

CEPU Power Industry Committee Submission on the Harmonisation of Energy Supply Industry Technical and Safety Regulation

Discussion Paper

Ministerial Council on Energy Feb 2009

This submission is made by the CEPU Power Industry Committee which is comprised of representatives who work within the energy supply industry (ESI). The CEPU Power Industry Committee supports the Government's proposal to progress towards a harmonised legislative framework within the ESI which the State and Territory technical and safety regulation will operate.

We agree there should be an overarching scheme which should to the greatest extent possible:

- put in place best-practice regulation to ensure public and workers safety;
- facilitate greater labour mobility and swifter emergency response, especially in the context of skilled labour shortages;
- lower the compliance burden for multi-jurisdictional operators; and
- provide regulatory certainty and consistency across jurisdictions.

Scope

4. The discussion paper proposes a harmonised approach to ESI technical and safety regulation covering the following sectors of the energy supply chain:

- electricity networks (transmission and distribution);
- gas networks (transmission and distribution pipelines); and
- electricity generation and gas plants, pending assessment of the level of coverage provided for in the National Occupational, Health and Safety Review (National OHS Review) as assessed by the Leaders Group.

No comment required

5. The scope of the discussion paper covers technical and safety regulation in current State and Territory regulation, and seeks to identify opportunities to harmonise and make improvements where such regulation or variations in industry developed safety-critical work practices impede workforce mobility. However, given different coverage issues in each state and territory, the Leaders Groups will more fully consider this issue in its draft and final implementation plan.

No comment required

6. While the National OHS Review will look to harmonise OHS regulations which govern all Australian workplaces, the ESI has special safety and technical requirements and obligations not covered by OHS legislation

... that require it to have its own separate, yet consistent and compatible, technical and safety regulatory framework....

The CEPU Power Industry Committee agrees the ESI has special safety and technical requirements and obligations which are not and should not be covered by generic OH&S legislation. Although the two laws should be complementary it is important that the ESI is governed by separate targeted laws.

Regulatory Framework

7. The proposed regulatory framework provides for the delivery of safe energy services. It seeks to implement a light-handed regulatory approach and flexibility for network operators to innovate and improve efficiency, while facilitating greater labour force mobility.

This discussion paper outlines key features of the framework, and presents a number of options for comment by stakeholders.....

Energy Network Safety System (ENSS)

8. The key regulatory instrument within this new, nationally consistent regulatory framework is the proposed Energy Network Safety System (ENSS), which is consistent with the performance-based safety management systems (also known as a 'safety cases') currently operating in most States and Territories.

This light-handed regulatory instrument will place a minimum compliance burden on network operators, while providing the flexibility to implement safe working solutions to maintain worker and community safety standards. ..

The CEPU comments on this at point ...

ENSS Standard

9. It is envisaged that the management systems' requirements of an ENSS electrical standard may be aligned as far as possible with the management requirements of the existing gas standards, AS 2885 and AS 4645, covering gas pipelines and gas distribution as well as other existing standards, thus minimising the development cost to industry. In the longer term, it is envisaged that an ENSS electrical standard and the relevant parts of AS 2885 and AS 4645 may be amalgamated. One key issue identified in the discussion paper is the extent to which it is desirable to develop a generic standard covering the management systems of both gas and electricity networks, so as to facilitate a common ENSS standard for network operators.

CEPU Comment – generic electrical and gas standards may be possible but not to the extent that the safe management of either gas or electricity is compromised. Generic standards may have to be supplemented by specific standards where it is clear that a generic standard does not fit the circumstances.

Small and Isolated Networks

10. The discussion paper presents options on how small and isolated networks should comply with the general provisions of the ENSS standard. The paper presents two options to either:
- require small and isolated network operators to comply in full on the basis that they will have a very simple ENSS, or,
 - provide an exemption from the requirements of an ENSS where they are able to demonstrate compliance with safety outcomes equivalent to an ENSS.

The CEPU supports Option 1. Smaller operators should fully comply because the technical and safety aspects of their ENSS should not be compromised. Their ENSS will be simple to administer making full compliance less of an issue.

Central ENSS Register

11. A Central ENSS Register is proposed to contain a list of third-party certification bodies, accepted or certified energy networks, and information related to the requirements for compliance with the relevant State and Territory legislation and regulation.

The CEPU does not support third party certification. Certification should be done by the State or Territory regulator.

Mandatory Standards

12. A key issue for stakeholder comment is the concept of having a limited number of mandatory standards directly referenced in legislation, particularly in high risk public and workplace safety situations. Two options are presented:

Option 1 - for a select number of safety-critical work practices and technical standards to be mandatory; or

Option 2 - that there be no specification of mandatory standards other than the ENSS.

The CEPU supports option 1. We agree there should be specification of mandatory standards for a limited number of mandatory standards.

Criteria for referencing standards

13. The Leaders Group proposes that a set of principles be established to guide:
- what standards need to be developed;
 - which, if any, standards should be directly referenced in legislation; and,

- which, if any, standards should be referenced as "deemed to satisfy" solutions.

The CEPU supports the work of Ee-oz which is currently doing a project to identify the categories of ESI workers in each State and Territory and the qualifications associated with these categories. The aim is to find out what is out there and what the differences are. This will assist the Leaders Group in the development of standards and help identify which standards should be directly references and which standards can be "deemed to satisfy".

Governance Arrangements

Ministerial Council on Energy (MCE)

14. The enabling legislation sets out a governance structure with the appropriate separation of powers and oversight for the delivery of safe and efficient energy services. The MCE will represent the interests of each State and Territory in its decision making role over amendments to be made to the framework. Comment is sought on bringing energy technical and safety issues within the ambit of the MCE.

The CEPU supports the MCE having responsibility for technical and safety issues within the ambit of the MCE as this will facilitate the process of harmonising legislation and regulation.

Advisory/Regulatory Committee

15. Reporting to the MCE, a committee is proposed with the role of monitoring the framework and making recommendations, as well as, having a role in the development of the scheme rules. Two options are presented:
- establish an Advisory Committee that is a tripartite body consisting of energy network regulators, unions and industry representatives; or
 - establish a Regulatory Committee consisting solely of State and Territory regulators, that also has an administrative regulatory function, and is supported by a standing Industry Reference Group.

The CEPU supports the establishment of a tripartite Advisory Committee as opposed to a regulatory committee which is not tripartite.

Acceptance/Certification

16. The "certification" and/or "acceptance" process for a network operator's ENSS will be contained in the Scheme Rules which outlines audit requirements and auditors' qualifications. The scheme rules are designed to ensure that Regulators will have confidence that certification is fulfilling the regulatory objectives and is undertaken consistently across jurisdictions, providing certainty for network operators. Three options are presented for approval of an ENSS:
- certification by a third-party independent certifier;
 - acceptance by the Regulator, certification by a third-party independent certifier; or,

- a two-staged approach to the introduction of the certification system, with acceptance by the Regulator in the short term, followed by certification of a third-party independent certifier once maturity of the system is ensured.

The CEPU does not support any of these options. We are not convinced that third party certifiers are necessary.

We see no reason to deviate from the current system but with the modification that the regulator does the certifying according to a national template.

Enforcement and compliance bodies

17. The Regulators will administer, enforce and apply penalties under the framework. The paper presents three options for the regulatory governance of the safety of the ESI under new uniform legislation:
- maintaining multiple jurisdictional regulators but operating under new, uniform legislation;
 - as above but implement a ministerial agreement to ensure that regulators operate in a harmonised way by formalising the role of Electrical Regulatory Authorities Council (ERAC) and Gas Technical Regulators Committee (GTRC) ; or,
 - establish a single national regulator with offices in each State and Territory.

The CEPU supports the option detailed in the first dot point above, which provides that there be multiple jurisdictional regulators but they operate under new uniform legislation. We do not agree that the role of ERAC or GTRC should be formalised. We believe this will just create another layer of bureaucracy.

Standards Development

18. There are several options identified by the Leaders Group to take forward the development of standards and/or other normative documents necessary for the harmonisation of the ESI safety and technical regulation. The paper presents four options for the development of standards:
- Australian Standards;
 - National Standards;
 - Departmental Standards; or,
 - other documents such as codes, specifications, handbooks and guidelines.

The CEPU believes that whatever vehicle is deemed to be appropriate for the development of standards, it should be reflective of the views of industry stakeholders. It could be a

committee of Australian standards plus codes, specifications etc, it could be the Standards Association – it could be a mixture of options.

National Energy Skills Passport

The recommended development of a National Energy Skills Passport will provide a mechanism for recording the currency of authorisations, inductions and refresher training for qualified electricity, electrotechnology and gas workers, particularly in areas of training that require periodical updating (refresher training) and that improve worker portability. The passport will be supported by nationally consistent training packages that have already been developed by EE-OZ Training Standards for energy generation, transmission and distribution, gas transmission and electrotechnology and which reference nationally consistent standards. This will ensure workers in the energy industry have the same base level of training with common generic procedures recognised across jurisdictions.

