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The Manager
MCE Secretariat
Department of Industry, Tourism and Resources
GPO Box 9839
Canberra ACT 2601

Dear Sir / Madam

Submission on the *Discussion Paper on Harmonisation of Energy Supply Industry Technical and Safety Regulation* (dated Feb 2009)

The ACT Planning and Land Authority (ACTPLA) is the Technical Regulator of energy distribution networks in the Australian Capital Territory. The powers of the Technical Regulator are set out under Part 5 of the *Utilities Act 2000*.

ACTPLA is also the regulator of electrical and gas installations under the *Electricity Safety Act 1971* and the *Gas Safety Act 2000* respectively, and is responsible for licensing relevant trade occupations under the *Construction Occupations (Licensing) Act 2004*. Under its principal legislation, the *Planning and Development Act 2007*, ACTPLA exercises important strategic land planning and development approval functions relating to development in the ACT, including energy utility infrastructure.

ACTPLA is a member of the Electrical Regulatory Authorities Council (ERAC) and the Gas Technical Regulators Committee (GTRC), and has participated along with other State and Territory technical and safety regulators in providing comment during the development of the Discussion Paper on Harmonisation of Energy Supply Industry Technical and Safety Regulation by the MCE Leaders Group.

ACTPLA broadly endorses the submissions made by ERAC and GTRC in response to the Discussion Paper, but particularly wishes to highlight the omission from the paper of the role of technical regulation of matters other than safety, and the potential impacts of such omission on the effectiveness of technical regulation.

Under the ACT legislation technical regulation deals with a broader range of matters than network safety, and includes, for instance, matters related to service standards (quality of supply, reliability, etc) and asset maintenance (network serviceability and

sustainability, especially where all or part of the assets remain in public ownership to some degree, as is the case in the ACT).

It is noted that the focus of the Discussion Paper is primarily on safety regulation through the establishment of Energy Network Safety Systems (ENSS). A significant amount of other technical regulation matters, which are the responsibility of the State and Territory technical regulators, will remain outside of the scope of the proposed ENSS approach. Nevertheless, in principle ACTPLA supports the safety case approach behind the ENSS model provided it is underpinned by robust standards which include meaningful performance measures.

The value of developing, at this time, a single ENSS standard for electricity and gas network operators is doubtful, given that the gas sector has a more developed set of national standards. Hence for the foreseeable future a separate ENSS for gas and electricity is most appropriate. ACTPLA believes that a risk based approach by network operators must involve a mandatory standard. Considerable efficiencies are to be gained from having in place for each energy sector, detailed supporting standards along the lines already developed in the gas transmission and gas distribution sectors. Without national mandatory standards there is no justification for proposals for national harmonisation.

ACTPLA endorses the view that energy sector workplace safety should be consistent with the National OHS Review model, and that the ENSS should focus on the broader network (public) safety issues peculiar to utility infrastructure in public spaces.

Implementation of an ENSS will impact on the delivery of other technical regulation functions residing with the State and Territories. It is therefore important that any future governance arrangements do not make the delivery of these functions (which will remain additional to and outside of the ENSS) by technical regulators more complex or difficult.

Given this, and the very substantial synergies between the wider range of electrical and gas regulatory functions carried out by the ACT regulator (and other State regulators), any future governance model should be based on a continuation of the central role of State and Territory regulators.

ACTPLA therefore does not believe there is a sound case for establishment of a single national regulator. Indeed, this is likely to lead to greater complexity and lack of coordination between safety regulation under the ENSS and other network technical regulation requirements, and would introduce a system of 'dual regulation'. It would also undermine the considerable synergies available where a regulator deals with both networks and installations, as is the case in the ACT. Establishment of a single national regulator would add significant costs for little or no apparent net public benefit.

Funding for State and Territory regulator functions under the ENSS, including standards development, implementation and compliance, should be fully recoverable from the energy supply industry as a regulatory cost. All direct costs associated with the jurisdictional regulators' contribution to national regulatory tasks (e.g. participation in the work of the Regulatory Committee via ERAC and GTRC, participation in the standards working groups, etc) should be paid by the Commonwealth in its MCE secretariat capacity and recovered from the energy supply industry.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Neil Savery', written over the typed name and title.

