

Draft Energy Technical and Safety Harmonisation Enhancement Plan and Energy Technical Safety Regulations Consultative Regulatory Impact Statement

Submission to the MCE Energy Technical and
Safety Leaders Group and Department of
Resources, Energy and Tourism

9 October 2009

The following comments are provided by Grid Australia on the Draft Energy Technical and Safety Harmonisation Enhancement Plan dated September 2009 and the Consultation Regulatory Impact Statement (RIS) dated September 2009. Comments that are specific only to the RIS are contained in Section 9.

1. Scope of the Draft Plan

Grid Australia accepts the proposal to exclude electricity generation from the scope of the final plan provided that the assets external to the generation facility and connecting the generation to the electricity network are included.

2. The Proposed Regulatory Framework

2.1 Legislation and a new Australian Standard

The implementation plan must ensure that there is no duplication in national or jurisdictional regulations including economic and Occupational Health and Safety regulations. Further this must be included as a requirement for assessing future changes to regulations.

The development of a new national Australian Standard for an Energy Network Safety Scheme is supported provided that this standard is a high level framework and performance based standard.

The inclusion of this new Australian Standard for an ENSS in regulation as shown on page 26 and in Figure 2 is supported subject to it being a performance based standard.

The dot point reference to “asset life cycle” on page 27 is assumed to relate only to safety related issues in the life cycle of the asset and not the economics of the life cycle as this is under the charter of the economic regulator. The cover of the ENSS should only include the management of the safety risks to as low as reasonably practicable of the assets over their life (design, construction, commissioning, operation, maintenance and decommissioning).

2.2 The Energy Network Safety Scheme

While it is agreed that the proposed ENSS will provide an opportunity for the industry to improve efficiency in accordance with COAG best-practice regulatory principles, efficiencies should be targetted in the regulatory and administration functions and not just within the network businesses. It is also essential that any additional costs that may be incurred in the interim are kept to a minimum in order to minimise the impact on consumers.

2.3 Two Tiered Implementation of the Proposed Framework

The adoption of a two tiered approach is supported in order to enable sector specific issues to be dealt with in tier two. This approach recognises the differences that currently exist in Standards for the gas sector compared to the electricity sector.

2.4 Mandatory Requirements

The inclusion of standards, other than a performance based ENSS Standard, in Regulation is not consistent with best practice regulation and therefore Option 2 is supported. The ENSS however must be a performance based standard and focussed on outcomes rather than having prescriptive requirements.

It is essential that network businesses continuously improve and adapt to the many changes that the industry will face over the coming decades and standards called up in legislation can seriously limit this ability and increase costs while not delivering any improved safety outcomes which should be the key focus.

2.5 Validation, Submission and Acceptance of an ENSS

2.5.1 Validation

The use of independent third party auditors for validation, Option 2, is preferred. The use of 3rd parties rather than regulatory staff to undertake these audits will improve the validation stage by utilising wider experience and skills which would provide opportunities for improvement to safety cases and improved safety outcomes.

An audit/validation plan would be developed by the network business in consultation with the regulator and then submitted for endorsement of the jurisdictional regulator. The selection of the 3rd party auditor should be agreed by both the network business and the regulator and the 3rd party auditor engaged by the network business.

If there are initial concerns regarding the use for 3rd party auditors then the first validation exercise could have a staff member of the safety regulator working with the 3rd party auditor to ensure the validation process and quality is satisfactory. Once the first validation is completed with the 3rd party auditor there would be no ongoing requirement for this to occur.

The ENSS validation should occur every 5 years.

2.5.2 Acceptance/Certification of an ENSS

The ENSS should be accepted by the regulator after a successful validation by the 3rd party auditor. The regulator would have regard to the quality of the audit, the independence of the audit and rigor of the ENSS when considering the audit report. However if the regulator is involved in the development of the audit plan and the selection of the 3rd party auditor this should not be an issue. Therefore Option 2 with the addition of joint development of the audit plan and 3rd party auditor selection is supported.

Once an ENSS is validated, it is submitted to the jurisdictional regulator in which the majority of assets are located for acceptance. Once accepted and entered into the national register the ENSS shall unconditionally be accepted by other jurisdictional regulators.

A nationally consistent approach to acceptance of an ENSS is required otherwise it is unlikely that unconditional acceptance by other jurisdictional regulators will occur and therefore the potential efficiencies contained in the RIS will not occur.

2.6 Small and Isolated Networks

Small and isolated networks should comply with the ENSS Standard however they would have a very simple ENSS compared to a large network ie. Option1 is recommended. It is essential that no matter what the size of the network, the operator understands the risks associated with operating, developing and maintaining the network. This understanding comes from undertaking the analysis and preparation required to develop an ENSS.

2.7 Central ENSS Register

The development and maintenance of a central register for validated safety cases is essential for governance of the system and to ensure that jurisdictional regulators understand which ENSS systems have been validated and for what area they cover. There should be no additional costs to the industry due to the creation of this register.

3. Standards Development

Grid Australia support the development of a performance based Australian Standard ENSS. The development of other standards would be on an as needs basis determined by the Policy committee after a benefit test has justified the development is warranted.

The development of standards should use the Bureau method but may use other methods as deemed appropriate by the Policy Committee in order to ensure that these are progressed in a timely manner. However funding will be required for this work and it is recommended that the MCE provide suitable funding.

4. Legislative Implementation

The use of the “applied law” method, Option 1, rather than “model” method is supported. For harmonisation to occur and to be maintained over time it is essential that every state is consistent in these laws. The “model” method will not ensure that this will continue to occur.

Further if the “model” method is used and jurisdictional regulators continue to exist, harmonisation would be reduced over time. If the “model” law is used it is essential that a National safety regulator model be used rather than continuing with jurisdictional regulators to reduce the risk of reducing harmonisation over time.