The CEPU supports the concept of a national energy skills passport. The passport does not replace but is in addition to occupational licences:

The passport will detail specific competencies/authorisations. eg the passport could state that an Electrician can do switching up to a certain level and refresher training undertaken.

The authority will operate nationwide.

In-house training for additional skills should be consistent.

The advantage of the passport is that an employer would know automatically that the holder has all the training and skills necessary to do the job.

If the holder of the passport fails to perform the work satisfactorily, they will lose their licence and then can't do the work. It would act to monitor the quality of work done and would protect the integrity of the training and skills of authority holders and licensed tradespeople.

Legislation

20. Enabling legislation would need to be developed that is nationally consistent and underpins the harmonisation of ESI technical and safety regulations across State and Territory borders. The discussion paper presents two options:

Option 1 - introduce legislation into State Parliament with a schedule to be adopted nationally; or,
Option 2 - for each State and Territory to introduce their own legislation based on model legislation.

The CEPU supports option one. The legislation must be introduced in a manner which minimises the potential for a State legislature to change aspects of the harmonised legislation that does not suit them.

The CEPU supports the option where one State acts as the lead agent enacting the major legislation and the other State/Territories introduce minimum legislation based on that lead agent's legislation.

Option two would increase the potential for various States customising the legislation which in turn would compromise the harmonisation work. The result would be individual systems with interstate differences. Further, down the track if each State/Territory has its own legislation there would be nothing to stop individual state governments changing that legislation and so introducing the differences that the process of harmonisation is trying to eradicate.

We do not believe we should cede rights to the Commonwealth.

Option 1 avoids the situation whereby if there is a change to the legislation, each State has to enact complementary legislation, that is, every time there is a change it needs to be changed in every State.

21. The legislation will:
- contain a provision for each energy network operator to have an ENSS;
 - set out a process for verification of the ENSS;
 - require the ENSS to be listed on a central ENSS Register;
 - describe the roles and responsibilities of an Advisory/Regulatory Committee; and,
 - may provide the flexibility to allow for mandatory compliance with a limited number of workplace standards.

Next steps

Subsequent Documents

22. This discussion paper is a first step in developing the Harmonisation Implementation Plan envisaged in the MCE Terms of Reference (See **Appendix 1**). There are many issues related to implementation that need to be addressed before a comprehensive Harmonisation

Plan is finalised and submitted for approval by MCE. Many of these issues are alluded to in this paper ..

Implementation

23. The Leaders Group has discussed the possibility that the proposed model may be implemented in stages. Given that the gas industry is more advanced in terms of harmonisation than the electricity industry, the Leaders Group acknowledges that it may be advisable to have a staged approach to implementation. To begin with a stage one approach could be to develop harmonised standards in the electricity industry equivalent to that of the gas industry; at stage two both industries could converge under a harmonised national framework for energy safety and technical regulation.

Current Arrangements

69. The electricity and gas industry sectors are amongst the most regulated sectors in the Australian economy.
70. Currently each State and Territory has its own regulations to govern the safety and technical requirements of the work carried out in the energy supply sector. Between jurisdictions there are differences in the extent of overlaps ..
71. **Appendix 3** provides an overview of the standards, codes, guidelines and policies that exist in each State, Territory and Commonwealth legislation governing the safety of the energy supply industry.

Stakeholder comments:

Stakeholder views are sought on the coverage and detail of the descriptions provided for each State, Territory and Commonwealth legislation contained in **Appendix 3**.

The CEPU supports the harmonisation of standards but believes the standard of regulation is justified on the basis that the ESI is a uniquely dangerous industry often requiring detailed regulation.

Our idea of harmonisation is not to throw out detailed regulation but to standardise it across the board.

72. There are also differences in the safety regulations between States and Territories. For example some states have developed their safety regulations to be technology specific, while others are divided into vertical sectors of the supply chain.
73. Further, the Leaders Group recognises that jurisdictional regulators' responsibilities vary. ie. some regulators have responsibility for reliability and economic regulation while others are solely responsible for safety regulation. This is part of the difficulty in drawing a clear delineation between what regulations can be standardised to provide greater labour force mobility and what is outside the ambit of State and Territory Regulators.
74. **Appendix 4** provides some detail on the issues of difference between State and Territory safety and technical regulation under the current arrangements. However the Leaders Group acknowledges that this information may be incomplete.

Stakeholder comments:

Stakeholder views are also sought on the coverage and detail of the current regulatory arrangements contained in **Appendix 4**.

CEPU Comment – we cannot comment on this until appendix 4 is complete and accurate. However, we recognise the difficulties created for harmonisation where regulators responsibilities vary.

75. More broadly there are also some differences between the States and Territories in their:
- network safety operating plan requirements;
 - auditing procedures;
 - compliance regimes; and
 - reporting requirements.
76. There are also differences in the degree to which harmonisation of safety and technical regulation has already taken place between the electricity and gas industries. Gas transmission is more advanced with nationally consistent standards covering pipelines and a nationally consistent training package (UEG06) already in place.

Problems

77. The differences in industry and enterprise work practices, regulation, training and authorisation requirements across State and Territory borders and across organisations, have led to a number of inefficiencies in the energy sector. They are described below:

Limits on workforce mobility

78. Historically networks have developed around local arrangements with different equipment and operations in place. These differences have led to different network requirements within and between jurisdictions. However, with increased interconnectivity of energy markets between States and the increasing use of contractors working in multiple networks the issue of workforce mobility is becoming more pertinent. The different licensing arrangements, refresher training and underpinning documented work practices, standards and guidelines between States and Territories and enterprises means that workers are restricted in terms of which networks or generation facilities they are permitted to operate on.
79. Better mobility of electrical and gas workers across network operators and jurisdictional borders is necessary to mitigate the effects of labour shortages and reduce workforce bottlenecks.

Example:

80. In the case of generation requirements, different technical and safety requirements in some jurisdictions act as a barrier to the efficient and effective mobility of tradespeople. The bulk of the technical and safety requirements for generators are covered by general OHS regulations, which currently differ across jurisdictions.
81. In some jurisdictions (i.e. Queensland and Victoria) specific energy technical and safety regulations apply to electricity generation, however, in other States (i.e. South Australia), requirements are imposed through licensing arrangements, while in other States only the general OHS requirements apply.
82. The steps prescribing how electrical and gas workers perform particular procedures may vary significantly across jurisdictions and networks. This limits the mutual recognition of a workers competencies and ultimately worker portability. For example, while an electrical line worker can perform the same procedure and get the same outcome as a co-worker in another jurisdiction, as they have been trained differently they would not be permitted to operate outside their home jurisdiction until they were re-trained. An example is polarity testing, which is a simple test performed by electrical line workers to ensure the active, neutral and earthed electrical wires are not incorrectly wired. Steps to perform polarity testing vary from 10 to over 40, depending on which jurisdiction or network you are operating in. Under a harmonised framework with a national training package every electrical line worker would be trained to perform procedures using the same steps and safety standards reducing barriers to workforce mobility.

Under the current arrangements all electrical line workers are trained to the identified qualification of the industry endorsed training package. However, individual network operators and jurisdictions have some specific procedural and regulatory requirements that are unique to their operations and networks. These requirements are not uniform across jurisdictions and add another layer of training to an already existing endorsed National Qualification. For example, organisational differences mean that presently if a line worker from Western Australia moves to Queensland they are required to undertake three weeks training to perform the same operation they did back in Western Australia. This training is not only time consuming but costly, placing a significant compliance burden on network operators. Furthermore, it limits the industry's ability to swiftly respond to an emergency, and is a particular problem for contractors offering services across the country.

Limits to cross border emergency response

84. Historically, networks have been designed, constructed (with different equipment) and maintained differently, with different network operator work practices and training, and jurisdictional regulatory requirements. Because of these historical differences there are limitations on the capacity, and safety, of workers to operate across jurisdictional borders. Given these inconsistencies the industry is unable to swiftly respond to an emergency.

Example:

85. The effect of different State and Territory arrangements was demonstrated by a wind storm in Victoria on 2 April 2008, which resulted in a large number of customers being cut-off electricity supply due to distribution network outages. On that occasion, line workers from other jurisdictions were unable to readily assist restoration of supply in Victoria because of differing work practices. This event highlighted the importance of a standardised approach to safety critical work practices and reducing barriers to labour mobility.

Regulatory inconsistency and compliance burden

86. Numerous gas pipelines and electrical transmission lines cross State and Territory borders and are subject to different regulations, authorisations and reporting requirements applying to the asset on either side of the border. Multi-jurisdiction network operators are required to meet these differing and duplicative regulatory obligations, placing a large compliance burden on network operators that is both costly and inefficient.

