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

1 OVERVIEW

The Gas Technical Regulators Committee (GTRC) believes that the gas supply industry is already harmonised and after reading the discussion paper it is difficult to identify that the regulation of the gas industry is an issue. The industry has developed and utilises Australian Standards that provide for a risk based approach through the use of safety cases.

However should MCE require further change GTRC notes that there are three concurrent Government reforms that are also occurring at this time. These include:

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

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

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

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

These synergies include gas network safety and gas appliance and gas contractor and worker safety being the responsibility of a single jurisdictional regulator so that all inter-related segments of the industry are monitored and regulated appropriately and consistently. Any move to separate the ESI into a

separate regulatory function would be seen by GTRC to be detrimental to safety.

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

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

Consistency with the OHS Act and Governance Arrangements

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

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

[1] Recommendation 76 of the *National Review into Model OHS Laws: Second Report to WRMC – January 2009*:
Ministers agree that:

a) in developing and periodically reviewing the model OHS Act, there should be a presumption that separate and specific OHS laws, (including where they form part of an Act that has other purposes) for particular hazards or high risks industries that are within the responsibility of the Ministers, should only continue where they have been objectively justified;
b) even where that justification is established, there should be an on-going, legislative and administrative inter-relationship between the laws and, if there are different regulators, between those regulators;
c) as far as possible, the separate legislation should be consistent with the nationally harmonised OHS laws;
d) where the continuation of the separate legislation is not justified, it should be replaced by the model Act within an agreed timeframe;
e) where specific provisions are necessary, they should normally be provided by regulations under the model Act relating to matters previously regulated by the separate legislation to be kept to a minimum; and
f) this approach should be recommended to COAG so that, subject to COAG agreement, it is extended within a reasonable timeframe to other legislation that pertains to OHS but which is within the responsibilities of other Ministers.

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

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

Specific comments on the subject Discussion Paper follow.

2 SCOPE

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

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

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

It is assumed that the inclusion of energy meters in the scope is to cover the remote connection/disconnection of supply using a ‘smart’ meter as a switching device in the electrical industry. The technical (accuracy) requirements of meters are the responsibility of the National Measurements Institute. Selecting and installing the appropriate meter, obtaining meter data, ensuring its security and ultimate transmission to the retailer is the responsibility of the pipeline or network operator (or delegate), monitored by the relevant economic regulator. Ensuring the meter remains within the required accuracy during service is an activity that is currently performed by

the pipeline or network operator and for consumers supplied from a distribution network through statistical sampling in accordance with the relevant Australian Standard with oversight from the technical regulator. GTRC believes this should continue.

3 REGULATORY FRAMEWORK

Flexibility and innovation while facilitating greater labour force mobility is a contradiction. The Terms of Reference specifically require the Leaders Group to address “greater labour mobility and swifter emergency response”. Labour mobility requires common work practices and common training curricula across the industry. GTRC believes that the training could be enhanced in the gas sector by the Gas Businesses adopting the national training packages in relation to competency assessment and qualifications for gas transmission and distribution workers. The adoption of a national Skills Passport which assesses workers against these training packages would promote mobility. In relation to work practices these are the responsibility of network and pipeline operators rather than regulators. One means of providing flexibility and innovation within a performance-based national regulatory framework is by allocating the development or review of a work practices to not more than (say) for transmission to two pipeline operators and for distribution to two network operators with the agreed “best” result (or a combination) being implemented by all the network/pipeline operators.

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

4 ENERGY NETWORK SAFETY SYSTEM (ENSS)

4.1 Safety Management System

It is stated that the proposed ENSS will be consistent with the performance-based safety management systems also known as safety cases currently in operation. GTRC supports the safety case in principle provided it is underpinned by robust standards. For Gas Transmission pipelines GTRC believes that the regulatory framework that utilises AS 2885 “Gas Pipelines” and is called up in regulation by every State and Territory jurisdiction is functioning well and no change is required. GTRC sees no benefit and considerable cost in changing this arrangement. GTRC also believes that the recently released Australian Standard AS 4645 “Network Management “will provide a similar outcome for the gas distribution sector.