Neil Savery
Chief Planning Executive

03 April 2009

**HARMONISATION OF ENERGY SUPPLY INDUSTRY TECHNICAL AND
SAFETY REGULATION
ERAC RESPONSE TO DISCUSSION PAPER DATED FEBRUARY 2009**

1 OVERVIEW

ERAC notes that there are three concurrent Government reforms that are also occurring at this time. These include:

- The Workplace Relations Ministerial Council (WRMC) Review into Model OHS Laws;
- The ongoing energy market reforms; and
- The Council of Australian Governments' (COAG) decision to introduce a National Licensing System for some occupations (including line workers, cable jointers, electricians and gas fitters).

These reforms seek to implement a national regulatory framework with ongoing implications for the technical regulation of the ESI. For this reason ERAC firmly believes the MCE needs to ensure that the proposals and findings that come from this MCE Discussion Paper are consistent with, and are aligned as closely as possible to, these other key reforms.

The WRMC National Review into Model OHS Laws report of January 2009 recommends nationally consistent legislation for safety in all workplaces to be controlled and administered jointly by state jurisdictions. ERAC strongly supports these recommendations.

The single national (Federal) regulator proposal contained in the subject Discussion Paper is inconsistent with the National OHS Review model. ERAC is also strongly opposed to the move to a national (Federal) regulator, as this does not present the best option for government from a regulatory point of view. ERAC contends that a move to a national (Federal) regulator would involve a range of additional costs, which could be saved by progressing national harmonisation via the existing State and Territory based regulators. Given the level of expertise that is available on a local level, and the synergies that currently exist across industry via the local regulators, ERAC believes that it would be hard to justify the move to a national (Federal) regulator.

These synergies include the co-location of the electrical network safety regulator with the electrical appliance and electrical contractor and worker safety regulator so that all inter-related segments of the industry are monitored and regulated appropriately and consistently. Any move to separate the ESI into a separate regulatory function would be seen by ERAC to be detrimental to safety.

Local regulators also work more closely with electrical entities on safety, taking into account local issues such as environmental, climatic and geographic factors. A national (Federal) regulator using mandatory standards would result in a one-size-fits-all approach to this type of safety issue.

Given the current environment, ERAC firmly believes that it would be much more cost-effective to pursue national harmonisation via the existing State and Territory regulators.

Consistency with the OHS Act and Governance Arrangements

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

The OHS Report proposes uniform OHS legislation 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 industry specific regulation of OHS is contemplated or proposed to be continued, it should be demonstrated that it would produce better OHS results than coverage by the nationally implemented model Act. Even where that could be shown, there should be an on-going, legislative and administrative inter-relationship between the two frameworks. This could only be achieved by a decision of the Council of Australian Governments (COAG).¹

The proposal for a national (Federal) energy safety regulator is therefore inconsistent with the regulatory model proposed under the OHS report. Although the model OHS Act will not cover all safety aspects of the energy supply sector, the OHS Act will directly link to the framework developed by the Leaders Group. The OHS Act should set the model that the energy safety and technical legislative and governance arrangement should follow. Therefore, the single national (Federal) regulator proposal is not supported by ERAC. ERAC is strongly supportive of the proposed regulatory framework

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.

and governance arrangements being consistent with what is proposed in the National OHS Review.

For these reasons, ERAC believes that the MCE should refer the proposals contained in any Draft Harmonisation Plan to COAG as a business case for an industry-specific OHS system. This should be done prior to proposing a National Regulation Impact Statement (RIS). ERAC also believes that any proposals contained in the Draft Harmonisation Plan are aligned as closely as possible to the National OHS System, as contained within the OHS Report.

Specific comments on the subject Discussion Paper follow.

2 SCOPE

The scope of the proposed harmonised regulation should not include electricity generation and gas plants. These are generally considered to be the same as factories that produce goods and where workplace safety regulation applies. However, some jurisdictions may desire to retain regulation of these plants under their local legislation outside the harmonised regime.