Examples:

87. Within gas distribution there is much variation in regulatory requirements between the States. Victoria, Western Australia, New South Wales (NSW) and South Australia all have performance-based requirements for network safety and operating plans. Queensland has some prescriptive and minimal performance-based requirements. In addition to these differences compliance and reporting requirements also differ. Overall Victoria and Western Australia are very similar but some of the other States vary much more significantly.
88. These variations cause significant additional burdens for distribution networks that cross borders. In southern NSW the Albury Gas Company network of 25,000 consumers is effectively just a small part of Envestra's Victorian network of 500,000 consumers. Likewise there are 600 consumers in Tweed Heads that are effectively part of a much larger APA network in Queensland. These small extensions across borders are expected to have separate Safety and Operating Plans, associated compliance audits and

Regulatory Reports. This is an unnecessary duplication on behalf of the network operator as these requirements are already adequately addressed by the larger part of their network.

89. In addition, different metering regulations mean that the same gas meters cannot be used on both sides of the Victorian and NSW border or Queensland and NSW border, thereby imposing a significant cost premium on regional NSW customers.
90. In addition to the differences in requirements for Safety and Operating Plans there is also a wide variation in compliance regimes. In Victoria and South Australia the technical regulators undertake compliance audits. However, in NSW and Queensland a certificate of compliance from an independent auditor is required. In Western Australia the technical regulator 'approves' changes to such plans, whereas in NSW no approvals are issued for any reason. In Victoria guidance on a range of issues is provided by the Regulator. There is also a wide range of different reporting requirements in each State.
91. ActewAGL's gas networks, which operate across NSW and Australian Capital Territory borders, reported that the separate OHS Act and Workcover reporting requirements for each jurisdiction places burdensome compliance cost on their operations.

Stakeholder comments:

The Leaders Group seeks comments on the extent of the problem in the current arrangements, and possible approaches to address these issues.

The Leaders Group also seeks comments on the above mentioned examples and other examples of limits to labour force mobility, emergency response, regulatory inconsistencies and compliance burden.

The CEPU agrees with the comments contained in paras 77-91 above. The examples given are also an accurate picture of the types of problems with the current arrangements. This is why we are supportive of the harmonisation of regulation to minimise the extent of these problems.

Guiding Principles

93. In developing the proposed Regulatory Framework outlined in the next Section, the Leaders Group has taken the following guiding principles and other factors into account:

MCE – Terms of Reference of the Leaders Group

94. In the development of a harmonised approach to energy technical and safety regulation, the Leaders Group was guided by the following principles set by the MCE in the Terms of Reference (provided at **Appendix 1**):

- Technical and safety regulation is important for public safety, and to ensure workers operate within a safe environment and to enable the provision of safe energy services, taking into account that most energy supply industry assets reside in public places.
- Reducing the cost of regulation and the regulatory burden on business, particularly where regulation affects businesses that work across jurisdictional boundaries, without compromising safety outcomes.
- Enhancing productivity and workforce mobility to enable the delivery of efficient network services; lower the compliance burden for multi-jurisdictional operators; and facilitate greater labour mobility and swifter emergency response, especially in the context of skilled labour shortages.
- Regulatory certainty and consistency across all jurisdictions, to the extent appropriate.
- Energy specific regulation should not duplicate or be inconsistent with general Occupational Health and Safety legislation, and the Council of Australian Governments' (COAG) Business Regulation and Competition Working Group's reforms in the harmonisation of general Occupational Health and Safety laws and regulations. This should take into account that most ESI assets reside in public places.

Principles of Good Regulatory Practice

95. In addition to these MCE guiding principles, the Leaders Group has taken into account principles of good regulatory practice outlined in COAG's, *"Best Practice Regulation: A guide for Ministerial Councils and National Standards Bodies"*, October 2007. In particular, the key features to be adopted by the Leaders Group include:
- regulatory instruments should be performance/outcomes-based, that is, they should focus on outcomes rather than inputs;
 - prescriptive 'deemed to comply' provisions should only be used in instances where it can be clearly demonstrated that a prescriptive approach is required for the purposes of ensuring safety;
 - the burden on the public and the parties involved should be minimised; and
 - regulatory measures should contain compliance strategies which ensure the greatest degree of compliance at the lowest cost to all parties.
96. The Leaders Group recognises that the regulatory framework needs to take into consideration Good Regulatory Practice (GRP) principles as espoused by:
- the Productivity Commission (PC);
 - the World Trade Organization (WTO);
 - the Organization for Economic Co-operation and Development (OECD); and
 - the Standards and Conformance Subcommittee of the Asian Pacific Economic Cooperation (APEC/SCSC).
97. Those GRP principles include:
- applying regulations consistently regardless of the size of the organisations involved;
 - the incorporation of risk management principles, such as those espoused in AS/NZS 4360, *Risk Management*; and
 - in cases where risk assessment justifies, a formal accredited independent 3rd party conformity assessment should be carried out.
98. In developing the regulatory framework the Leaders Group has also taken the following into account:
- The findings of the Review of Australia's Electrical Equipment Safety System for the Electrical Regulatory Authorities Council (ERAC) by Conformance and Standards Services (CaSServ), especially the concept of replacing separate State and Territory approvals with a national process.

- The Energy Network Association (ENA) policy statements titled *A Policy Framework for Energy Safety in Australia*, released April 2008, and *Proposed National Framework for Electricity Network Safety*, released in July 2008.
- The fact that many energy network operators have existing 3rd party certification schemes in place covering quality, environmental and occupational health and safety management, and thus the imposition of another compatible certified management scheme should not be a burden, especially as it is intended to replace existing less compatible management system (safety case) requirements.
- The principle of the equal validity between the referencing of a standard or other normative document in legislation. That is, a standard that is referenced at the second or third tier level holds the same value as though it was referenced within the legislation itself.

Consistency with the National OHS Review

99. The regulatory framework for the ESI as outlined in this discussion paper is intended to be complementary to the National OHS model.
100. The energy sector has special requirements compared to those covered in the model national OHS Act that require it to have a separate or subordinate (depending on the outcome of the National OHS review) regulatory framework. Those special requirements are summarised as follows:
- **Assets are in the public domain:** To some extent the model National OHS Act assumes organisations are working within a controlled environment. In the case of the ESI, specifically network infrastructure, much of the infrastructure is within the public domain. For the model National OHS Act to adequately cover this aspect of the industry, it would require a major modification to the scope of the model National OHS Act to incorporate an extension to include energy infrastructure public safety. This is not a realistic proposition.
 - **Specialist expertise:** To sufficiently ensure the highest standards of safety are maintained in the electricity and gas industries, the specialised technical expertise of the energy sector is required in drafting energy safety and technical regulations. Again this would put an onerous requirement on the OHS sector to accommodate the needs of the energy sector.
 - **Other industries also have unique requirements:** Other sectors such as coal mining, offshore petroleum, chemicals and dangerous goods and maritime, similarly to the energy sector, have specialist requirements and are also requesting that they have an OHS Act specific to their industry. Therefore, it seems likely that the model

National OHS Act will need to make similar allowances for a variety of different industries and the energy supply sector is not the only exception to the rule.

101. For the above reasons, it is essential the energy sector picks up the risks not captured by the model National OHS Act in a separate yet consistent regulatory framework. The regulatory model proposed in this discussion paper aims to do this.

Stakeholder Comments

The Leaders Group seeks stakeholder views on the interaction between the scope of the National OHS Review and the scope of this discussion paper, and the potential impact the scoping paper may have on the recommendations and/or options included in the discussion paper. In particular, the Leaders Group seeks comments on whether the proposed approach (potentially isolating the ESI requirements) may introduce undesirable inconsistencies between safety requirements for the ESI and electrical workers outside the ESI.

CEPU Comment - The second report of the National Review into Model Occupational Health and Safety laws, recommends that separate and specific OHS laws for particular hazards and high risk industries should only continue where they have been objectively justified. The CEPU believes that in the case of the ESI the case for specific regulation has been justified. There are peculiarities and unique characteristics of the ESI which justify separate regulation. This separate regulation will not cause problems between ESI workers and non-ESI workers because it is industry specific regulation. Workers engaged outside the ESI do not confront the same hazards and risks found in this industry. The hazards and risks confronted by electrical workers engaged in work in other industries are covered by other legislation and regulations.

The Proposed Regulatory Framework

102. The proposed regulatory model has taken into account principles of good regulatory practice and governance structures as outlined earlier. The proposed architecture is broken up into the following key parts, as represented in **Figure 2** on the next page:
- legislation (acts and regulations);
 - Energy Network Safety System (ENSS);
 - standards;
 - acceptance and certification;
 - Advisory Committee and/or Regulatory Committee;

- regulation; and
- Central ENSS Register.

