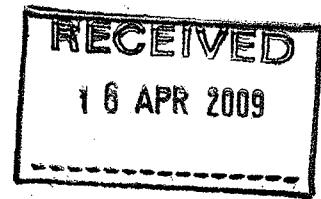




NSW Government

Department of Water & Energy



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Dear Ms Palmer

**Discussion Paper – Harmonisation of Energy Supply Industry Technical and Safety Regulation**

Thank you for the opportunity to provide comment on the above paper released by the Ministerial Council on Energy's Energy Technical and Safety Leaders Group on 9 February 2009.

The Department of Water and Energy (DWE) has consulted with representatives of the electricity and gas networks industry operating in NSW in the preparation of this submission. Our key concern is that any new harmonised regulatory framework does not result in increased costs, or impediments to innovation, conflicts of interest, inferior safety outcomes and/or reduced efficiency compared with the present NSW technical and safety framework.

I understand that the Electrical Regulatory Authorities Council (ERAC) is submitting its own comments on the above paper. However, although there has been consultation between ERAC and DWE staff, there has been no opportunity for DWE to sign off on the final ERAC comment to the Secretariat. I therefore advise that the comments by ERAC should not be interpreted to represent those of DWE in any way.

More detailed comments on particular issues raised in the Discussion Paper are outlined in the attached table. Should you have any further enquiries about this matter, I have arranged for Mr Paul Grant, Manager, Special Projects and Reform, to assist you. Mr Grant may be contacted at the Department's Elizabeth Street Office on telephone number (02) 8281 7731.

Yours sincerely

**Mark Duffy**  
Director-General

Comments on Discussion Paper – Harmonisation of Energy Supply Industry Technical and Safety Regulation: February 2009

ISSUE	DOC REF	COMMENTS FROM DEPARTMENT OF WATER AND ENERGY (NSW)
Guiding Principles	93 - 98	<p>The principles should also take into consideration the outcomes of the 1995 Report by the Industry Commission Inquiry into OH&amp;S, which still has relevance to safety regulation today. The following recommendations are particularly relevant:</p> <ul style="list-style-type: none"> <li>• Safety should be a major part of a quality approach to management;</li> <li>• Regulations should allow employers and employees to determine how to achieve safety</li> </ul>
Scope – Industry	59	<p>Harmonisation should be staged, so as to facilitate consensus and prompt action where it will have most benefit. Given the high level of national standardisation for gas networks and pipelines, and the early stage of development for electricity networks, the initial focus of the harmonisation project should be limited to the scope of work as defined in the Leaders Group Terms of Reference (i.e. electricity network and generation sectors).</p> <p>Harmonisation of the generation sector can be best achieved by jurisdictions leaving safety to the OH&amp;S framework and connection agreements with network operators. Public safety for generators is not a key issue due to their ability to effectively control public access to assets. Technical issues for generators are already well covered and harmonised through the NEL and NER [Paragraphs 80-81 of the Discussion Paper do not acknowledge the relevance and coverage of the NEL and NER]. It is recognised that some jurisdictions currently have dedicated regulatory frameworks for generators, but it is timely that this should be reviewed for necessity on a cost-benefit basis given that NSW does not have such a framework while achieving desired outcomes.</p> <p>The development of a standard for an ENSS for electricity networks is a priority during Stage 1 (Para 23).</p>
Scope – Technical &/or Safety	63	<p>The Discussion Paper concentrates on safety outcomes only, despite saying in Paragraph 63 that it “covers relevant technical regulation, in so far as it is currently covered in State and Territory legislation, and regulation as it relates to safety”. Most jurisdictions set technical standards (e.g. for reliability) and such standards are then factored into decisions of economic regulators.</p> <p>All jurisdictions are held accountable by the community for the safety and reliability outcomes for energy networks. This includes ensuring that the risk of major energy supply interruptions is acceptably low. NSW has taken an integrated approach to technical regulation, ensuring that energy networks are managed for all required outcomes, including safety and reliability.</p> <p>It is not possible to separate safety management from asset and risk management, or indeed from effective management at all levels. For example, tree trimming and line inspections are an integral part of</p>

