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Harmonisation of Energy Supply Industry Technical and Safety Regulation

Envestra is Australia's largest natural gas distributor, delivering gas to over 1,000,000 customers in all mainland states except for Western Australia. Being subject to numerous jurisdictional regulatory regimes, Envestra is well placed to comment on harmonisation of technical and safety regulation.

Envestra fully supports MCE's initiative to harmonise Energy Safety and Technical Regulation and the work of the Leaders Group. There are many anomalies across States that cause increased compliance costs and unnecessary differences in work practices. Harmonisation of regulation is an important step in eliminating or significantly reducing these anomalies.

In developing a national framework there is a risk that the highest standard from each state becomes the new standard, which would result in significantly increasing compliance costs. Envestra would strenuously oppose legislation introduced under the guise of reducing regulatory obligations through harmonisation that had a net effect of increasing the compliance burden. We are already concerned that the establishment of a national energy customer framework, while producing harmonisation, may result in a further layer of regulation for distributors.

In response to the consultation paper the attached comments are offered to assist in progressing the harmonisation plan.

Should you wish to discuss any of these comments further please contact me on (08) 8418 1128.

Yours sincerely
Ralph Mignone

Manager Engineering and Technical Regulation
Envestra Limited

Attachment - Envestra Ltd comments on MCE's Consultation - Harmonisation of Energy Technical and Safety Regulation - February 2009

Stakeholder comments:

The Leaders Group seeks stakeholder views on the scope of harmonisation as outlined in the discussion paper, and potential impacts on any related technical requirements that are currently included in State and Territory regulations but are not specifically related to public or worker safety and that cross over into other regulatory spaces, such as reliability and economic regulation.

Appendix 4 of the consultation paper details the many functions and requirements adopted by the jurisdictions, which clearly demonstrates that the current regulatory processes have led to very diverse and inconsistent Regulations. These all have the common aim of ensuring public and consumer safety. If they are to be made consistent then the regulatory regime need to be changed.

Envestra believes the scope of the new regulatory regime should not be restricted to those functions undertaken by network operators (para 61), but expanded to include all of areas currently covered by Energy Technical Regulators as outlined in appendix 4 (of the paper). The harmonisation plan should include establishment of a regulatory body with powers to develop (subject to MCE approval) nationally consistent model energy regulations to be adopted in all states and territories. The regulatory body and associated regulatory processes should be able to address any energy technical and safety area where there are benefits to be gained through harmonisation. The national regulatory body could also be given broad powers to resolve differences/anomalies across borders that the jurisdictional regulators either can't or won't resolve, and if necessary the power to make binding decisions that may impact one or more jurisdiction without the need for further legislative changes.

Once the regulatory body is established the first area for it to harmonise should then be energy network regulation. This should include developing nationally recognised ENSS regulations covering the functions undertaken by gas and electricity distribution network operators. The ENSS regulations should include uniform and nationally recognised compliance processes, ie verification, auditing, and reporting requirements. Recognising that the regulatory landscape in each jurisdiction differs, administration of the ENSS or other future harmonised energy safety and technical regulation may need to remain with the jurisdictional regulators, at least initially.

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.

Appendix 3 clearly demonstrates the very wide and varied range of application of Standards in legislation. As all networks are not designed and constructed the same, some flexibility in the way Standards are referenced is necessary. Envestra believes the best approach is for Standards to be referenced in the ENSS rather than in Legislation. Network operators would still be required to comply with the ENSS and hence the referenced Standards. This is currently the case in most jurisdictions where some key Standards are referenced in legislation, whilst allowing scope for others to be used, thereby recognising that those referenced in the ENSS are the key Standards.

Stakeholder comments:

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

Appendix 4 clearly demonstrates the widely differing legislative landscape in each jurisdiction. There are large differences in both the functions and range of legislative obligations adopted in Energy Technical Regulation. This demonstrates the need for greater consistency and potential for harmonisation across the many areas currently covered by the Energy Technical Regulators.

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.

Envestra has already provided the Leaders Group with examples where differences in work practices and compliance costs can be reduced through harmonisation. This is especially true where large networks cross a State border to serve a relatively small number of customers. In such cases, compliance by the "larger network" is currently not considered to imply compliance for the small parts of the network on the other side of the border, even though the overall requirements and processes are essentially the same.

