

MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
DEPARTMENT OF CONSUMER AND EMPLOYMENT  
PROTECTION  
AND THE  
ECONOMIC REGULATION AUTHORITY WA

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**1 PURPOSE**

- 1.1 The purpose of this Memorandum of Understanding ("MOU") is to establish an agreed framework for mutual cooperation between the Department of Consumer and Employment Protection (DOCEP) and the Economic Regulation Authority (ERA) in relation to the regulation of the electricity and gas industries in Western Australia. In this memorandum, "ESD" is used to describe the EnergySafety Division of DOCEP, whereas "DES" is used to describe the Director of Energy Safety, a statutory office that heads the EnergySafety Division of DOCEP.
- 1.2 The ERA and DOCEP (the Agencies) recognise that mutual cooperation between them will contribute significantly to the ability of the Agencies to effectively and efficiently discharge their respective functions.
- 1.3 The Agencies agree to provide each other with mutual assistance in relation to the exchange of information, appropriate referral of matters, and cooperation in compliance, education and enforcement activities within the framework of this MOU and consistent with all relevant law. In particular, the DES agrees to provide technical advice and support to the ERA, as covered by this MOU.

**THE ECONOMIC REGULATION AUTHORITY**

- 1.4 The ERA is an independent regulator and body corporate established by the *Economic Regulation Authority Act 2003* and it has the functions set out in section 25 of that Act.

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## THE DIRECTOR OF ENERGY SAFETY (AND ENERGY SAFETY DIVISION OF DOCEP)

- 1.5 The office of the DES as an independent energy industry technical and safety regulator<sup>1</sup> was established by s.7 of the *Energy Coordination Act 1994* and the functions of the DES are set out in various items of legislation. In summary, the DES is supported by the staff of ESD, which is also an active participant in the State's emergency management framework, with particular responsibilities for –
- managing liquid fuel shortage emergencies;
  - managing gas supply emergencies;
  - promoting energy infrastructure security; and
  - representing lifeline organisations (e.g. water, electricity, gas, telecommunications, and main roads organisations) at State Emergency Management Committee level.

## 2 LIAISON BETWEEN AGENCIES

- 2.1 The Agencies agree that there will be a liaison meeting at least once yearly between the Chairman and Chief Employee of the ERA and DOCEP's Director General and the DES, and that this meeting may include other senior members of staff as considered appropriate, to discuss matters relating to the Agencies' functions.
- 2.2 Operational liaison at their own level will take place as is considered necessary or desirable by senior staff of the Agencies.

## 3 TECHNICAL ADVICE AND SUPPORT BY ESD TO THE ERA

- 3.1 ESD has staff with electricity and gas technical expertise. It is agreed in principle that the ERA may at any time request the ESD to provide technical advice and support that it considers necessary or desirable for the performance of its functions. The type of advice and support likely to be sought is shown in Schedule 1, however, this is intended to only be an indicative list to show the broad scope of possible interaction.
- 3.2 Requests for advice and support will be in writing (e.g. memo, email etc), may be initiated by any of the senior staff of the ERA and may be directed to any of the senior staff of the ESD. However, nothing in this MOU is to be interpreted as meaning that the ERA may not alternatively or additionally obtain technical advice and support from other persons.
- 3.3 The DES or his senior staff will acknowledge any request per Clause 3.2 and respond without undue delay in writing, to advise whether or not it is possible to satisfy the request within the timeframe requested or expected. Work on the request will then progress as agreed.

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<sup>1</sup> Safety regulation of gas transmission (at 1.9 mega Pascals or above) and upstream gas production is administered by the Resources Safety Division of DOCEP

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- 3.4 In addition to responding to requests per Clause 3.1, ESD will advise the ERA of any significant actions in respect of remedial action, orders issued or Court proceedings initiated against energy industry licence holders.

#### **4 REFERRAL OF MATTERS**

- 4.1 If an Agency receives a matter which, in its opinion, is more appropriately dealt with by the other Agency then, consistent with written law (including regulations and Codes), the Agency may refer that matter to the other Agency to be dealt with.
- 4.2 For the avoidance of doubt, nothing in Clause 4.1 obliges an Agency to accept a matter referred to it by the other Agency pursuant to Clause 4.1.

