ENERGY SUPPLY INDUSTRIES SAFETY HARMONISATION

Draft of Energy Technical and Safety Harmonisation Enhancement Plan
Technical and Safety Regulations

Consultation Regulatory Impact Statement

Submission from Energy*Safety*
Department of Commerce
Government of Western Australia

September 2009

ENERGY*SAFETY'S* RESPONSE TO DRAFT PLAN AND RIS

Introduction

The Ministerial Council on Energy (MCE) Energy Technical and Safety Leaders Group (the MCE Leaders Group) has developed and released a *Draft Energy Technical and Safety Harmonisation Enhancement Plan* (Draft Plan) for public comment. The Plan is accompanied by a Consultation Regulatory Impact Statement (RIS) prepared by PriceWaterhouseCoopers (PWC).

This response sets out the main concerns with both documents and provides some contextual and background information relevant to Western Australia.

Main Concerns

Energy*Safety* supports in principle a harmonised legislative framework within which State and Territory energy supply industry (ESI) technical and safety legislation will operate. However, the future approach should not compromise the existing standards, adversely affect related safety regulation upstream and downstream, nor should it increase the regulatory burden for industry, with no additional benefit being gained.

In summary the main concerns and recommendations are:

1. The Draft Plan and RIS do not provide substantive evidence that there is a problem with the current state-based safety regulation of electricity and gas distribution networks and pipelines in Western Australia. The Draft Plan and RIS repeatedly argue that the current regulatory requirements present problems where network operators have assets across State boundaries. This is not an issue for Western Australia for gas or electricity. The proposed solution is resource-intensive to achieve, with no gain and has adverse effects on related safety legislation. However, evidence has been provided on page 51 of the RIS that Country Energy (NSW) has an agreement with the Queensland regulator to use the ENSS approved by the NSW regulator in that part of their network that is located in Queensland. This example seems to offer an easy administrative example that others could follow.

2. Development of an acceptable Australian Standard for an Energy Network Safety Scheme (ENSS), initially for the electrical sector, and its adoption by all jurisdictions would allow a harmonised approach to be achieved without the need for a national body or new legislation. The development of the standard would need careful oversight and it is recommended that the Leaders Group perform this role. The gas industry effectively uses such an approach with the use of AS4645 and AS2885, with no issues being raised by regulators or the supply industry.

3. The need for new legislation could be removed through the signing of an Inter-Governmental Agreement (IGA) between all jurisdictions where the parties:

- agree to use the Australian Standard ENSS and
- agree that only one ENSS will be required for integrated networks that cross jurisdictional borders

4. However, if new legislation and an oversight body are to be created, then the proposed governance model is not supported because it allows an industry-led body to provide oversight of the regulation of itself via a Policy Committee which includes only one electrical and one gas regulator amongst seven members.

- Energy*Safety* recommends the Safework Australia model in terms of the role and composition of the governance committee that has been established to oversee and implement the national OHS review and legislation.
- This governance model provides that every State regulator has a seat at the table, with two union and two employer representatives and one independent chairperson. Decisions will require both a proportionate majority of committee members and a proportionate support from the regulatory members in order to proceed.

5. Both the Draft Plan and the RIS fail to discuss effects of the proposals on safety regulation upstream and downstream of the two sectors involved. Nor do the documents discuss jurisdictional regulator resources required, both in manpower and costs.

6. Both the Draft Plan and RIS argue the present regulatory framework inhibits mobility. This is incorrect in Western Australia, where gas and electricity transmission and distribution network workers are not required to be licensed, and where electrical workers licences from other jurisdictions are accepted under mutual recognition obligations. All employers require safety induction, including enterprise-specific training, for new workers, regardless of whether they have relocated from interstate, hold a licence from another jurisdiction or have been locally recruited. This is the responsibility of network operators, not regulators and is unlikely to change given the risks associated with this type of work. The issue of worker mobility has been dealt with in other DRET initiatives and no longer seems to be relevant to the scope of the Draft Plan or RIS. Therefore, it is recommended that it be removed from the Terms of Reference and final documents.