Requirements additional to workplace safety laws exist for the ESI because the “workplace” and the assets are in the public domain. This is recognised in all jurisdictions and should remain so after the National Review of Model OHS Laws has completed its task and new Model OHS Laws are in place.

Chapter 20 of the report into the review into Model OHS Laws recognises that there may be a need for separate legislation in specific industries and as far as possible, the separate legislation should be consistent with the nationally harmonised OHS laws.

It is assumed that the inclusion of energy meters in the scope is to cover the remote connection/disconnection of supply using a ‘smart’ meter as a switching device. The technical (accuracy) requirements of meters are the responsibility of the National Measurements Institute. Selecting and installing the appropriate meter, obtaining meter data, ensuring its security and ultimate transmission to the retailer is the responsibility of the network operator (or delegate), monitored by the relevant economic regulator. The functions and rollout of smart meters is already a separate COAG taskforce responsibility. The Harmonisation Plan should make this use of the meter clearer. Effective work practices will be required to ensure the safety of consumers when the meter is used as a remote connect/disconnect device.

3 REGULATORY FRAMEWORK

Flexibility and innovation while facilitating greater labour force mobility is a contradiction. The Terms of Reference specifically require the Leaders Group to address “greater labour mobility and swifter emergency response”. Labour

mobility requires common work practices and common training curricula across the industry. These are the responsibility of network operators rather than regulators. One means of providing flexibility and innovation within a performance-based national regulatory framework is by allocating the development or review of a work practice/training package to not more than (say) two network operators with the agreed "best" result (or a combination) being implemented by all the network operators.

It is understood that labour force mobility is mainly a concern of large contracting companies that operate across jurisdictional and/or network boundaries. Different work practices between network operators require their personnel to undergo (sometimes extensive) induction/re-training each time they cross a boundary. This is not a regulatory failure but a network operator coordination failure. It is in their economic interest and capability to jointly resolve this matter.

4 ENERGY NETWORK SAFETY SYSTEM (ENSS)

4.1 Safety Management System

It is stated that the proposed ENSS will be consistent with the performance-based safety management systems also known as safety cases currently in operation. Safety cases profess to achieve better outcomes than mandatory standards. Safety cases are developed through a risk management process that attempts to reduce the probability of a fatality using the "as low as reasonably practicable" (ALARP) approach. The alternative approach where a suite of standards and other documents are prescribed that must be followed by the network operator aim to deliver consistent and defined outcomes to each and every part of the network. The difficulty is that a network of any significant size and asset age distribution would have extreme difficulty in achieving compliance with all these standards due to the resources needed.

A safety regulator, in accepting a safety management system, will require a network operator to implement control and mitigation measures that become enforceable and define compliance with the management system. This also requires the compilation and analysis of data about non-compliance and other safety related events (accidents and near misses) that can be used to determine the actual safety performance of the network and the effectiveness of the control and mitigation measures along with feedback and continuous improvement processes.

4.2 ENSS Standard

The development of a single ENSS standard for electricity and gas network operators should be a second step in the harmonisation process (if done at all). Attempting to do this, as the first step, will increase the time required to develop the ENSS for electricity network operators due to the involvement of another group. However, the electricity ENSS must be based as closely as possible on the two gas standards, so that its completion is not delayed but at the same time its quality and coverage must not be compromised.

The ENSS should have two parts similar to the two parts of AS3000: 2007 Wiring Rules. The first part is the performance-based safety management system setting out, inter alia, the performance targets, the risk assessment tools, and the certification and audit requirements. It is considered that operators of large networks would choose to follow this method as it allows the network operator to customise its safety management system.

The second part is the 'deemed to comply/satisfy' component that includes an extensive suite of standards and other documents, compliance with which discharges a network operator's obligations. A transition period should be included in the legislation that provides a period for a network operator to bring its network to a condition that complies with the standards in the 'deemed to comply' part of the ENSS, should the network operator choose this option. It is considered that operators of smaller networks would choose to follow this method. Even so, the network operator must still apply risk management techniques and achieve performance targets, etc., and undertake conformance audits to demonstrate that the network complies with the standards.