		<p>asset management and result from effective risk management to ensure safe outcomes from the assets for the public and workers. Network operators should be able to prove compliance with a harmonised technical and safety framework through the one, integrated management plan. If this framework only requires a safety plan or similar, then this safety plan must be capable of integration into a larger management plan and must cover compliance with all aspects of safety, including OHS.</p> <p>If technical issues are ignored, then there will be no harmonisation on issues such as reliability. This project is an opportunity which should not be missed to achieve better harmonisation for network planning standards, reliability and quality of supply.</p>
Scope – Boundary between OH&S and Energy Safety .	99-101	<p>The discussion paper correctly identifies the need to ensure that the OH&amp;S framework and the harmonised energy safety framework are complementary.</p> <p>Although there is a need for network operators to take an integrated approach to both aspects of safety, for example through a single ENSS, this need not require a single regulator for all aspects of safety. Presently in NSW, the technical regulator (DWE) does not attempt to take on the OHS role of WorkCover, except as it relates to risks relating to assets containing natural gas and live electrical parts. For example, live work on electricity networks is a technical safety issue, whereas the risk of falls from heights (e.g. a tower) should be part of the OHS framework.</p> <p>What is important is that there is a single national framework for each aspect of safety and that there is a single mechanism for DNSPs to ensure compliance with both OHS and technical safety regulation, which may be administered by separate regulators.</p> <p>The alternative of requiring the technical regulator to also cover the OHS issues would result in regulatory inefficiencies through requiring separate OHS frameworks for different industries and separately resourced regulators covering the same OHS issues. This could also result in unnecessary differences on general OHS issues between the energy industry and other industries, such as two conflicting procedures attempting to control essentially the same risks.</p>
Scope – Management Systems approach to regulation v. Risk Management approach	66; 110	<p>The proposal to use a management systems approach to regulation is a sound one. By doing this, Governments are able to receive independent verification that networks and other assets are being managed well so as to achieve the regulation's objectives.</p> <p>An appropriate management system would at least include appropriate policies, plans, implementation &amp; operation, performance assessment, improvement and management review. This approach creates</p>

		<p>confidence that the required outcomes will be achieved. A purely outcomes-based regulatory approach is less pro-active and results in retrospective action following any unsatisfactory outcomes. Prescriptive approaches are also to be avoided.</p> <p>However, the discussion paper does not adequately follow through on this approach, concentrating instead on risk management only (see Para 110). <b>Risk management is essential, but is only part of a broader, integrated management system. Risk management alone does not address all of the features required to ensure objectives are met</b> (e.g. an appropriate management policy including a commitment to comply and a framework for objectives, which is communicated to employees and regularly reviewed for suitability).</p> <p>Such a management system also needs to integrate several lower level management systems including safety/risk management, asset management and compliance management. A suitable model is presented in BSI PAS 99, which is the world's first integrated management system requirements specification. It is based on the six common requirements of ISO guide 72 (a standard for writing management system standards), and enables integration of two or more management systems into one cohesive system with a holistic set of documentation, policies, procedures and processes.</p>
Mandatory Standards & Other Standards	12; 13; 116; 124; 129-137	<p>There is a need for an overarching mandatory standard for a management/safety plan for each industry.</p> <p>Any subordinate standards would need to meet Standards Australia's net benefits test to justify why the standard was needed.</p> <p>Where a standard is proposed to be mandatory, the governing body for the framework needs to ensure that mandation is necessary under an agreed process for assessment and agreement. Such a process is necessary in order to minimize the negative outcomes that may be associated with mandatory standards:</p> <ul style="list-style-type: none"> <li>• Shifting of responsibility from those who should have it to regulators and standards setters</li> <li>• Limiting innovation and efficiency</li> <li>• Lack of ownership by workers and employers as the requirements are imposed from external sources; and</li> <li>• They run a greater risk of becoming out of date</li> </ul> <p>The necessary process for mandation needs to be developed by the Leaders Group and agreed as part of the framework.</p> <p>Any resulting standards would need to be put into/referenced in the main standard as either a mandatory or an acceptable standard (so that it is not applied or varied on a jurisdictional basis).</p>

