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By email: MCETechnicalReform@ret.gov.au

Energy Technical and Safety Regulation – Discussion Paper

esaa welcomes the opportunity to comment on the MCE Energy Technical and Safety Leaders Group's Discussion Paper, *Harmonisation of Energy Supply Industry Technical and Safety Regulation*.

esaa is the peak industry body for the stationary energy sector in Australia and represents the policy positions of the Chief Executives of over 40 electricity and downstream natural gas businesses. These businesses own and operate some \$120 billion in assets, employ over 40,000 people directly and contribute \$14.5 billion directly to the nation's Gross Domestic Product.

esaa supports the principles set out by the MCE terms of reference for the review – namely, that any national regulatory proposal 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.

esaa understands that the regulatory framework would cover both safety and technical regulation and other factors which govern the work practices and infrastructure standards of electricity and gas networks. This would include:

- Technical regulation, in so far as it is currently covered in State and Territory legislation, and regulation as it relates to safety; and
- Possible improvements where technical regulation or variations in industry developed critical work practices impede workforce mobility.

esaa supports a separate regulatory regime for energy networks based on a single national legislative framework. Energy networks have extensive assets in the public domain which can pose potential safety risks for both workers and the community. States and territories have recognised the need for industry specific safety regulation and enforcement bodies in a number of high risk industries including the energy network sector. The broad goal of the MCE Leaders Group is to develop a consistent national framework harmonising existing jurisdictional legislation and regulatory practices. A single well-designed and efficient legislative model would encourage good regulatory practice and governance for the benefit of all network businesses and reduce the compliance burden for multi-jurisdictional operators.

The national regulatory regime should allow a performance-based framework whereby network operators are able to target and manage those hazards and risks that are

specific to each network operation. A regulator would administer the legislation in each jurisdiction ensuring that network operators are complying with all legal obligations and imposing penalties if breaches occur. The performance based approach is underpinned by third party auditing of company practices to ensure that systems and processes are in place to manage safety risks.

The Discussion Paper sets out a proposed regulatory framework based on the 'Energy Network Safety System' (ENSS) standard as the mechanism for harmonising technical and safety regulation for the electricity network sector. Such an approach would require each operator to prepare a safety case that:

- Identifies all the known and credible hazards and risks;
- Describes how the risks are to be managed; and
- Describes the safety management system needed to ensure controls are effectively and consistently applied and performance is measured and continuously improved.

esaa supports the implementation of the proposed ENSS standard as an appropriate light handed regulatory measure which will minimise regulatory burden and provide sufficient flexibility to the energy sector. However, the discussion paper also canvasses whether there should be a limited number of mandatory standards directly referenced in legislation particularly for high risk public and workplace safety situations.

esaa does not favour an approach that locks prescriptive safety standards and practices or provides for generic standards for both gas and electricity network operators in legislation. Not all network assets and network operations are the same. Network operators should have the ability to develop their own safety management systems that deliver the same safety outcomes as mandated standards but without the compliance burden and inflexibility that single, all-encompassing or generic standards would create. Such standards are difficult to amend once implemented and can deter changes to work practices that could improve both efficiency and/or safety outcomes.

In the same way that the economic regulation of networks encourages businesses to find efficiency savings while maintaining network reliability, good regulatory practice should encourage operators to find innovative ways of ensuring high safety levels. The application of a performance-based safety standard would encourage network operators to improve and tailor their approach to safety while delivering outcomes that are equal to or better than mandated obligations.

esaa's preference is for industry to have a greater role in developing codes and guidelines that network operators must take into account when developing and implementing an ENSS. Network operators would need to demonstrate how they can achieve better safety outcomes if they depart from those codes and guidelines.

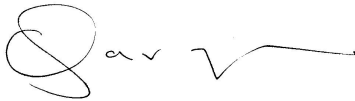
esaa supports the establishment of a tripartite Advisory and Regulatory Committee which includes energy industry representatives to provide advice to the MCE on improvements to a national legislative and regulatory framework. esaa does not support options where representation is limited to energy network regulators. The focus of energy regulators should be on the application and enforcement of performance standards not the development of regulatory changes.

The key next steps for the development of a nationally consistent framework for energy safety regulation is the development of an ENSS for the electricity sector given the diversity of regulatory approaches and standards that apply to electricity networks in

different jurisdictions. While the gas sector has more advanced national technical standards, there is still a degree of inconsistency in the way that these are applied in some jurisdictions. Once these issues are resolved the proposed Harmonisation Plan should outline a timetable and process for the MCE to consider national energy network safety legislation that will apply a common and consistent approach to technical and safety regulation for both gas and electricity networks across all jurisdictions.

The Discussion Paper notes that the MCE Leaders Group will consider arrangements for electricity generation and gas plant following the finalisation of the National Occupation, Health and Safety Review. esaa supports this approach given the generation sector differs markedly from the network sector in that the public are generally not as exposed to generation assets and generation businesses have far greater control over operational risks.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Clare Savage', with a long horizontal flourish extending to the right.

Clare Savage
Chief Executive Officer