4.3 Small and Isolated Networks

The type of ENSS should not be based on network size, as this is an absolute measurement with a discontinuity. The network operator must declare to the jurisdictional regulator whether a safety management system or a deemed to comply approach will apply to its network. Alternatively, in the absence of an approved safety management system a deemed to comply regime is assumed to apply. A network operator could start out using the safety management system approach and later change to a deemed to comply approach, or the reverse.

ERAC is unable to comment on embedded networks as they have not been defined but do not see the need for any special consideration if the type of ENSS is not related to network size.

4.4 Central ENSS Register

The establishment of a Central ENSS Register and its maintenance by the Advisory/Regulatory Committee is supported. The statement "information related to the requirements for compliance with the relevant State and Territory legislation and regulation" is not understood, as under the harmonisation proposal there will be common legislation and common requirements.

5 MANDATORY STANDARDS

As set out above, the "deemed to comply" component of the ENSS must include a comprehensive range of standards and other documents for the use of network operators that choose that path.

6 GOVERNANCE ARRANGEMENTS

6.1 MCE

The MCE is composed of Ministers with conflicting interests. Some deal with energy policy issues, some deal with government energy business enterprises, some deal with energy safety enforcement and some deal with all or a mix of these issues. Energy Ministers are not always involved in energy safety regulation but as members of the MCE will be required to make decisions on energy safety regulation that may have an adverse impact on the financial performance of energy business enterprises for which they are responsible. However, in the absence of another more suitable body the MCE seems to be the most reasonable body to set policy for the safety and technical regulation of the energy supply industry. To help manage these conflicts, it is essential that the MCE have direct advice from regulators, independent of any commercial drivers, as described in 6.2 below.

To ensure that all jurisdictions understand and agree with the extent and coverage of the safety and technical policy role of the MCE an Intergovernmental Agreement should be put in place.

6.2 Advisory/Regulatory Committee

ERAC does not support the creation of an Advisory Committee. However, if the Advisory Committee option is selected, each energy safety and technical jurisdictional regulator should be represented on the committee to ensure that each jurisdiction is adequately represented and that all regulatory issues are considered thoroughly.

Of the two options presented, the Regulatory Committee option is preferred. If the Regulatory Committee option is selected, then it should require the formalisation of the roles of ERAC and GTRC. Rather than having a separate committee, this body should have clear reporting lines to the MCE. Therefore, the SCO should be expanded to include a representative from ERAC and a representative from GTRC and its name changed to SCOR (Standing Committee of Officials and Regulators). The Industry Reference Group, comprising industry representatives and relevant union representatives, would report to SCOR, or a sub-committee of the regulators. This proposal is shown diagrammatically in attachment A.

Alternative option.

If the MCE is of a mind to create a single regulatory body then ERAC proposes that the ENSS legislation should create a National (non Federal) ESI Safety and Technical Regulator comprising the existing State and Territory energy safety and technical regulators, i.e. members of ERAC and GTRC.

This arrangement would ensure that the individual jurisdictional members followed a consistent approach to the acceptance/certification of network operator's ENSS and enforcement of the ENSS law. This arrangement provides a minimum cost solution for National Regulation as the existing State and Territory regulatory funding arrangements would continue and the general

scope of State and Territory regulatory cover would be unchanged, (replacing the current safety and technical legislation with the ENSS legislation) while continuing to discharge their other existing functions.

This formal recognition of ERAC and GTRC and prescription of executive functions and responsibilities would require administrative support and it is suggested that the Department of Resources, Energy and Tourism would provide secretarial support to the National (non Federal) ESI Safety and Technical Regulator and provide a partition on its website for use by the Regulator (for the ENSS Register and other matters). An electricity member and a gas member of the National Regulator would represent the Regulator on the SCOR advising the MCE. Funding for the National Regulator functions (those in addition to the existing jurisdictional functions) would be obtained through the DRET budget.

This proposed structure aligns with the proposed structure for the National OHS regulation and will make coordination of the OHS and ESI regulation more efficient and effective. It is shown diagrammatically in attachment B.

