victoria Programs and promote high standards of safety, quality and compliance by using approved parties, and products. The Solar Victoria Programs are part of the Victorian Government's approach to climate change and achieving Victoria's renewable energy targets set under the *Renewable Energy (Jobs and Investment) Act 2017*.
- C. The parties have entered into this memorandum of understanding (**MoU**) to promote effective communication, coordination and information management between them in performing the commission’s statutory functions and the Department in relation to its administration of the Solar Victoria Programs.
- 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. The information sharing arrangement applies to the Department in relation to its administration of the Solar Homes Program only.
- E. The MoU supersedes the memorandum of understanding 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) **business day** means any day that is not a Saturday, Sunday or a public holiday;
- (b) **commission** means the Essential Services Commission;
- (c) **Contact Officers** means the person holding the respective positions, from time to time, specified in the Schedule.
- (d) **Department** means the Department of Environment, Water, Land and Planning;
- (e) **ESC Act** means the *Essential Services Commission Act 2001* (Vic);
- (f) **Information Sharing Arrangement** means the information sharing arrangement set out in Part E pursuant to section 60E of the ESC Act;
- (g) **MoU** means this memorandum of understanding, as amended from time to time in accordance with its terms;
- (h) **party** means a party to this MoU;
- (i) **receiving party** has the meaning given to it in clause 13.1;
- (j) **referring party** has the meaning given to it in clause 13.1;
- (k) **requesting party** means a party that issues a written request under clause 10.1(b).
- (l) **Solar Victoria Programs** means the discretionary financial benefit and loan programs referred to as the Solar Homes Program, Solar Business Program, Home Heating and Cooling Upgrade Program (together 'the Programs') administered by the Department.
- (m) **Solar Victoria** means the business group with the Department of Environment, Water, Land and Planning responsible for administering the Solar Homes Programs.
- (n) **VEET Act** means the *Victorian Energy Efficiency Target Act 2007* (Vic)
- (o) **VEU program** means the *Victorian Energy Efficiency Target scheme* as established by the *Victorian Energy Efficiency Target Act 2007*.

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 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 the Department.

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.

5. Relevant functions and responsibilities of the parties

5.1 Essential Services Commission

5.1.1 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;

- (d) administer the VEU program, which includes accreditation of persons who may create Victorian Energy Efficiently Certificates.

5.2 The role of Solar Victoria

Solar Victoria is a business group within the Department, responsible for administering the Solar Victoria Programs. The Programs are part of the Victorian Government's approach to addressing climate change and achieving Victoria's renewable energy targets set under the *Renewable Energy (Jobs and Investment) Act 2017*.

B. Purposes

6. Purposes of MoU

- 6.1 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.
- 6.2 Without limiting clause 6.1, 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

7. Consultation

- 7.1 Where relevant, each party will use best endeavours to consult with the other in a timely manner:
 - (a) in relation to any matter specified by the other party which is relevant to its objectives or functions;
 - (b) in the making of any guidance material which may be relevant to the functions or responsibilities of the other party;

- (c) in respect of a matter which may impact on an industry regulated by the commission or participant in the VEU Program or Solar Victoria Programs administered by either party

7.2 Each party, having regard to their respective roles in relation to industries regulated by the commission or responsibilities in relation to the VEU Program or Solar Victoria Programs will:

- (a) consult with, and involve the other in, the performance of any function or discharge of any responsibility that has or is likely to have material implications for the other as early as practicable
- (b) on request, provide the other with timely advice on matters for which it is responsible
- (c) provide the other with timely relevant information on matters for which both parties have some responsibility
- (d) promptly inform the other of any material changes to its role or to the regulatory or program arrangements it administers
- (e) exchange details of annual work programs to the extent that they are relevant to the role of the other
- (f) provide the other with advance notice of its intention to undertake a major review or activity that will or may have material implications for the other; and
- (g) identify opportunities to coordinate strategic planning and undertake knowledge sharing initiatives to optimise material understanding of roles and strategic directions: and

7.3 The parties recognise that while mutual consultation is important where their functions and/or responsibilities overlap, their respective decisions must be made independently of each other.

7.4 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 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 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.

8. Meetings

- 8.1 The Chief Executive Officer of the commission and Chief Executive Officer of Solar Victoria will meet quarterly, or as otherwise agreed between them, to discuss:
- (a) matters of strategic importance to the parties; and
 - (b) any other matter as agreed between the parties.
- 8.2 The respective Chief Executive Officers may invite their staff members or other representatives to attend the meetings described in clause 8.1.
- 8.3 The Contact Officers will meet bimonthly, or as otherwise agreed between the relevant Contact Officers, to discuss matter as agreed between the relevant Contact Officers;
- 8.4 The Contact Officers may invite staff members or other representatives of the respective parties to attend the meetings described in clause 8.3.

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
 - (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
 - (c) the commission 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 Solar Victoria's functions
 - (d) the commission must not share the types of information set out in section 60E(7) of the ESC Act, including:

- (a) any confidential or commercially sensitive information which must not be shared by the commission under section 60C of the ESC Act;
- (b) 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) confidential or commercially sensitive information which must not be shared by the commission under section 65 of the VEET Act
- (f) 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
- (g) without limiting clause 3.2, the Information Sharing Arrangement does not in any way prevent or inhibit either party from obtaining information by other means.

9.2 Each party will:

- (a) use or disclose 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) 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
- (d) to the extent that there is any legal barrier preventing the sharing of information under the Information Sharing Arrangement or other legislation, 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).

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
 - (c) 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 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.
- 11.2 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.

12. Information that may be shared

- 12.1 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

13. Nature of arrangement

- 13.1 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).
- 13.2 The referring party will ensure that a referral under clause 13.1
- (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.
- 13.3 This clause 13 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

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:
- (d) 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;
 - (e) together with the other party's Contact Officers, instigate the review of this MoU in accordance with clause 16 below; and
 - (f) together with the other party's Contact Officers, arrange the meetings specified in clause 8.1.

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 respective Chief Executive Officers identified at clause 8.1 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

16.1 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 21st day of February 2023)



.....
Kate Symons
Chairperson

Stan Krpan
Chief Executive Officer
Signed for and on behalf of The State of Victoria as represented by its Department of Energy,
Environment and Climate Change by Stan Krpan,
Chief Executive Officer Solar Victoria in the presence of

.....
Witness signature

Schedule

Role	Subject matter	Commission	Solar Victoria
Contact Officer	General liaison	Executive Director, Victorian Energy Upgrades	Director, Risk Assurance and Standards