5. Worker Mobility Issues

The National Skills Passport Scheme and ongoing development is supported by Grid Australia. However prescribing this scheme in the ENSS Standard provides little benefit and can frustrate further development. The ENSS Standard should describe the outcomes required in terms of a national scheme for skills training and recognition to enable worker mobility between companies.

The industry is responsible for the ongoing safety of employees in the industry and provides the required skills training. Therefore it is appropriate for the industry to administer the scheme and

this maybe achieved by the energy network businesses or ENA administering the scheme. Suitable confidentiality arrangements would be put in place in conjunction with key stakeholders.

Grid Australia has an MOU in place with each of the transmission companies to provide assistance during major system events. The passport scheme will assist in worker mobility in a major system incident.

6. Proposed Governance Arrangements

6.1 Ministerial Council on Energy

Grid Australia supports the MCE being responsible for the overall governance of safety and technical regulation.

6.2 Committees

The establishment of a regulatory and separate policy committee is considered to be superior to other options. For the following reasons:

- It separates ongoing regulation and compliance from policy development.
- It provides stakeholders the forum to develop the ENSS and therefore make the changes required in a way that meets the needs and in a manner that suits the energy supply sector.
- Is not biased to any stakeholder group and this is essential if the industry is to make these changes and ensure commitment from the stakeholders.

6.3 Energy Technical and Safety Policy Committee

The Energy Technical and Safety Policy Committee (ETSPC) and its proposed functions is supported.

The composition of the ETSPC committee must have suitable representation of stakeholders and the committee composition as recommended in paragraph 231 by the Leaders Group is supported. The industry is responsible for the safety outcomes and this can only be achieved with the parties working together at this level.

6.4 Energy Technical and Safety Regulatory Committee

The Energy Technical and Safety Regulatory Committee (ETSRC) and their functions is also supported however while the ETSRC may make recommendations regarding changes to the framework and technical regulatory policy, any recommendations must be submitted to the ETPSC for review.

6.5 Alternative Governance Arrangements proposed by a number of Regulators

The combining of the policy and regulation into one body is not best practice. The model of having this split as is the case with the AEMC and the AER is considered to provide a superior governance arrangement.

The composition of the Safe Work Australia Council is not considered to be applicable in this instance as the Safe Work Australia Council covers all Australian industry whereas this scheme is applicable only to the energy networks. There is potentially only four energy network sectors (gas and electricity transmission and distribution) covered by this plan and therefore it is entirely possible and desirable to have these sectors represented in policy decisions. These stakeholders are responsible for the delivery of the safety outcomes and therefore it is essential that they are represented on the ETSPC.

The alternative governance arrangement is not supported and would miss an opportunity for the industry to take clear responsibility for all aspects in achieving the required safety outcomes.

6.6 Enforcement and Compliance Bodies (Regulators)

Option 2, the continuation of the jurisdictional regulators but with the proposed Regulatory Committee acting as a coordinating body is supported in the interim but it is recommended that a transition plan be put in place to migrate towards a National Regulator.

For the jurisdictional regulator model to be effective, the following must be achieved:

- harmonisation of the regulatory framework and regulations,
- common acceptance of an ENSS including across boarder acceptance of one ENSS
- no overlap between national and state based regulations and administration,
- the ETSPC model proposed by the leaders group with representation from the four energy sectors and,
- the “applied law” method used for legislation.

7. Framework Implementation

The implementation framework outline is endorsed except for the following:

- The Australian Standards Committee should be a Standards Committee.
- The combining of the Operating and Safety Rules Committee and the Australian Standards Committee into one Standards Committee. The use of a separate Operating Safety Rules Committee is not required and this work should be managed by the Standards Committee and this will ensure there is no overlap between the harmonisation works and reduce overheads and costs.

- The Skills Working Group should not be responsible for the implementation and database for the Skills Passport as this is the responsibility of the network business and ENA.

8. Costs Associated With Harmonisation

One of the stated objectives of the MCE charter is to reduce the cost of regulation on business without compromising safety outcomes. Therefore there should be no additional levies or charges on the industry due to these proposed changes.

9. Consultation Regulatory Impact Statement

The following comments are specific to the Consultation RIS.

9.1 Technical and safety requirements in the ESI

The first dot point on page 25 of the RIS states that the industry needs additional technical and safety regulation. The intention as stated by the MCE in the Terms of Reference is to reduce the cost of regulatory burden on businesses. Having additional technical and safety regulations is inconsistent with this. The goal must be to harmonise regulations and focus on providing the desired safety outcomes with less prescriptive regulation. Section 3.2 recognises that the energy networks are one of the most regulated industries in Australia.

9.2 Administrative burden of inconsistent ENSS requirements

The ENSS is a series of documentation, process and systems that are required to manage and operate the network safety. It is assumed that the cost to develop an ENSS is the incremental cost in developing any additional documentation, systems and processes to meet the requirements of a safety case. It should be noted that the cost to develop an ENSS would vary widely depending on the maturity of a company's documentation, processes and systems.

It is estimated that for an electricity transmission business, the cost to develop an ENSS and have it endorsed is between \$300,000 and \$400,000 assuming that the normal support systems such as ISO 9000 accreditation, asset management and operational systems and procedures and support documentation is already in place. The estimated ongoing annual compliance cost is estimated to be approximately \$100,000 to \$150,000. All costs include the cost for the 3rd party auditor.

For electricity transmission businesses the cost saving by having a single ENSS if a business operates in two jurisdictions would depend on the similarity of the assets and environment. Assuming these are similar it is estimated that the costs could be reduced by approximately 50%.