6.3 Acceptance/Certification

The audit process and procedures should be set out in Regulations (referred to as Scheme Rules in the discussion document) under the ENSS Act (principal legislation). These Regulations would define how an ENSS was certified/accepted and the required qualifications, experience and risk assessment capabilities of the auditing entity and individual auditors. This is required to ensure national consistency in the appointment of auditors and the process used by the individual regulators. Regulators need to be confident that the process is working as intended and that option 2 in item 16 is implanted. Option 1 could only be considered when the system was judged to be mature by the National Regulator, which may occur at different times for individual jurisdictions.

With regard to auditing of a small encroachment of a network into an adjacent jurisdiction, the harmonised legislation should include a mechanism that provides for one jurisdiction to be able to appoint a second (neighbouring) jurisdiction to perform the regulatory role where there are small cross-border networks supplied from larger networks operated by a common network operator.

6.4 Enforcement and compliance bodies

The proposal to have a Commonwealth based National (Federal) Regulator is not supported. The second option in paragraph 17 should be followed if the previously suggested National (non-Federal) Regulator option is not implemented.

7 STANDARDS DEVELOPMENT

To provide recognition and authority all Standards referenced in the Act and subsidiary regulations should be produced through the Standards Australia

process. Where available international standards should be adopted with minimal changes to take into account Australian conditions. National or Departmental Standards are to be avoided.

Industry participants, subject to Regulator oversight, should develop documents setting out common work practices to be implemented across the jurisdictions so as to make labour force mobility more efficient and cost effective.

8 NATIONAL ENERGY SKILLS PASSPORT

This proposal is strongly supported. However to be effective in promoting worker mobility and emergency response the training packages (initial and refresher) and task work practices must be common across all jurisdictions. This can only be achieved by commitment and concerted effort on the part of all network operators and training providers to agree to common standards, processes and procedures.

9 LEGISLATION

The legislative framework should follow that used for the National Electricity Law under which the National Electricity Market operates. This framework is also used for the National Gas Law.

A host State will introduce the required legislation into its Parliament and the other States and Territories will enact adoptive legislation in their Parliament to adopt that legislation in whole with automatic adoption of any future amendments made by the host State. This arrangement would be included in the Intergovernmental Agreement mentioned previously.

10 NEXT STEPS

The list of next steps does not include the development of the legislation. Drafting instructions must be prepared that advise the host State's Parliamentary Counsel what is to be included in the Bill that is to be presented to Parliament. The Parliamentary Counsel will then draft the Bill for review by the instructing officer. A number of iterations will be required and the Leaders Group may be involved when appropriate milestones are reached or questions raised by Counsel require discussion and agreement. This process can consume considerable resources. It will also be necessary to coordinate with the Parliamentary Counsels of the other jurisdictions regarding their adoptive legislation.

ERAC does not agree that a review of the full scope of the existing State and Territory technical and safety legislation/regulations must be undertaken.

This suggestion may be the result of confusion caused by the different structures of the various State Government departments and therefore the mix of subject matter in their legislation. It is unlikely that the outcome of a review of the stock of legislation will cause a government to restructure its departments just to make all the legislation look the same.

ERAC believes that the network operators want consistency in what is being measured or what the standards are across jurisdictions, that is, reliability, quality, voltage, etc. This could lead ultimately to common "national" performance targets but its achievement is beyond the scope and timescale of this project.

It should be possible for the Leaders Group to develop a comprehensive table of contents list via correspondence prior to a meeting with sign off at the meeting. The drafting officer in the host State would then commence drafting the instructions, which basically flesh out the contents list using recommended sections of the suite of existing legislation and to draft new sections describing the new roles created by the harmonisation process e.g., the National (non Federal) ESI Regulator. It is then up to each jurisdiction to review its own legislation to determine what provisions will become redundant and can be repealed and what is left as purely a State administrative requirement that does not impact on worker mobility. These legacy provisions would remain in the existing jurisdictional Acts and Regulations.