4.2 ENSS Standard

The development of a single ENSS standard for electricity and gas network operators should be a second step in the harmonisation process (if done at all). and should be based as closely as possible on the two gas standards, so that its completion is not delayed but at the same time its quality and coverage must not be compromised.

4.3 Small and Isolated Networks

GTRC prefers option 1 of the discussion paper with small operators required to demonstrate appropriate risk management of their assets The form of the existing Gas Standards sets out those matters that would need to be addressed in a ENSS, this may not be the case in the electricity industry.

4.4 Central ENSS Register

GTRC considers this to be unnecessary unless it is used to facilitate safety case acceptances that cross State or Territory boundaries.

5 MANDATORY STANDARDS

GTRC supports the adoption of a properly administered risk based approach by network and pipeline operators which would involve a mandatory standard for the framework itself (ie the Safety Case or Safety Management System). As these standards already exist for Gas transmission and distribution they should form the basis of the mandatory standard. GTRC believes there are considerable efficiencies to be gained from the development of underpinning detailed supporting standards such as have been developed in the gas transmission and distribution sectors. Without these efficiencies there is no justification for the proposal of introducing a nationally consistent approach. Harmonisation is already underway in the gas sector and the additional processes and costs proposed have no demonstrated benefit from a GTRC perspective. Standards developed through Standards Australia are preferred.

6 GOVERNANCE ARRANGEMENTS

6.1 MCE

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

conflicts, it is essential that the MCE have direct advice from regulators, independent of any commercial drivers, as described in 6.2 below.

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

6.2 Advisory/Regulatory Committee

GTRC does not support the creation of an Advisory Committee and is strongly opposed to the proposal that there should be a Federal Regulator similar to the AER or NOPSA.. However, if the Advisory Committee option is selected, each energy safety and technical jurisdictional regulator should be represented on the committee to ensure that each jurisdiction is adequately represented and that all regulatory issues are considered thoroughly.

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

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

This arrangement would ensure that the individual jurisdictional members followed a consistent approach to the acceptance/certification of network operator's ENSS and enforcement of the ENSS law. This arrangement provides a minimum cost solution for National Regulation as the existing State and Territory regulatory funding arrangements would continue and the general scope of State and Territory regulatory cover would be unchanged, (replacing the current safety and technical legislation with the ENSS legislation) while continuing to discharge their other existing functions.

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

(those in addition to the existing jurisdictional functions) would be obtained through the DRET budget.

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

6.3 Acceptance/Certification

The audit process and procedures should be set out in Regulations (referred to as Scheme Rules in the discussion document) under the ENSS Act (principal legislation). These Regulations would define how an ENSS was certified/accepted and the required qualifications, experience and risk assessment capabilities of the auditing entity and individual auditors. This is required to ensure national consistency in the appointment of auditors and the process used by the individual regulators. Regulators need to be confident that the process is working as intended as the Regulator has to live with the consequences of the sign off and therefore GTRC's preference is for the Regulator to be responsible for the final sign off. However, if this is considered inappropriate then GTRC would consider Option 2. Option 1 could only start to be considered when the system was judged to be mature by the National Regulator, which may occur at different times for individual jurisdictions.

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

6.4 Enforcement and compliance bodies

The proposal to have a Federal based single National Regulator is not supported. The second option in paragraph 17 is the approach preferred by GTRC..

7 STANDARDS DEVELOPMENT

To provide recognition and authority all Standards referenced in the Act and subsidiary regulations should be produced through the Standards Australia process. This would include the adoption through the Australian Standards process of international standards (ISO) where available and appropriate with minimal changes to take into account Australian conditions. GTRC is opposed to the development and use of in-house company standards or "industry" standards that are developed by the utility businesses/industry associations without the appropriate transparency and the appropriate input and scrutiny by other stakeholders.

Industry participants, subject to Regulator oversight, should develop documents setting out common work practices to be implemented across the

jurisdictions so as to make labour force mobility more efficient and cost effective.