7. The Draft Plan emphasises up-front validation of a safety management system (safety case). While a standard for Energy Network Safety Systems (ENSS) is the foundation for achieving a safe system, validation to that Standard is required to ensure commercial imperatives do not erode safety. Energy*Safety* believes validation by an independent authorised auditor or the regulator under existing State legislation is acceptable. The validation process would need to be similar for each jurisdiction to ensure a common approach. One

way to ensure this would be to include guidelines for the validation process in the ENSS Australian Standard or as an accompanying document and include a reference in the IGA.

8. Energy*Safety* believes it is equally important for rigorous audit verification of the ENSS implementation and ongoing inspection and compliance checking by the jurisdictional regulators. These issues are not discussed in the Draft Plan.

9. Energy*Safety* believes the regulator should be able to require amendment to a submitted safety case within a given timeframe, citing reasons for doing so, to ensure the rigour of the ENSS process prior to implementation. Responsibility for worker and public safety would remain with the network operator.

10. Neither the Draft Plan nor RIS mention Enforcement and Penalties. Regulation that does not contain enforcement and penalty provisions for non-conformance is a waste of parliament's time and regulators' resources.

Alignment with COAG Agenda

Western Australia notes that the following three concurrent Government reforms are also occurring at this time:

- the Workplace Relations Ministerial Council (WRMC) Review into Model OHS Laws;
- the ongoing energy market reforms; and
- the Council of Australian Government's (COAG) decision to introduce a National Licensing System for some occupations (including electricians and gas fitters).

The Draft Plan and RIS seek to implement a national regulatory framework, with implications for the technical safety regulation of the ESI. Therefore MCE needs to ensure that the proposals and findings emerging from the Draft Plan and RIS are consistent with, and are aligned as closely as possible to, these other key reforms.

The National OHS Review Final Report, completed on 30 January 2008, recommends an optimal structure and content of a model OHS Act which is expected to be adopted by all jurisdictions. The WRMC released the COAG initiated *National Review into Model OHS Laws: Second Report to WRMC* (the OHS Report) mid February 2009.

The OHS Report proposes uniform OHS legislation that is nationally consistent across sectors to be administered by the States. The Report proposes that a single OHS legislative system should be the foundation for reform in this area. Where separate regulation of OHS is contemplated or proposed to be continued, it is to be demonstrated that it would produce better OHS results than coverage by the nationally implemented model legislation. Even where this may be demonstrated, there is to be a continuing legislative and administrative inter-relationship between

the two frameworks. Such an approach, subject to agreement, could be achieved by a decision of the Council of Australian Governments (COAG).[1]

Context

The Western Australian gas sector is regulated by two separate safety regulators. Resources Safety Division of the Department of Mines covers upstream and transmission and Energy*Safety* covers gas distribution (typically assets that operate below 1.9Mpa) and LPG, CNG and LNG installations.

EnergySafety ensures Western Australian homes, workplaces and other environments are safe by:

- developing and implementing a legislative and policy framework for energy safety;
- delivering inspection and enforcement services;
- maintaining a licensing regime which ensures only suitably qualified persons perform electrical and gas work and provide services to the public;
- managing accreditation systems under the safety legislation; and
- providing information, education and advisory services to encourage compliance with safety legislation and reduce the risk of death, injury and destruction caused by electricity and gas.

Gas

The Energy*Safety* Gas Directorate is responsible for the safety and acceptable performance of gas distribution infrastructure, gas installations and appliances (including industrial gas appliances) by:

- auditing gas network operators' design standards and constructed networks for compliance with prescribed safety requirements;
- monitoring the safe work practices of network operators' employees and contractors, including attendance to incidents;

---

[1] Recommendation 76 of the *National Review into Model OHS Laws: Second Report to WRMC – January 2009*: Ministers agree that:

a) in developing and periodically reviewing the model OHS Act, there should be a presumption that separate and specific OHS laws, (including where they form part of an Act that has other purposes) for particular hazards or high risks industries that are within the responsibility of the Ministers, should only continue where they have been objectively justified;
b) even where that justification is established, there should be an on-going, legislative and administrative inter-relationship between the laws and, if there are different regulators, between those regulators;
c) as far as possible, the separate legislation should be consistent with the nationally harmonised OHS laws;
d) where the continuation of the separate legislation is not justified, it should be replaced by the model Act within an agreed timeframe;
e) where specific provisions are necessary, they should normally be provided by regulations under the model Act relating to matters previously regulated by the separate legislation to be kept to a minimum; and
f) this approach should be recommended to COAG so that, subject to COAG agreement, it is extended within a reasonable timeframe to other legislation that pertains to OHS but which is within the responsibilities of other Ministers.