#### **5 CONFIDENTIALITY**

- 5.1 When an Agency receives information from the other Agency in accordance with this MOU, it will take all reasonable steps to ensure such information is only used or disclosed for the purpose for which it was obtained, or as otherwise authorised by the other Agency, consistent with written law. If an Agency intends to use or disclose information other than for the purpose for which it was obtained, it must inform the other Agency before the use or disclosure of the information unless the use or disclosure is required by written law.
- 5.2 If a request made to one Agency ('First Agency') under Freedom of Information legislation requires on its face the release of information obtained by the First Agency from the other Agency ('Second Agency'), the First Agency must consult with the Second Agency prior to any release of information pursuant to the request.

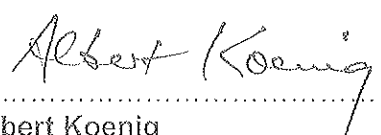
#### **6 COST OF PROVISION OF TECHNICAL ADVICE, SUPPORT AND INFORMATION GENERALLY**

- 6.1 In general, the Agency providing information, advice or assistance to the other will bear the whole cost incurred by it in researching, developing and providing the information, advice or assistance.
- 6.2 Notwithstanding the provisions of Clause 6.1, if the ESD is asked by the ERA to provide advice and support services which are beyond its capacity to deliver, then the ERA may, at its discretion, request the DES to engage additional, temporary resources for the work, subject to the related estimated cost being agreed between the Agencies and the ERA agreeing to reimburse ESD accordingly.


**7 REVIEW AND TERMINATION**

- 7.1 The Agencies agree that this MOU may be reviewed and amended at any time.
- 7.2 An Agency must give written notice to the other of its intention to terminate this MOU. The MOU will terminate 7 days after the date upon which the notice was received.

DATED this 23<sup>rd</sup> day of May 2006.

  
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**Albert Koenig**  
 DIRECTOR OF ENERGY SAFETY and  
 EXECUTIVE DIRECTOR,  
 ENERGY SAFETY DIVISION  
 DEPARTMENT OF CONSUMER &  
 EMPLOYMENT PROTECTION

  
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**K Peter Kolf**  
 GENERAL MANAGER  
 ECONOMIC REGULATION AUTHORITY

  
 .....  
**Brian Bradley**  
 DIRECTOR GENERAL  
 DEPARTMENT OF CONSUMER &  
 EMPLOYMENT PROTECTION

  
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**Lyndon Rowe**  
 CHAIRMAN  
 ECONOMIC REGULATION AUTHORITY

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**SCHEDULE 1***(Refer Clause 3.1)***INDICATIVE SCOPE OF ADVICE AND SUPPORT TO BE PROVIDED BY ESD**

It is expected that the matters on which EnergySafety may be asked to provide technical advice and support will include the following:

- a) Assisting the ERA in the assessment of asset management plans and the safety, reliability and quality of supply performance of electricity and gas network licence holders, and providing related advice.
- b) Assisting the ERA by independently assessing the "technical rules" for access to networks as proposed by Technical Rules Committees, and providing advice on their suitability –
  - in respect of good network engineering practice;
  - in respect of compliance with prescribed minimum safety standards;
  - in respect of compatibility with minimum benchmark standards (quality and reliability) for supply to all consumers, as networks have to serve not only those seeking access, but also those already on the network; and
  - in respect of ensuring the rules are not made to provide a barrier to access.
- c) Providing advice to the ERA on electricity network performance against standards, identifying where possible the means and locations for needed improvements, and where sanctions might sensibly be applied.
- d) Assisting the ERA with advice on technical issues generally, particularly issues that may have a safety origin, including where ESD may have imposed major 'orders' (or equivalent undertakings by network operators) for improvements, or changes in technical standards that may significantly impact the capital or operating costs of network operators.
- e) Advising the ERA of any significant actions in respect of remedial action orders issued or Court proceedings initiated against energy industry licence holders, by the ESD.
- f) Providing general technical support to the ERA for network 'transport tariff' determinations (e.g. consumer installation inspection costs of network operators need to be considered).
- g) Conducting compliance investigations and providing reports in response to complaints about network performance, by major network users to the ERA, particularly as provided for by the *Electricity Industry (Licence Conditions) Regulations 2005*.
- h) Providing advice to the ERA on energy industry related disputes and complaints.