8 NATIONAL ENERGY SKILLS PASSPORT

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

9 LEGISLATION

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

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

10 NEXT STEPS

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

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

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

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

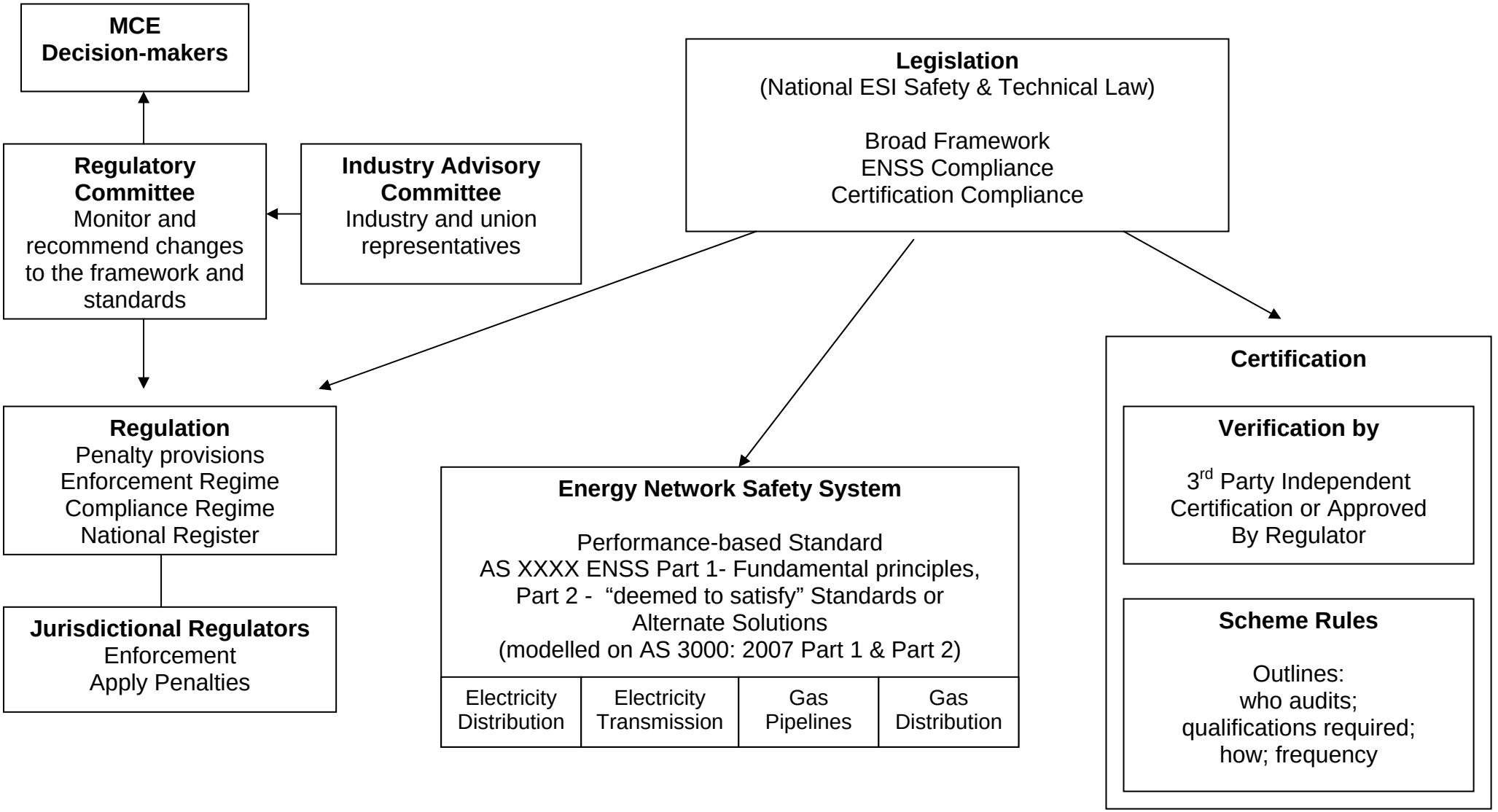
It should be possible for the Leaders Group to develop a comprehensive table of contents list via correspondence prior to a meeting with sign off at the meeting. The drafting officer in the host State would then commence drafting the instructions, which basically flesh out the contents list using recommended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

11 IMPLEMENTATION

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

Attachment A

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



Attachment B

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