103. These are discussed in more detail throughout this chapter and, in some cases, the Leaders Group has presented options on each for stakeholder comment.
104. As noted previously in the Scope chapter, the Leaders Group will give greater consideration to the application of this proposed regulatory model to the electricity generation, gas plant and gas retailer sectors upon release of the National OHS scoping document in mid February 2009.

Legislation

105. The Leaders Group proposes that the legislation may effectively be a single enabling instrument effected by each State and Territory.
106. National harmonisation and a consistent regulatory framework is difficult to achieve unless there is a single enabling legislative mechanism that is not open to the potential of unnecessary differences between jurisdictions. A consistent legislative framework reduces regulatory inconsistency for multi-jurisdictional operators, thereby reducing the compliance burden on the regulated business.
107. Furthermore, a more harmonised regulatory framework for network operators better enables the mobility of workers between and within jurisdictions and reduces unnecessary regulatory inconsistency and interpretation.
108. As presented in **Figure 2** on the next page, the Leaders Group proposes that the legislation:
- require each energy network operator to have a Energy Network Safety System ((ENSS) (discussed in detail at paragraph 109) that may comply with a proposed standard for an ENSS. For example, if an Australian Standard was developed it could be referenced as AS XXXX ENSS;
 - set out a process for verification of the ENSS;
 - the roles and responsibilities of an Advisory/Regulatory Committee;
 - provide the flexibility to possibly allow for mandatory compliance with a limited number of workplace standards that may be essential for worker safety. An option is presented that prescriptive standards covering some issues of public and worker safety, are required to better facilitate inter-jurisdictional worker mobility (see paragraph 129); and
 - require the ENSS to be listed on a Central ENSS Register.

Stakeholder comments:

The Leaders Group seeks stakeholder views on the content of the legislation and what, if any, further matters should be addressed in the legislation. Stakeholder views are also sought on basing the legislation on the concept of compliance with a national ENSS standard.

CEPU Comments- the legislation should reflect the highest standards. Jurisdictional comparison should identify the regulatory framework which has the highest standard of safety and this should be the model for the national ENSS standard. The ENSS should not reflect areas of agreement between jurisdictions simply because there is a commonality but rather the highest standard should be adopted.

Energy Network Safety System

109. The term "Energy Network Safety System (ENSS)" is used in the proposed regulatory model in place of the term "Safety Case", or, "Safety Operating System" or "Management System", these being performance-based management systems commonly referred to by States and Territories.
110. The proposed ENSS will:
- describe the full extent of all relevant operations;
 - identify all hazards related to designing, constructing, operating and maintaining the energy network (all hazards approach);
 - detail and systematically assess the risk associated, with those hazards;
 - identify the control measures that will reduce risk to As Low As Reasonably Practicable (ALARP);
 - document relevant safety related standards, any departures and how equal or better outcomes will be achieved; and
 - apply an ENSS to ensure the controls are effectively and consistently applied and performance is measured and continuously improved.
111. Currently, performance-based management systems, such as the proposed ENSS, are used to regulate energy technical and safety of networks and facilities in most, if not all, States and Territories. Each management system may vary slightly in the way it is managed but given the commonality between jurisdictions, there is agreement amongst the members of the Leaders Group that a uniform performance-based management system should be applied across all jurisdictions.
112. The proposed ENSS based regulatory approach is a relatively light-handed regulatory approach (as per COAG best-practice regulatory principles) that encourages industry to improve the

efficiency of its operation without compromising safety. An ENSS provides industry with an alternative to complying with prescribed standards or other requirements by allowing alternate solutions, except for the potential option of a limited number of mandatory safety critical work practice standards directly referenced in legislation.

113. Under the proposed regulatory framework the ENSS, and compliance with it, will be directly referenced in nationally consistent legislation and would be the chief health and safety document for a network or facility. It would document the operator's commitments to reducing risks to a level that is as low as reasonably practicable. The ENSS would also describe arrangements for health and safety that are used by managers, supervisors and the workforce to understand health and safety issues and their controls. It should be noted however, that this does not mean that the ENSS obviates compliance with the specific requirements of the general OHS legislation in each jurisdiction.
114. Under this framework, various obligations for the health and safety of persons working on networks or facilities rest with the operators, employers and employees.
115. The proposed ENSS should serve to minimise the regulatory burden on business through its compatibility with current "Safety Case" regulatory arrangements in the energy supply industry and the fact that many network operators already have other certified management systems in place.

Stakeholder comments:

The Leaders Group seeks stakeholder views on the proposed Energy Network Safety System and its coverage.

CEPU Comments – The CEPU is concerned with qualifying regulation of the ESI as being "light handed". A light handed regulatory approach must not compromise safety standards. The COAG Best Practice Principles do not recommend a "light handed" approach per se but recommend that "regulatory measures should contain compliance strategies which ensure the greatest degree of compliance at the lowest cost to all parties. "

The Principles also state; "performance based requirements that specify outcomes rather than inputs or other prescriptive requirements should be used unless prescriptive requirements are unavoidable in order to ensure public safety in high risk situations." [emphasis added]

This does not translate to a "light handed" regulatory approach in every instance. Clearly, where the situation calls for a more prescriptive (and hence heavier handed approach) this is perfectly permissible under the

COAG principles of regulation. A light handed approach smacks of giving the power companies too much autonomy. Alternate solutions must be carefully monitored to ensure lesser standards do not creep into the ESI.

Apart from this concern, the CEPU is comfortable with the proposed ENSS and its anticipated coverage.

Standards and other normative documents

Definitions

116. The word "standard" is used throughout this document within the following definitions:

- **Performance standards** or other normative documents define an end result and allow flexibility on how that result is achieved. An example of a requirement in a performance standard would be: "An operative should be free from risk of electrocution when performing some function".
- **Prescriptive standards** or other normative documents may define exactly how to do something - they are like a set of instructions. A prescriptive standard may allow little or no flexibility on how the end result is achieved. An example of a requirement in a prescriptive standard would be: "minimum safety clearances in high voltage substations such as an operative shall maintain a distance of xx metres from live parts"
- **"Deemed to satisfy" standards** can be a performance or prescriptive standard or other normative document that gives an option on how a requirement(s) of a performance standard may be achieved. "Deemed-to-satisfy" standards are standards that have been developed and tested and are known to provide a level of safety. They are prescriptive solutions for:
 - use by those requiring to comply that want to have certainty of compliance or simplicity in achieving the same outcomes, especially for smaller operators; and
 - used as benchmarks when alternative solutions are being assessed for acceptance against performance requirements.
 - The benefit of adopting a "deemed to satisfy" standard is that there is no onus on the applicant to prove that the solution meets the corresponding performance standard. In the examples for performance and prescriptive standards given above, the prescriptive requirement may be a "deemed to satisfy" solution to the performance requirement.

- **Alternate solutions** can be formulated as an alternative to the "deemed to satisfy" solution to meet the required outcomes. An alternate solution must be demonstrated to satisfy the required outcomes, either directly or by showing its performance is at least equivalent or better than that of the "deemed to satisfy" solution. The benefit of using an alternate solution is that it greatly increases the options available for achieving the required outcome, allowing for innovations and the adoption of new technology. However, in adopting an alternate solution, the applicant must bear the cost of demonstrating that the alternate solution meets the applicable required outcomes.
 - **Other normative documents** describe a standards-like document that has been developed and published by a relevant stakeholder and is considered to be authoritative by all stakeholders. These may include documents developed by the Energy Networks Association and State and Territory Regulatory Authorities.
117. Presently most States and Territories use the "safety case" (ENSS type of) approach and use a mixture of existing prescriptive and performance standards as well as industry guidelines as benchmarks to assess the adequacy of "safety cases".

ENSS management system standard

118. The proposed regulatory model may consist of a suite of documentation including:
- for **electricity networks** a new Australian Standard AS XXXX, *Electrical Network Safety System (ENSS)*, that consists of Part 1 covering management systems requirements plus Parts 2 and 3 covering additional operational requirements for electricity transmission and distribution networks; and
 - for **gas networks**, the existing standards, AS 2885 and AS 4645, covering gas pipelines and gas distribution.
119. It is envisaged that the management systems' requirements of the electrical standard AS XXXX, *ENSS*, may be aligned, as far as possible, with the management requirements of the existing gas standards, AS 2885 and AS 4645, covering gas pipelines and gas distribution as well as other existing standards, and thus minimise the development cost to industry.
120. In the longer term, it is envisaged that AS XXXX, *ENSS*, and the relevant parts of AS 2885 and AS 4645 may be amalgamated to form a generic standard covering the management systems of both gas and electricity networks to facilitate a common ENSS for network operators involved in both gas and electricity supply. The operational requirements of AS 2885 and AS 4645 will be retained as separate parts of the amalgamated standard.

121. Information on the options available for developing standards and other normative documents is contained in the Standards Development chapter at paragraph 152.

Stakeholder comments:

Stakeholder comments are sought on whether it is desirable to develop a generic standard covering the management systems of both gas and electricity networks, so as to facilitate a common ENSS standard for network operators.