11 IMPLEMENTATION

The proposed staged implementation is supported. A specific timeline beyond stage one should not be developed at this time as this sort of implementation always takes longer than expected. Final amalgamation of electricity and gas safety and technical regulation is not critical and the political environment may change.

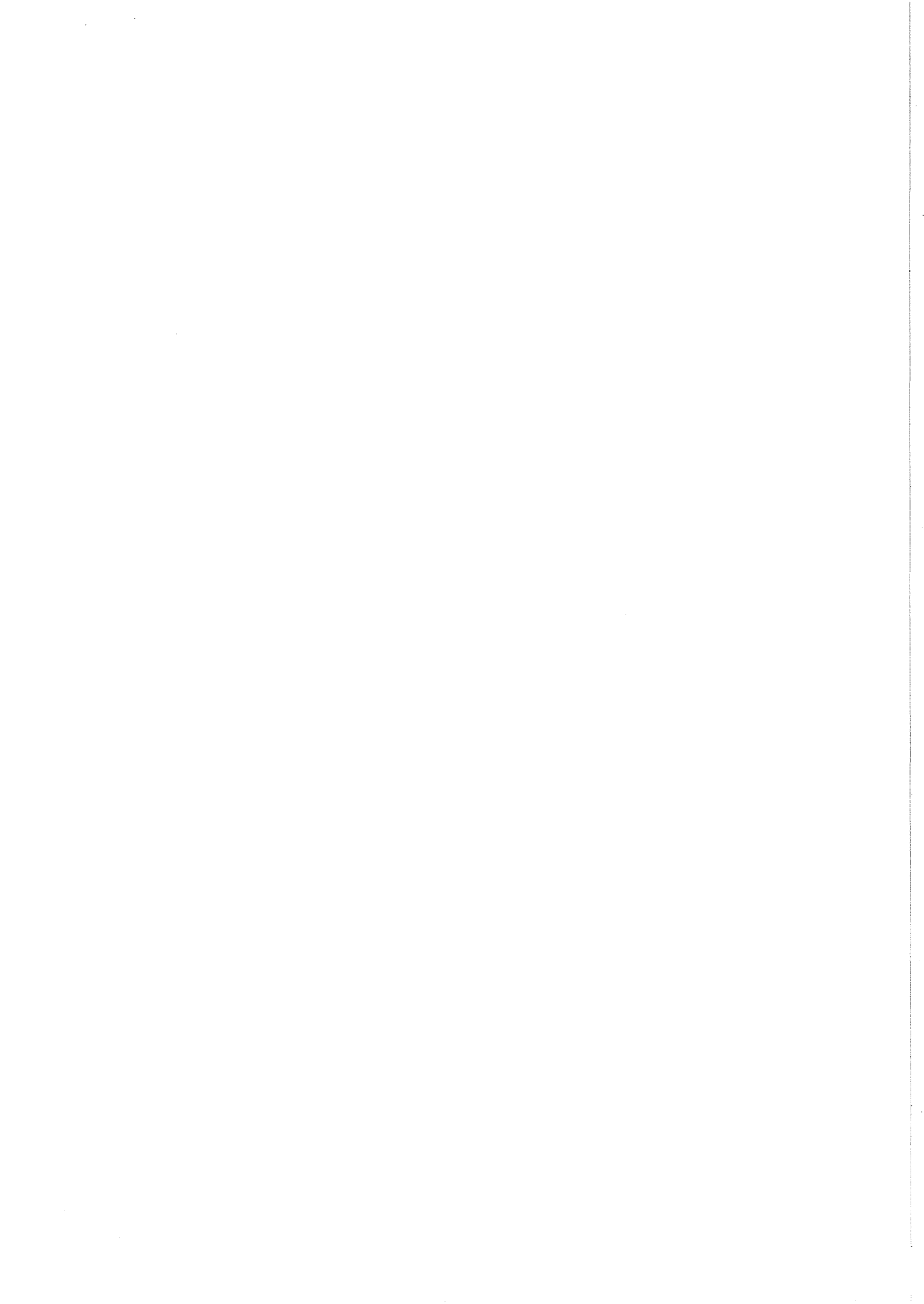


Figure 2 (option 2): Elements of the Proposed Regulatory Model

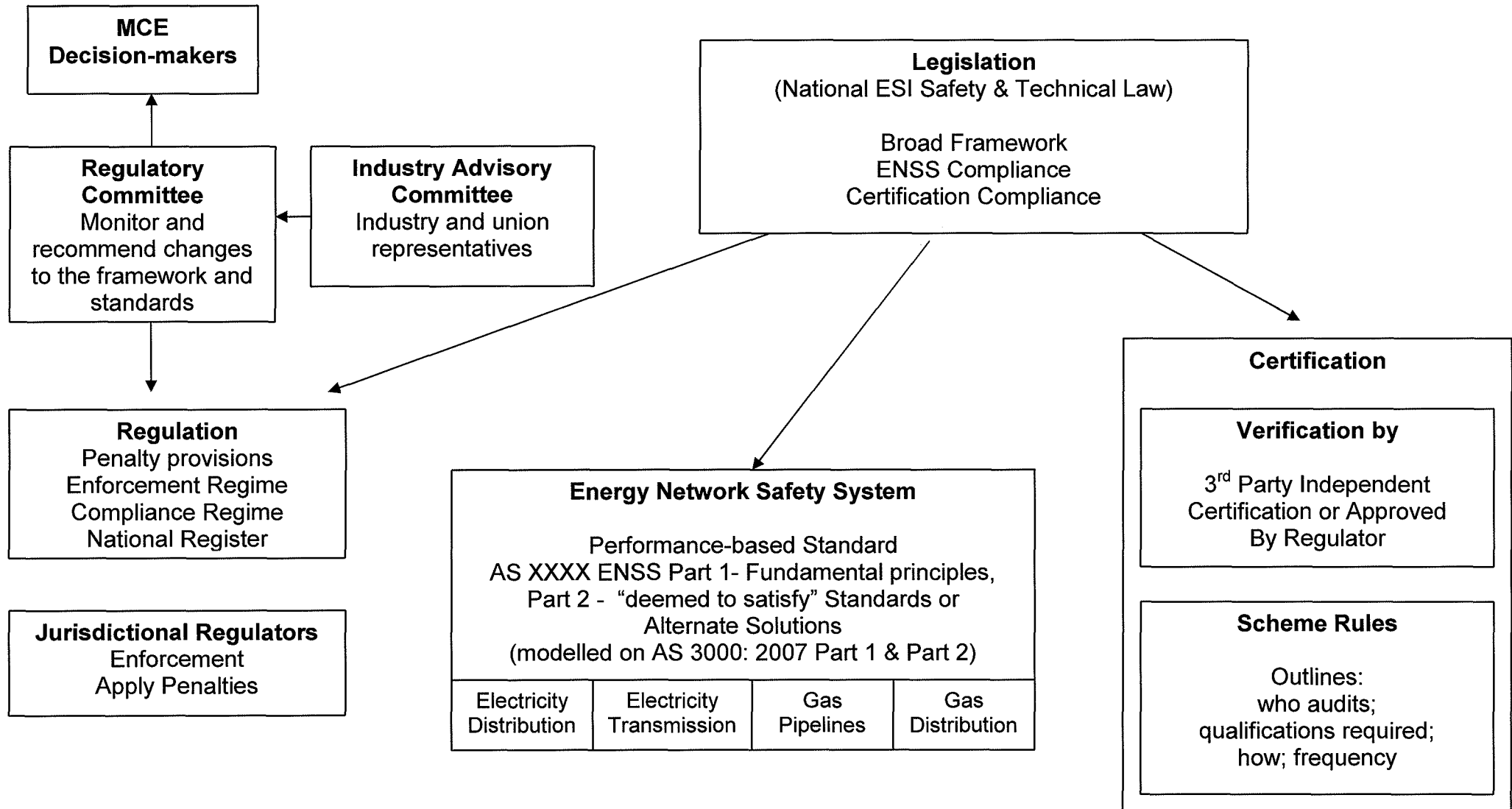


Figure 2 (ERAC alternate option): Elements of the Proposed Regulatory Model