Many of the problems and limitations outlined in the consultation paper stem not from any safety or technical requirement, but from the evolution of differences in legislative and compliance requirements, sometimes reflecting ideologies of individuals at a point in time. This can result in network operations being (unnecessarily) more complex and costly in one

jurisdiction than another. It is vital that such differences are reduced or eliminated. Adopting model energy safety and technical legislation should make working in more than one jurisdiction far simpler and reduce compliance costs.

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.

In reference to paragraph 99 “ *The regulatory framework for the ESI as outlined in this discussion paper is intended to be complementary to the National OHS model*”, as both frameworks are proposing to adopt an “all-risk approach” there appears to be a potential for duplication and hence additional unnecessary compliance costs if clear demarcation is not established.

This has been made more complex by the apparent widening of the scope of the proposed National OH&S Framework. Traditionally OH&S legislation has focused on workplace and worker safety, but may now be broadened to cover “others” affected by an enterprise or undertaking. While this is intended to cover visitors and customers at workplaces this could unintentionally flow over into the area of public safety.

The language used in both sets of legislation must ensure consistency, avoid duplication and not create any gaps. As an example the approach used in WA for pipelines mirrors the same requirements in both the OH&S and Pipelines technical regulations and appears to be a workable approach for the ESI, and therefore should be considered.

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.

Envestra fully endorses basing the legislation on compliance with a nationally recognised ENSS as outlined in the consultation paper. Currently, for gas, these are detailed in jurisdictional regulations in an inconsistent way (refer appendix 4). Such inconsistency leads to unnecessary duplication and higher compliance costs.

In proposing a national legislative framework for ESI the consultation paper tends to focus on what needs to be included in the legislation (ENSS etc) but fails to fully address who will have the required powers to do these things.

We believe a national regulatory body needs to be established with powers to develop and introduce model legislation, eg regulations detailing requirements for the ENSS that would then be adopted in all states and territories in a similar manner to the NEL and NGL. Alternatively such powers could equally be conferred on an existing body such as AEMC.

The regulatory body should also have the powers to resolve issues such as cross border differences and anomalies affecting relatively small areas that the jurisdictional regulators either can't or won't resolve, eg the Albury Gas Company operating in southern NSW could be deemed part of Victoria in respect to gas network regulation, as has been done for economic regulation, and Tweed Heads could be deemed part of Queensland for gas network regulation. By deeming these small networks to be part of the much larger network across the border, it would significantly reduce both differences in work practices and compliance costs. However, these are second-best solutions, as ideally the existence of state borders should not create any issues from a technical perspective.

While such a body is required to develop and introduce such legislation it may not need to be responsible (at least initially) for compliance - this could remain with the jurisdictional technical regulators. However where interpretation and implementation by the jurisdictions leads to further anomalies or inconsistencies the national regulatory body could be responsible for resolving such differences.

Stakeholder comments:

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

Envestra fully supports the concept of a single nationally recognised ENSS for both gas and electricity networks as proposed in the consultation paper. However the requirements are better contained in Regulations, as is currently the case for gas, rather than in an Australian Standard.

For gas a form of ENSS (Safety Case or Safety and Operating Plan) has been in operation in the most states for many years. In many ways the concept of ENSS and associated compliance regime is already widely accepted. However we see significant advantages in adopting a single set of requirements and these being applied in the same way. A nationally consistent set of requirements would reduce compliance costs.

It should be noted that while an Australian Standard was available, *AS-4568 Preparation of a Safety and Operating Plan for Gas Networks*, none of the jurisdictional Regulators chose to reference this standard in their Legislation but elected to develop their own Regulations for this requirement. To avoid this happening in electricity, requirements for the ENSS should be in Regulations.

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.

In gas networks the development of the equivalent of ENSS (ie Safety Case/Safety and Operating Plan, the associated compliance regime and the detailed technical requirements) has evolved from a mix of both Australian Standards and Regulations and this has worked well. Requirements for the equivalent of an ENSS (Safety Case or Safety and Operating Plan) with the associated compliance requirements are contained in Regulations. The technical details for construction and operation of networks are contained in Australian and other technical standards.

The overall requirement is for all the risks to be identified (formal risk assessment), to document how these are to be managed (safety management system) and for these to be documented in the ENSS. It would appear that the overall approach and key areas (training, competency, equipment, work-practices, audits and reporting, etc) are all common between gas and electricity.

If separate legislation were implemented for electricity and gas there is a risk that these will become inconsistent, however it is important that the inherent differences between electricity and gas are recognised and addressed in the legislation.