CEPU Comments – We don't have a problem with a generic standard covering the management systems of both gas and electricity networks so as to facilitate a common ENSS for network operators provided safety is not compromised in either management systems.

Features of the ENSS

122. A safety management system approach is proposed as it is performance-based allowing alternate solutions to "deemed to satisfy" prescriptive standards, adopts contemporary risk management principles, and is likely to be compatible with a solution accepted under the proposed National OHS Act.
123. AS XXXX, ENSS, will be a performance standard and will permit alternate solutions to achieve its performance requirements. For some outcomes AS XXXX, ENSS, may specify, as one of a number of alternate solutions, prescriptive or performance standards as "deemed to satisfy" solutions to the specified performance or outcome requirements
124. The provision of alternate solutions is an important feature of the model because it allows network operators to innovate and improve efficiency, while ensuring the same safe outcome is achieved across all network operators. Likewise the provision of "deemed to satisfy" standards provides benchmarks for the development of training packages. The extent to which safety critical work practices standards may be allowed to be varied under this framework is one of the issues on which stakeholder comment is sought.
125. The ENSS standard is to specify compliance with the legislation which may reference some mandatory standards.

Small and Isolated Networks

126. An issue arising out of a safety management system approach is how small and isolated networks should be treated under the

proposed regime. The Leaders Group has identified two options as follows:

Option 1: Require small and isolated network operators to comply in full with the requirements of the ENSS on the basis that they will have a very simple ENSS.

This option supports good regulatory practice which states that regulation should be applied consistently to organisations regardless of the size of the organisations involved.

Option 2: Provide an exemption from the requirements of an ENSS for small and/or isolated network operators able to demonstrate compliance with safety outcomes equivalent to those achieved when a formal Accepted or Certified ENSS is in place.

This exemption is intended to capture small, isolated and remote networks with few customers to whom, developing a formal ENSS may place an unjustifiably large regulatory burden on them given their size. These alternate arrangements would need to include mandating the safety critical work practices standards so as to deal with worker mobility concerns.

127. The specification of "deemed to satisfy" standards in AS XXX, ENSS, is especially important for smaller network operations where the ENSS will usually rely more on "deemed to satisfy" standards, while larger network operators will usually rely more on alternate solutions.
128. The provision of "deemed to satisfy" standards will reduce regulatory compliance on small and/or isolated networks by allowing them to submit a prepared ENSS without the requirement to fully develop one on their own.

Stakeholders Comments

The Leaders Group seeks views on the two options for the treatment of small and isolated networks.

If an exemption is permitted for small and isolated networks, the Leaders Group seeks views on the definition of a "small and isolated network"? The Leaders Group also seeks views on whether or not either of these options should also be applied to small embedded networks.

CEPU Comment - The CEPU supports Option 1. Given that smaller operators will have a very simple ENSS we can see no reason to exempt them from the requirements of the ENSS.

Workers work across both small and large network and the work practices should be the same irrespective of the network. This is a key aim of the harmonisation process to allow portability of skills and national standards that are common.

Mandatory standards

129. A key issue for stakeholder comment is the concept of having a limited number of mandatory standards referenced in legislation.
130. **Appendix 3** is an initial overview of the use of standards, codes, guidelines and policies in Australian legislation as they relate to energy network safety. Energy Network Safety Systems (or schemes) are required to be performance based either by legislative design or reference to risk management, performance based codes and standards such as the pipeline standard AS2885.
131. Where standards and codes are mandated, legislation is increasingly allowing alternative safety management schemes. For example, in Victoria an electricity network operator seeking to establish a safety management scheme must demonstrate in detail how its adopted Standards and Codes meet or better the safety outcomes and objectives of the legislation through the operation and management of that scheme. Regulators in turn must ensure that Standard and Code outcomes appropriately deal with the safety and consistency issues.
132. This is consistent with OHS legislation which allows support by codes of practice. A code is a source of practical guidance on safe work practices and risk management in relation to specific hazards and/or hazardous activities. A code may or may not reference other standards or codes. A code aims to ensure that adequate health and safety standards are implemented on specific OHS matters, whilst allowing flexibility for a duty holder to incorporate new inventions and technological changes that are most appropriate for their workplace, provided they do not reduce health and safety or the consistency of standards. Duty holders must comply with a code unless they identify another way of achieving the same or better safety standards than those prescribed in a code.
133. The issue centres on how best to ensure employers and employees comply with all appropriate safety and consistency related standards in an environment where safety legislation is already increasingly encouraging the development and application of enterprise safety management systems (or schemes) which incorporate appropriate standards. In addition, an important issue in reviewing the current framework is how best to ensuring efficient operation of the network through increasingly consistent technical and regulatory requirements. This has led to the following options:
- Option 1.** The specification of a limited number of justified mandatory standards in legislation, particularly in high risk public and workplace safety situations. This will ensure that there is

consistency in safe work practices nationally which is one factor to enable greater portability of workers. It is suggested that there will have to be consistent safety compliance models as mobility of workers cannot be achieved through a performance-based model approach that allows alternate solutions to the specified "deemed to satisfy" standards. This option also allows, in the longer term, for more consistent technical requirements to apply to network operators.

As part of this option it is also suggested that it is inefficient to have individual network operators use varying in-house safety critical work practices standards, as the development of good industry practice on such safety critical matters should be done in a test environment, on behalf of the wider industry, and introduced on a standardised basis once thoroughly evaluated.

Option 2. No specification of mandatory standards other than for the ENSS. It is argued that mandatory standards will add a significant layer of complexity and take time to make revisions to, and this will create a barrier to the ongoing development of good safety practices and innovation in the industry.

It is suggested that option 2 will ensure employers and employees comply with all appropriate safety and consistency related standards, and will produce a more positive and beneficial outcome than mandating standards. It is further suggested that the high level of safety in the industry will be better maintained and improved by requiring network operators and the Regulator and/or certifier to ensure compliance with all appropriate safety and consistency related standards (of which Australian Standards only constitute one part) by:

- network operators, through the development and implementation of an ENSS that will ensure an equal or better outcome; and
- the Regulator and/or certifier ensuring that relevant published safety and consistency related standards have been appropriately considered in the ENSS.

134. Noting these views, in developing standards the Leaders Group proposes adopting a performance-based model allowing alternate solutions to the "deemed to satisfy" standards, or other normative documents, except in high-risk public and workplace safety situations, where a limited number of mandatory standards for safety-critical requirements or work practices may be justified as necessary. The key issue is: what is the basis or criteria for determining what, if any, such standards are referenced in legislation?

Stakeholder comments:

The Leaders Group seeks views on the two options presented with respect to the issue of mandatory standards.

The CEPU supports Option 1 – we believe that there are high risk safety situations that necessitate the inclusion of mandatory standards in the legislation. Consistency in safe work practices is essential for the mobility of workers.

We agree that individual network operators should not be able to vary safety critical work practice standards.

We also agree the mobility of workers will be impeded by a performance based model that allows alternate solutions to the specified "deemed to satisfy" standards.

We agree that the development of good industry practice on such safety critical matters should be done in a test environment on behalf of the wider industry and be standard for the industry.

Criteria/principles for developing and referencing standards

135. The Leaders Group proposes that a set of principles be established for the selection of standards to guide:
- what standards need to be developed;
 - which, if any, standards should be directly referenced in legislation, and
 - which, if any, standards should be referenced as "deemed to satisfy" solutions in AS XXXX, ENSS, and, if needed, in AS2885 and AS 4645.
136. It is essential that any criteria for selection of mandatory standards be based on the MCE principle of "importance for public safety and to ensure workers operate in a safe environment, as well as, enable the provision of safe energy services".
137. Under a "deemed-to-comply" approach, the development of criteria for referencing standards and other normative documents in the ENSS either directly as mandatory standards or "deemed to satisfy" solutions in the performance based AS XXXX, ENSS, is required.

Stakeholder comments:

Stakeholder views are sought on criteria to guide:

- the development of standards; and
- the referencing of standards or other normative documents as mandatory standards or "deemed to satisfy" standards.

Any such recommendations must be accompanied by justification in terms of the COAG Best Practice Regulation criteria.

Acceptance/Certification

138. A key issue in the energy technical and safety regulatory framework is what the appropriate "acceptance" or "certification" model should be for a network operator's ENSS. The Leaders Group has identified three options as follows:

Option 1: Compliance of a network operator's ENSS is achieved through an authoritative system of auditing by 3rd party certification bodies accredited by the Joint Accreditation System of Australia and New Zealand (JAS-ANZ), using industry-wide developed scheme rules and underpinned by the international best-practice procedures and standards of the International Accreditation Forum (IAF) and the International Organization for Standardization (ISO).