- monitoring the quality of gas provided to consumers generally, for compliance with prescribed requirements;
- investigating unsatisfied consumers' complaints about gas supply reliability and quality; and
- auditing network operators' compliance with prescribed meter management requirements, to ensure acceptable meter accuracy
- licensing gas fitters and enforcing prescribed technical standards for gasfitting work;
- requiring gas network operators, gas pipeline licensees and LPG cylinder distributors to conduct consumer installation safety inspections in accordance with prescribed requirements and auditing this work to ensure compliance;
- overseeing the work of external inspectors approving industrial gas appliances;
- conducting safety inspections of consumers' gas installations that are not connected to utility networks or are not supplied with LPG directly from a gas distributor; and
- auditing gas appliances and equipment being offered for sale, to check compliance with prescribed safety and efficiency requirements.

Electricity

The Energy*Safety* Electricity Directorate is responsible for safety and acceptable performance of electricity transmission and distribution infrastructure, consumers' electrical installations and appliances, by:

- auditing electricity network operators' design standards and constructed networks for compliance with prescribed safety requirements;
- monitoring the safe work practices of network operators' employees and contractors, including attendance to incidents;
- licensing electrical workers and electrical contractors (through the functions of the associated Electrical Licensing Board) and enforcing prescribed technical standards for electrical installing work;
- requiring electricity network operators to conduct consumer installation safety inspections in accordance with prescribed requirements and auditing this work to ensure compliance;
- conducting safety inspections of consumers' electrical installations that are not connected to utility networks; and
- auditing electrical appliances and equipment being offered for sale, to check compliance with prescribed safety and energy efficiency requirements (such as the star rating labelling scheme and MEPS).

In addition, some Inspectors are regionally based, providing the ability for localised industry inspection, audit and investigation and emergency response.

The proposals in the Draft Plan effectively remove Energy Distribution Network Operations from the general energy safety and OHS frameworks. This will create a need for additional, specific regulation for this industry segment. This approach is inconsistent with the National OHS Review, which seeks to minimise specific industry regulation and requires consistency with the proposed generic OHS legislative framework.

Given the current environment, Energy*Safety* believes that it would be much more cost-effective to maintain existing regulator jurisdictions and separate legislation but is willing to pursue national harmonisation in line with model frameworks via the existing State and Territory regulators. If a model framework is to be developed it is preferred that development of a model for the electrical sector be undertaken initially and the effectiveness be assessed before making changes to improve alignment to the current, proven gas sector model where the AS4645 and AS2885 are effectively the gas ENSS.

Conclusions

Energy*Safety* supports in principle a harmonised legislative framework within which State and Territory energy supply industry technical and safety legislation will operate.

To achieve this Energy*Safety* concludes that:

(1) The Draft Plan and RIS have not produced evidence of regulatory differences causing significant problems for industry;

(2) Development of an acceptable Australian Standard ENSS and its adoption by all jurisdictions would allow a harmonised approach to be achieved without the need for a national body or new legislation. This has been proven in the gas supply industry. To achieve this aim, priority would need to be given to developing an Australian Standard ENSS for the electricity supply industry;

(3) The Leaders Group should take the lead role in developing the new Australian Standard ENSS with a high priority.

(4) An Inter-Governmental Agreement (IGA) between all jurisdictions that commits them to use the new Australian Standard ENSS and to only require one for each network, regardless of jurisdictional borders, would negate the need for a national body or new legislation;

(5) The Draft Plan and RIS do not consider the effects of the proposals on regulation upstream and downstream of the supply industries, nor compliance mechanisms; and

(6) An administrative model already exists that provides for one ENSS for network assets that cross jurisdictional borders.