Envestra recommends that legislation should be the instrument to detail what the ENSS should cover, and how compliance is to be implemented. The Regulations should not impose specific technical requirements as these should be detailed in appropriate standards.

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.

Typically, embedded networks do not apply in gas, however some very large installations could be considered imbedded networks, eg large industrial complexes, universities, defence facilities, and even some hi-rise buildings. Such imbedded networks/installations are not the responsibility of the network operator and they do not have the same impacts on the broader network that could be the case in electricity.

Envestra believes the specification for the ENSS should be made sufficiently scalable and the compliance regime sufficiently flexible to cover both large

and small networks. This has been the practice in gas and shown to be effective. The legislation should still include a provision to enable the Regulator to make exemptions (eg for a temporary facility or where covered by other legislation such as hazardous facility legislation).

Stakeholder comments:

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

The typical approach for gas is outlined in appendix 4, whereby the principle standards used to benchmark the expected outcomes for network operators are referenced in legislation. Such lists are not exhaustive and provide general guidance. In nearly all cases where such clauses reference Australian Standards, alternate means of compliance are also included.

Envestra supports this approach and does not endorse legislation mandating compliance with specific Australian Standards as the only means of compliance for distribution networks. Rather than calling the standards up in legislation, the relevant standards should be referenced in the ENSS.

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.

Envestra does not see a need for criteria for developing and referencing standard to be included or addressed here; such principles are already covered in the processes adopted by Australian Standards.

Stakeholder comments:

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

An ENSS must be reviewed by a suitably qualified and independent third party to ensure that:

- (a) the ENSS fully complies with the specification for the ENSS and that all the risks identified and method outlined to manage those risks are appropriate for the size and complexity of the network.
- (b) the network operator has established and implemented in practice those processes to manage risk detailed in the ENSS.

For gas this is currently undertaken by the Technical Regulator in some States, and a suitably qualified and experienced independent auditor in others. As both approaches work in practice it should not be necessary to specify a single approach, just that this requirement is satisfied and that the

methods used are robust, eg that the relevant state or national Energy Regulator is satisfied that these requirements have been met. Standardisation of approach here will not yield any benefits to the industry, ie this has never been an issue.

To avoid duplication, acceptance and certification in one State needs to be acceptable in all jurisdictions. This is especially vital where a network extends over a border but remains essentially part of a larger network in the other state. Attempts to have this adopted have been met with provisos that essentially required the whole process to be duplicated in order to meet the other State's requirements. A nationally consistent ENSS and approach to compliance should overcome these issues.

Stakeholder comments:

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

Envestra does not see the need for the third party certifiers to be accredited and/or registered. However such a register could contain those networks that have been accepted and any special conditions that may need to be registered for a particular State.

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.

The ideal of uniform work practices in every network would require all networks to be built and operated the same, in which case those with the required skills could be registered and free to operate in any network. However while there are basic principles and skills workers must have, they also need to understand the differences that apply in particular networks.

Envestra believes that in relation to gas networks, minimum qualifications do not need to be included in legislation, but it is recognised that the National Energy Passport may be a useful way of tracking energy skills/competencies.

An essential requirement to be included in the ENSS legislation is that workers have the required skills and competency for the work they perform. How this is demonstrated would then be outlined in the network operator's ENSS and may require specific qualifications, licences, training, competency tests etc. The national passport is an excellent way to register those with the minimum requirements, but a passport would not be an automatic right

to work in any network. Network-specific inductions and training would still be required.

Stakeholder comments:

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

Envestra believes the development of specific Standards is an industry issue rather than a regulatory framework issue. The regulatory process should be restricted to the development of the regulatory framework, and the development of specific legislation (ie Acts, Regulations and Codes/Guidelines). Requirements for the ENSS can be specified in Regulations which should include a requirement that relevant Standards are referenced in the ENSS, such referenced standard thereby becoming part of the compliance process.

The Water Industry (WSAA) currently develops Standards which are either issued as a WSAA Standard or have been adopted and issued as Australian Standards. The industry determines when and which standards get developed rather than it being a legislative issue.

Envestra believes the current approach using Australian Standards, whilst cumbersome and slow, is acceptable and would also support the move to energy industry developed Standards. This process should continue until the industry develops a better approach possible along the WSAA lines.

Stakeholder comments:

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

Envestra fully supports the bringing of energy supply technical and safety issues within the ambit of the MCE, and the preparation of the Harmonisation Plan is the first step in this process. If harmonisation is to occur an authority with the powers to make it happen is clearly required.