Under this arrangement, underpinned by an agreement with JAS-ANZ, audits would be conducted with a technical specialist from the relevant regulators as member(s) of the audit team, and the results of such certification would be automatically accepted by the Regulators without any further regulatory action.

The advantages of this option include:

the ability of 3rd party certification audits to be integrated with audits of other management systems covering such things as quality, environment and OH&S; and,
the independence, international basis and consistency of the JAS-ANZ accreditation system.

Option 2: Under this option the network operator is required to submit their ENSS and audit report from an independent auditor (who may or may not be accredited by JAS-ANZ) to a relevant regulator for acceptance. This proposal envisages the establishment of protocols that enable one regulator to grant approval on behalf of all jurisdictions in which the network operator's networks exist. The advantages of Option 2 include:

- a higher level of retention of experienced staff in the State and Territory regulators; and
- a capacity for greater flexibility in the documented ENSS.

Option 3: Is to implement option 2 initially, with option 1 coming into place as an alternative to option 2 after a period of time. This two-staged approach to the introduction of the certification system is intended to ensure the maturity of any new 3rd party certification system before Regulators cease control over the acceptance process.

Under this option, an Advisory/Regulatory Committee (see chapter on Governance for an explanation of the Advisory/Regulatory

Committee), after some years of satisfactory operation of option 2, would consider including option 1.

The advantages of this option is its staged approach provides time for any new 3rd party certification system to establish itself and ensure full confidence in the new system before transitioning to it.

Stakeholder comments:

The Leaders Group seeks views on the three options for "acceptance" or "certification" of a network operators ENSS

CEPU Comment – The CEPU favours option 2 - The CEPU does not favour an option where we are removed from a process that directly affects our members. We believe we should have an input into the certification process.

Regulation

139. Working alongside the legislation, the Leaders Group proposes that common regulation be developed under the auspices of the MCE, upon advice of the Advisory/Regulatory Committee. It is proposed that the regulations cover issues such as penalties and enforcement where there is non-compliance with the requirement of acceptance or certification.

Central ENSS Register

140. A publicly accessible Central Register is to be maintained by the Advisory/Regulatory Committee with entries to be made by:
- the relevant Regulator under the Acceptance arrangements; and
 - when it is introduced, network operators under the Certification arrangements
141. The Central ENSS Register would contain the following:
- a list of 3rd party certification bodies accredited to certify the ENSS of energy networks;
 - a list of energy networks accepted by Regulators or certified by certification bodies;
 - information related to the requirements for compliance with the relevant State and Territory legislation and regulation; and
 - registration of jurisdictional coverage to assist with transparency of the regulatory framework.
142. Entry of energy networks on the Central ENSS Register will, in effect, be the trigger for recognition as "approval" by the legislation enacted in those States and Territories covered by their Acceptance or Certification. The Central ENSS Register will assist the transparency of the proposed regulatory arrangements.

Stakeholder comments:

The Leaders Group seeks stakeholder comments on the need for the proposed Central ENSS Register and its contents.

CEPU Comment - The CEPU approves of the idea of a central ENSS register.

Passport and Licensing

143. As outlined previously, a difficulty with the current regulatory arrangements in the ESI is the limits to workforce mobility across jurisdictions. This is due to different licensing arrangements, underpinning documented work practices, standards and guidelines between States and Territories and network operators which restricts the networks or generation facilities that workers are permitted to operate on. In addition, these differences can place considerable compliance costs on enterprises, particularly significant for small to medium enterprises and there is also the indirect cost of managing these systems.
144. Each State and Territory maintains independent licensing regimes. Licensees have to pay a separate fee for the equivalent license(s) in each jurisdiction. On top of different licensing systems in jurisdictions some States and Territories also have different skills recognition of electrical workers. For example:
- New South Wales and Western Australia have no licenses for electrical line and cable jointer workers;
 - Queensland has licensing and is the Queensland industry is presently trialling a passport system;
 - Victoria has a registration process, (industry agreement not controlled by legislation) and an established Passport system;
 - the Australian Capital Territory is currently in the process of introducing licensing;
 - the Tasmanian Government has introduced licensing of line workers and cable jointers and has an established industry Passport system;
 - South Australia apply licensing only to contractors and not employees of ETSA; and
 - the Northern Territory has licensing.
145. There currently exist nationally consistent training packages for qualifications in the energy supply industry developed by EE-OZ Training Standards e.g. UET06-ESI-TDR for the transmission,

distribution and rail industry, UEG06 for the Gas Industry and UEE07 for the Electrotechnology Industry. However, once an operative in the industry, such as an electrical worker, undertakes training that is specific to each network the inconsistencies in this specific training limits the portability of workers.

146. Work towards addressing this issue is already underway with the announcement of the project to assess statutory competencies requirements in October 2008, to be carried out by EE-OZ Training Standards, in partnership with the CEPU, ENA and DEEWR, which will identify and map the commonalities across the networks of this specific training.
147. The EE-Oz project aims to improve the consistency and quality of statutory competencies requirements in the electricity supply industry between States and Territories, as a first step toward eliminating inconsistency in refresher training. The project will identify and seek to resolve the differences in requirements that impede an enterprise or a contractor's employee from performing work on electricity supply infrastructure across network operators and jurisdictions.
148. To record the currency of qualified electrical workers, particularly the refresher training they have undertaken, the Leaders Group recommends the introduction of a National Energy Skills Passport. When in operation the passport will provide a smartcard (or similar documentation) to workers which will contain their identification and record the currency of authorisations , inductions and refresher training.
149. In the context of this concurrent reform the Leaders Group accepts that the licensing issue may be addressed through the COAG National Licensing System and therefore is focusing on the development of a passport that complements the COAG reform process.
150. AS XXXX, ENSS will also require workers undertaking specified tasks to have relevant competencies. To facilitate the maximum portability of competencies, this may be achieved by workers having national qualifications and/or a national licence and/or a national passport.
151. A National Energy Skills Passport and its reference in the ENSS will enhance productivity and worker mobility.

Stakeholder comments:

Stakeholder comment is sought on the proposal for a National

Energy Skills Passport.

Stakeholder comment is also sought on what additional steps, particularly to industry work practices, are required to facilitate greater portability of ESI workers.

CEPU Comments- The CEPU supports the concept of the National Passport. We want nationally consistent standards for refresher training. See our previous comments on this matter.

A national database of passport holders should be kept by a relevant industry agency similar to Ee-Oz.

Standards Development

152. This chapter presents options for the development of standards. The previous chapters have discussed how standards and other normative documents may be referenced.

Identification of Options

153. There are several options identified by the Leaders Group to take forward the development of standards and/or other normative documents necessary for the harmonisation of the ESI safety and technical regulation.
154. The Leaders Group has identified the following factors for assessing the different options available to develop standards:
- development time;
 - credibility of the standards in the marketplace and thus their acceptability in regulations;
 - level of stakeholder ownership of the process, including a consensus on outcomes;
 - the need to have substantial stakeholder involvement in the standards development process;
 - given that some of the required standards already exist as Australian Standards developed by Standards Australia, the preference to maintain a consistent approach in their development; and
 - where possible, national standards should be aligned with international standards in accordance with Australia's commitment to the WTO TBT Code.
155. Deliverables can be developed as one or more of the following :

- **Australian Standards®** developed by Standards Australia, or under the auspices of Standards Australia. Standards Australia is considered to be Australia's peak non Government standards body. In developing Australian Standards, Standards Australia prioritises the development of standards based on an assessment of their Net Benefit to the Australian community and resource support from stakeholders.
- Under its New Business Model introduced in late 2008, Standards Australia provides a number of pathways for developing Australian Standards that require the provision of varying levels of resources by those proposing the development of Australian Standards. There was a level of support within the Leaders Group for the development of the required standards as Australian Standards. Another option with the Standards Australia model is the formation of a Standards Development Organisation (SDO) that is accredited to develop Australian Standards by the (Standards Australia) Accreditation Body for Standards Development Organisations (ABSDO);
- **National Standards** developed under the auspices of the MCE. National Standards would be developed by an entity (eg Energy Technical and Safety Leaders Group or other relevant industry body) set up as a Standards Development Organisation (SDO) without accreditation and then using consultant(s) to develop reasonably mature drafts for submission to Leaders Group and the MCE for approval as National Standards;
- **Departmental Standards:** Contract a consultant(s) (that could include Standards Australia) to develop Departmental Standard with the Leaders Group as advisors: or
- **Other Documents** such as codes, specifications, handbooks and guidelines under a different arrangement.

Stakeholder comments:

Comment is sought on the preferred option for the development of standards and other normative documents required for the proposed regulatory model.

CEPU - The process of getting a standard approved by Australian Standards is too lengthy. There needs to be a process to expedite the approval of standards. **To this end we support option 2.** However, this does not mean option 1 is rejected entirely. We like the idea of "an entity" which uses consultants to develop reasonably mature drafts for submission to the Leaders Group and MCE for approval as national standards. Workers must be represented on that "entity".