It is not entirely clear to Envestra that the paragraphs 159-163 in the consultation paper sets out the best way of achieving this. If a national Energy Regulator reporting to MCE via a Board was to be established (as per option 3 on page 36), MCE would be responsible for the enabling legislation to establish the national Energy Regulator, but once established the associated Regulations which tend to be of a more detailed technical nature. Further development of the ENSS and harmonisation of enforcement and compliance could be undertaken by that body. Further revisions to the enabling legislation could be undertaken by MCE at which stage the advisory committee could be re-established.

Stakeholder comments:

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

The role of the advisory/steering committee will not become clear until the final structure is more fully developed. If option three on page 36 is adopted, ie establishment of a national Regulator reporting to MCE via an independent Board, then there may be no further need for an advisory committee.

Envestra fully supports industry representation being included in the regulatory framework, ie on either an advisory committee or independent Board. Such industry representation should be much more formally constituted than the consultation committees currently in operation with the jurisdictional Regulators. The gas industry has actively promoted uniform legislation and a uniform approach to compliance however this has not happened via existing consultation forums.

Establishing a tripartite advisory committee is important rather than one made up of only Regulators. There are existing committees made up of only Regulators which have had the opportunity to harmonisation energy legislation but have elected to develop quite disparate energy legislation and have chosen quite different approaches to enforcement and compliance. If harmonisation is to occur then significant changes to the Regulatory framework is required. Envestra believes option 1 should be the preferred option.

Stakeholder comments:

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

If energy harmonisation is to occur, a National Regulatory body with the required powers to enforce harmonisation would need to be established. Envestra supports the establishment of such a body.

The body would be responsible for establishing and ongoing development of model legislation (Regulation) setting out what should be included in the nationally recognised ENSS. It would also be responsible for harmonising enforcement and compliance but these functions could continue to be undertaken by the State Regulators, at least initially. The governance body should also have the powers to make binding decision to ensure a consistent approach to enforcement and compliance and to resolve anomalies that the jurisdictional regulators may not be able to. As noted above it is not clear to us if this should be MCE or a governance body established by MCE.

Further work is required by the Leaders Group to more fully detail the roles and responsibilities of the various bodies. The approach should leverage off the existing national energy framework (MCE, AEMC, AER) rather than having to adopt a new approach which could be quite onerous. These bodies are already established and have powers recognised by the States.

Of the three options presented in the paper, option 3 - "*A single national regulator with offices in each jurisdiction*" should be the preferred approach. If harmonisation is to occur, changes from the status quo are required. This option is the only one that can effectively deal with cross-border issues. The other two options rely on the status quo which is responsible for the current wide divergence detailed in paper's appendix 3 and 4. Further consideration should be given to the role of a *single national regulator* being given to an existing national body, but then ensuring that there are *offices in each jurisdiction* for local enforcement and compliance (this role being given to existing jurisdictional technical regulators, at least initially).

Envestra supports further work by the Leaders Group to determine the exact structure, bodies and instruments required.

Stakeholder comments:

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

Envestra believes option 1 - *Legislation introduced into State Parliament with a schedule to be adopted nationally* would result in more consistent legislation being implemented over that proposed by option 2. Option 2 relies on voluntary adoption of nationally consistent Regulations which has not occurred to date for gas and therefore would be unlikely to occur for electricity.

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.

Many of the documents listed in the discussion paper would seem unnecessary if the requirements for the ENSS and associated compliance process were to be contained in Regulations, as is currently the case for gas, Standards development would then remain an industry/Standards Australia issue and outside the scope of the regulatory process.

Other than those documents listed in the paper, further work may be required to develop suitable national energy decision making, dispute resolution, and/or appeals processes. Harmonisation will depend on all

jurisdictions conforming to a consistent national framework, so both a consistent set of rules, and an effective means of ensuring that these rules are consistently applied, need to be established.

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?

To develop a fully harmonised approach to regulation of energy network a staged approach should be adopted, and may take much time achieve. A key decision to be made is whether to establish a national Regulatory body for energy networks only, and let the states work through the inevitable resulting issues or take a softer approach by establishing a national Regulatory body with broad powers to possibly harmonise the full range of functions currently undertaken by the jurisdictional Regulators, and develop incremental changes such as national ENSS regulations first and then gradually implement other changes.

Envestra believes the harmonisation plan should adopt the second approach.