Governance

156. This section considers governance arrangements for energy technical and safety issues. Under current arrangements, energy technical and safety regulation does not fall within the ambit of all MCE Ministers. These responsibilities vary across States and Territories. Further, as reflected in **Appendix 3**, the governance framework and regulatory arrangements differ between States and Territories.
157. In developing a proposed governance framework, the Leaders Group has looked to ensure integrity in the governance arrangements for the safety of the energy sector and appropriate separation of duties. The Leaders Group has considered governance and framework issues in related areas, such as the energy economic regulatory framework and the resources sector.
158. A robust governance model is important to enable the proposed model to effectively operate and allow the framework to evolve as needed. This will also better enable consistency in the regulatory arrangements and practices, reducing regulatory inconsistencies and regulatory compliance for multi-jurisdictional operators.

Ministerial Council of Energy

159. Under the proposed model, the MCE will have policy coverage on safety and technical regulation where previously they have not. It is recognised that not all MCE Ministers have responsibility for these issues and that a shift in responsibility or advisory role may be required by MCE Ministers.
160. The function of the MCE will be to make decisions on the recommendations put to them by the Advisory/Regulatory Committee. They will include matters such as changes to, or the development of, new regulation or standards and any other pertinent matter related to safety of the energy sector.
161. The MCE is not obligated to act on the advice of the Advisory/Regulatory Committee and can take other independent advice.
162. The MCE will provide a consensus decision making body that represents the interests of each state and territory. The MCE may direct the Advisory/Regulatory Committee to review the effectiveness of the regulatory framework on issues such as:
- the extent to which safety objectives are being met;
 - potential barriers to workforce mobility;
 - capacity to effectively respond to an emergency;

- the extent that unnecessary regulatory burden/overlap may exist; or
- any other matter to the discretion of the MCE.

163. Bringing energy supply technical and safety issues within the ambit of the MCE better enable such issues to be considered in a holistic manner taking account of jurisdiction specific issues where necessary. This approach will also enable consideration to be given to interactions with National OHS requirements.

Stakeholder comments:

The Leaders Group seeks comments on bringing energy supply technical and safety issues within the ambit of the MCE.

CEPU comment – The CEPU agrees technical and safety issues should come within the ambit of the MCE.

Advisory/Regulatory Committee

164. As outlined previously, the Advisory/Regulatory Committee would monitor and recommend changes to be made to the regulatory framework to improve efficiency and ensure safety.
165. The Advisory/Regulatory Committee would be responsible for the ongoing development and maintenance of the energy safety, compliance and enforcement framework under the guidance of COAG and MCE and in consultation with occupational health and safety agencies.
166. The Advisory/Regulatory Committee would have the authority to: propose legislative or regulatory changes and new or revised standards; introduce temporary emergency measures; and administer any problems with the certification process and set out the penalty regime.
167. MCE would not be obligated to act on the advice of the Advisory Committee or Regulatory Committee (if required) and can take other independent advice.
168. The Advisory/Regulatory Committee would:
- report to the MCE;
 - have the role of proposing any legislative or regulatory changes and new or revised standards and other normative documents;
 - have the authority to introduce temporary emergency measures;
 - be chaired by an independent industry based nominee of the MCE;

- administer any problems with the certification process and penalty regime; and
- may maintain an agreement with JAS-ANZ relating to the conduct of the ENSS certification scheme.

169. The key issue is how to best manage the regulatory framework in an ongoing sense, once established. The Leaders Group has identified two options for comment:

Option 1: Advisory Committee

The Advisory Committee would be established as a tripartite body with members similar to that of the Leaders Group consisting of nominated representatives of energy network regulators, unions and industry representatives.

The benefit of option 1 is it's a tripartite body giving all representatives an equal seat at the table when reporting to MCE, thus promoting more comprehensive advice and greater ownership by stakeholders than would be the case under an alternative arrangement. This in itself may present difficulty in reaching consensus.

Option 2. Regulatory Committee

A body consisting solely of State and Territory regulators in the absence of a national regulator. This body would be in two parts (one for electricity and one for gas) and would effectively formalise the roles of the Electrical Regulatory Authorities Council (ERAC) and the Gas Technical Regulators Committee (GTRC) by giving them clear reporting lines to the MCE, via representation on SCO. Sitting below the Regulatory Advisory Committee would be a standing Industry Reference Group who would advise the Regulatory Committee of the implementation and on-going improvements that may be required to ensure the frameworks effective operation.

The benefit of Option 2 is it will give the existing gas and electricity regulatory committees official reporting lines for their work and improve the effectiveness of the committees. The Industry Reference Group would be formally established in two parts: one for electricity and one for gas supply systems. It would provide direct feedback on the effectiveness and efficiency of the regulatory framework.

However should a single national regulator for the safety of the ESI eventuate; the functions of the Regulatory Committee could be rolled into the functions of the National Regulators. This is discussed more in the next sections, Enforcement and Compliance Bodies.

Stakeholder comments:

The Leaders Group seeks comment on the need for an Advisory/Regulatory Committee, its representation and accordingly what should its role be?

CEPU – We support Option 1 which provides for an advisory committee which is more reflective of the industry stakeholders than Option 2.

Enforcement and Compliance Bodies (Regulators)

170. At present there are multiple energy safety regulators across States and Territories.
171. The Leaders Group recognise that many of the activities of a technical and safety regulator require a local presence. For example, many existing electrical regulators' activities include:
- dealing with public safety concerns;
 - dealing with issues associated with working in proximity to powerlines;
 - building and structure clearance issues;
 - vegetation clearance issues;
 - auditing of network safety cases;
 - enforcement activities;
 - safety promotion; and
 - incident investigation and follow-up.
172. All of these activities require the ability to visit the site of interest and talk directly to local representatives with real decision-making capability on-site. To accommodate this each of the three options proposed maintain some form of local presence.
173. The Leaders Group outlines the following three options for the regulatory governance of the ESI:
- Option 1:** Essentially status quo, which is maintaining the existing multiple jurisdictional regulators but operating under new, uniform legislation, identical in each jurisdiction. Under this option future legislation changes would have to be collectively agreed and approved by the MCE.
- Maintaining multiple regulators would continue the professional and focused expertise and regulatory cultures specific to the regulators jurisdiction and, thereby ensure accurate dealings of issues within that jurisdiction.
- On the other hand, as proven to date, having local regulators can also be a factor in the divergence of consistent regulation and its interpretation between jurisdictions. This can increase the administrative burden on network operators that operate across

jurisdictions and that need to engage with different regulators to seek regulatory acceptance.

Option 2: As per Option 1, but also implement a ministerial agreement to ensure that Regulators operate in a highly harmonised way by formalising the role of ERAC and GTRC.

Under this option the Regulators would be required to report on policy and operations to the MCE via two national management committees, one for electricity supply and the other for gas supply (each established as a formal committee under the MCE, reporting directly to the MCE). These national committees could eventually take over the function of ERAC and GTRC and would replace the need for the Regulatory Committee as outlined in Option 2 of the previous section.

Option 2 is seen to provide a compromise between option 1, maintaining autonomous State and Territory Regulators and Option 3, moving to a single national regulator. It provides the benefit of continuing the existing regulatory governance arrangements and thus retaining the existing professional culture and focused expertise, which have been proven to ensure high levels of safety are maintained in the ESI.

Option 3: A single national regulator with offices in each jurisdiction. This option would require the creation of a new central body that reports to the MCE via an independent board.

A single regulator concentrates technical and safety regulatory experience for the energy sector in one agency, thereby harnessing expertise and synergies, provides a single contact point for the energy sector for energy safety regulatory matters, and ensures consistency in regulation while addressing the unique aspects of a network operator.

Furthermore in moving to a single national regulator consideration needs to be given to the differing elements of functions of responsibility between each State and Territory regulators. That is, the different coverage of the energy supply chain each jurisdiction regulator has, including coverage of the ESI, the electrical industry "beyond the meter" (installations in buildings, factories, marinas, etc), trade and business licensing, and equipment and appliances. Removal of any one element of this from the responsibility of the existing jurisdictional regulators would require the reassessment of the impact on the rest of the electrical regulation framework as staff are often shared across areas of responsibility.

Stakeholder comments:

The Leaders Group seeks comment on the proposed governance framework for energy technical and safety regulation, the options presented and any other option

CEPU comment – we favour Option 1 because the current system

of regulation, vastly improved by operating under harmonised regulatory environment, works well. We see nothing to be gained by creating a single national regulator with offices in each State (sounds a lot like what we have but with another layer of administration) nor do we see any reason to formalise the roles of ERAC and GTRC.

Potential Legislative Implementation

This section presents the options for the legislative architecture of energy technical and safety regulation.

Legal Options

174. The Leaders Group proposes that the objective should be to have a national legislative framework covering technical and safety issues in both the gas and electricity industries.
175. This legislation should complement and operate alongside the National OHS model legislation. More detail about how energy safety and technical legislation will interact with the National OHS framework will become clear after the release of the National OHS Review's scoping paper.
176. There are a number of options available for the adoption of a national framework for energy technical and safety regulation. No decision has been made at this stage as to which is the most appropriate option for this purpose. To a large extent, this decision will depend on the decisions that are ultimately made about the overall regulatory framework, in particular, in respect of its governance arrangements and the role of the regulator(s). Two potential options for a national legislative framework have been set out below for the purpose of demonstrating how a co-operative scheme may be achieved. However, other options may be considered by the Leaders Group as it contemplates the most appropriate legislative framework for this reform project.

Option 1: Legislation introduced into State Parliament with a schedule to be adopted nationally

177. Energy technical and safety legislation could borrow from the example of the co-operative legislative scheme that introduced the National Electricity Law.
178. The National Electricity Law is set out in a Schedule to the *National Electricity (South Australia) Act 1996*, which came into operation in December 1998. It is applied as a law of South Australia by that Act, and as a law of other participating jurisdictions by their Application Acts.² A similar model applies for the National Gas Law.
179. In relation to energy technical and safety regulation, there presently exists multiple Acts in each State and Territory with, at a minimum, one Act to regulate technical and safety issues for the electricity industry and a separate Act to regulate similar issues for the gas industry.

180. Option 1 would see the agreed framework for the regulation of technical and safety issues applied in an identical way in all participating States and Territories. The experience of implementing the National Electricity and Gas Laws has demonstrated that a model requiring jurisdictions adopt a 'template' Act demands a commitment on their part to resolving areas of disagreement before the framework is implemented. This serves to reduce the likelihood that States and Territories may individually seek to deviate from the national approach.
181. In addition, where it is agreed that amendments to the framework are required, only the lead legislature will have to pass the amending legislation through its parliament. The changes to the framework simultaneously become effective in the other jurisdictions by operation of their Application Acts. This process avoids inconsistencies arising between jurisdictions that may otherwise occur, for example, as a result of delays in the legislative processes of the different States and Territories. On the other hand, the use of a lead legislature also means that both the implementation of the national framework initially, and the passage of any subsequent amendments, become susceptible to the whims of one jurisdiction's parliament and its electoral cycle.
182. It is nevertheless clear that this first option would ensure an agreed model for the regulation of energy technical and safety issues is implemented and operates in a consistent manner in each State and Territory, thus meeting the objective of a harmonised national framework.

Option 2: Each State and Territory introduces their own legislation based on model legislation

183. The other option is for States and Territories to pass their own individual legislation in their own parliament which would be based on agreed model terms. This is the path the National OHS review is likely to adopt.
184. One example of this kind of model is the national scheme regulating offshore petroleum safety. Under that scheme, the National Offshore Petroleum Safety Authority (NOPSA) is established under Commonwealth legislation – the *Offshore Petroleum Act 2006* (the Commonwealth Act). NOPSA exercises various functions and powers in relation to the occupational health and safety of persons engaged in offshore petroleum operations. These functions and powers are conferred on it by or under the Commonwealth Act in relation to offshore petroleum operations in Commonwealth waters.³ The States and Northern Territory have enacted 'mirror' provisions which confer equivalent functions and powers within State and Northern Territory coastal waters.⁴ Accordingly, while

each jurisdiction has enacted separate legislation under this scheme, the outcome is that NOPSA can effectively exercise uniform powers and functions in both Commonwealth and jurisdictional waters.

185. In the present case, it is likely that this option would reduce the regulatory burden by only requiring one Act for both electricity and gas in each jurisdiction. It would also provide harmonisation with other jurisdictions to the extent that each State or Territory chooses to mirror the model legislation.
186. However, the Leaders Group is of the opinion that adopting this approach would only partially achieve the objective of creating a harmonised regulatory framework.
187. As this option does not require jurisdictions to adopt and apply a 'template' Act, it may be possible for a State or Territory to deviate from the agreed model terms to suit its own circumstances. Also, it should be noted that when amendments are required to be made to the framework, each jurisdiction would need to pass amending legislation in the same terms. A jurisdiction's refusal to amend in accordance with other jurisdictions, or a delay in doing so, would lead to inconsistencies between jurisdictional laws. This would result in a lack of uniformity in the application of the framework nationally.
188. The national reform of the law of defamation is an example of a national scheme based on this model where differences do exist between jurisdictions. The common law of defamation applies in Australia, except to the extent modified by State or Territory legislation. Uniform defamation legislation came into force throughout Australia in 2006.

However, as a result of some differences existing between these jurisdictional laws, the law of defamation varies slightly in each State and Territory.

189. It follows from the above that although implementing this second option would improve the harmonisation of energy technical and safety regulation nationally, this would not be to the extent that could be provided by the first option above. There may also be other options for the design of the framework that would ensure a more consist approach is adopted nationally. For example, the relevant legislation could be passed solely by the Commonwealth Parliament. It is possible, however, that a referral of State power to the Commonwealth may be required for this purpose (see s 51 (xxxvii) of the Australian Constitution).

190. These and any other relevant options will be considered by the Leaders Group as it further deliberates the question of the appropriate legislative architecture for the national scheme.

Stakeholder comments:

The Leaders Group seeks comment on the options presented for legislative implementation.

CEPU Comment – The CEPU favours Option 1 as the best method of legislative implementation. The lead State agency approach (Option 1) would see the agreed framework for the regulation of technical and safety issues applied in an identical way in all participating States and Territories. It will therefore reduce the scope for individual State jurisdiction to customise the legislation and so re-introduce differences in regulation – making a nonsense of the harmonisation process.

Next Steps

191. This discussion paper is a first step in developing the Harmonisation Implementation Plan envisaged in the Terms of Reference of the Energy Technical and Safety Leaders Group. There are many issues related to implementation that need to be addressed before a comprehensive Harmonisation Plan is finalised and submitted for approval by MCE.
192. Many of these issues are alluded to in the current draft discussion paper and they include the following:
- development of a consultation Regulatory Impact Statement (RIS), including a cost/benefit analysis, intended to be released for stakeholder consultation in conjunction with the Draft Implementation Plan;
 - determination of the full scope of the existing State and Territory technical and safety legislation/regulations with the view to identify areas for harmonisation
 - recommendations for the final scope of a national ENSS with addendums of State and Territory additional requirements;
 - a protocol for the development of standards for the ENSS;
 - a first draft version of a standard for the ENSS;
 - a first version of the Scheme Rules;
 - a framework for the operation of the Advisory/Regulatory Committee including the proposed National Register;
 - legislative mapping; and
 - EE-OZ assessment of the differing statutory competencies requirements.

Stakeholder comments:

The Leaders Group seeks stakeholder feedback on the proposed

subsequent documents required in addition to the Harmonisation Implementation Plan and suggestions on any other documents that may be required.

CEPU Comment – there must be full consultation with the industry stakeholders at every step of the implementation process.

193. Absent from this discussion paper is a strategy for implementation of the proposed model. The Leaders Group is seeking stakeholder feedback on how the proposed model could be implemented. This feedback will go towards developing a detailed strategy for implementation to be included in the Final Plan presented to MCE.
194. The Leaders Group has discussed the possibility that the proposed model may be implemented in stages. Given that the gas industry is more advanced in terms of harmonisation than the electricity industry, the Leaders Group acknowledges that it may be advisable to have a staged approach to implementation. To begin with, a stage one approach could be to develop harmonised standards in the electricity industry equivalent to that of the gas industry and, at stage two, both industries could integrate under a harmonised national framework for energy safety and technical regulation in line with the terms of reference set out by the MCE and the National OHS Review.

Stakeholder comments:

The Leaders Group seeks stakeholder feedback on how the proposed model should be implemented. What sequence should the model be implemented in and are there some aspects of the proposed model that need to be implemented before others?

CEPU Comment – a staged approach to implementation will ensure that harmonisation of the gas industry will not be delayed by the electricity industry. Further it is perhaps more manageable to implement changes in stages.

195. Stakeholder comments are sought by Friday 3 April 2009. Stakeholders are asked to consider this discussion paper in light of the National OHS Review's scoping paper released mid February 2009.

1. Following stakeholder comments, the Leaders Group proposes to develop a Draft Harmonisation Implementation Plan for stakeholder comments in mid 2009. A consultation Regulatory Impact Statement will be released at the same time.

1. It is expected that a Final Harmonisation Implementation Plan will be presented to MCE at the end of 2009/early 2010. The Final Harmonisation Implementation Plan will contain a detailed strategy for implementation of the recommended framework.

1. Should the MCE agree to the recommendations in the Final Harmonisation Implementation Plan it is envisaged that the Leaders Group, or a similarly structured working group, will continue to develop and implement the recommendations.