		<p>Apart from the overarching plan standard, there should always be scope for companies to adopt alternative means of compliance, providing they can clearly demonstrate that it will achieve an equal or better safety outcome (e.g. an international standard may be appropriate in some circumstances). Standards may not deal with legacy design issues</p>
Approval versus Certification of ENSS; & Qualifications of auditor	138	<p>Under no circumstances should technical regulators have a role in approving the ENSS. This should only be done by properly qualified and competent independent persons.</p> <p>Regulators need to ensure there is no conflict of interest that might be created by them doing both of:</p> <ul style="list-style-type: none"> <li>• approving an ENSS; and</li> <li>• taking compliance action in relation to an ENSS (e.g. in relation to the rectification of any deficiencies in the ENSS based on information obtained in response to an incident).</li> </ul> <p>Regulators may have difficulty demonstrating to others their competence to undertake compliance audits. This may create difficulties for mutual recognition of the results of a regulator audit/approval.</p> <p>Other issues associated with Regulator approvals are:</p> <ul style="list-style-type: none"> <li>• Who would handle any appeals concerning a regulator audit/approval?</li> <li>• Lack of any competition in the provision of the certification/approval service.</li> </ul> <p>A transition period could be accepted for those regulators currently undertaking such approvals to continue doing so for a limited period. The transition period proposed in paragraph 16 whereby all regulators initially approve the ENSS is not acceptable for NSW for the above reasons.</p> <p>Regulators should, however, have reserve powers to require modification to plans, as is the case in NSW, but only in limited circumstances where necessary to resolve an urgent safety issue in the short term. While these could be applied on a jurisdictional basis to address short term issues, the framework should require that any such changes would need to be assessed for adoption in national arrangements and ensure ongoing harmonisation.</p> <p>Those currently accepting independent certifiers do not generally require JAS-ANZ accreditation; only proof of qualifications and experience. The framework needs to document the basis for assessment of auditors. Requiring JAS-ANZ accreditation would greatly reduce the available auditing pool, increase costs, and reduce competition.</p>
Regulatory	17; 102; 139	At least in the short term, harmonisation is best achieved through new, uniform legislation (the NEL and

Governance		<p>NER are suitable models for achieving such uniformity) administered by existing jurisdictional regulators, which would provide the operational and enforcement services.</p> <p>A single national regulator with offices in each State and Territory can be pursued over the medium term, but this would slow the harmonisation process if pursued at the same time as the harmonised framework.</p> <p>More important than a single national regulator is a single approach to regulation and to the auditing/approval process for the management system/plan. Jurisdictional based compliance regimes would not be a concern providing there is mutual recognition in place. This needs to be recognised in model legislation which should define clear roles and responsibilities with a view to avoiding different interpretations and any overlap or duplication.</p>
Worker Mobility - Harmonised Work Practices	49; 84	<p>Worker mobility across jurisdictions and network operators needs to be improved, particularly relating to emergencies. Harmonisation of work safety standards is one means of improving worker mobility. DWE does not oppose mandatory standards providing there is an agreed net-benefit based approval process. If such an approval process is not adopted under the framework there is the potential for some mandatory standards to have a net negative outcome through unnecessary restrictions to innovation and associated inefficiency. If not properly scrutinised, standards may not deal with legacy network design issues, which can constrain some network operators.</p> <p>Where a net benefits test and approval process does not support mandation of standards, greater harmonisation should still be encouraged through industry committees and the publication of industry standards, where these are shown to have beneficial outcomes.</p> <p>Significant improvements in worker mobility can also be achieved by the following means, which can be pursued more promptly than developing new mandatory standards:</p> <ul style="list-style-type: none"> <li>• addressing differences in worker licensing/registration requirements between jurisdictions;</li> <li>• implementation of a passport or similar system to facilitate demonstration and acceptance of worker qualifications, competence and refresher training;</li> <li>• work planning which takes into account the use of external workers;</li> <li>• effective induction procedures for external workers;</li> <li>• ensuring local supervision for temporary external workers (e.g. in emergency situations). Network operator procedures are often different as they must take into account local network design issues (e.g. the types of materials and connections used for service lines).</li> </ul>

		Worker mobility has not been a major issue in NSW due to the general adoption by NSW network operators of the above additional means.
Worker Mobility - National Licensing System v. Passport	51 – 54; 143-151	<p>It is noted that the discussion paper does not attempt to address the licensing issue, which is being pursued through COAG.</p> <p>NSW has never operated a licensing scheme for line-workers and cable jointers employed or contracted by network operators, which are responsible for authorising these workers after confirming they have the appropriate training and competence.</p> <p>However, in NSW customers are able to directly engage “accredited service providers” (ASP) to undertake some contestable network work directly. These ASP’s must be accredited to undertake such work to protect customers and network operator interests.</p> <p>The possibility of introducing a requirement for network workers to hold a current passport describing qualifications, currency and competence appears to have merit and needs to be further explored when more information on the proposal is available.</p> <p>It is also noted that Commonwealth is aiming to accelerate the ESI Pathfinder Project, which is a joint project between EE Oz Training Standards, the Energy Networks Association (ENA) and the Electrical Trade Union (ETU). The project aims to identify common refresher training in the Australian Electricity Supply Industry, to encourage portability of qualifications across Australia.</p>
Jurisdictional Recognition of ENSS	86	It is agreed that it should not be necessary for a multi-jurisdictional network operator to operate under more than one set of obligations for effectively one network/asset. An ENSS certified as complying in one jurisdiction should be automatically accepted by other jurisdictions under mutual recognition arrangements.
Central ENSS Register	102; 140-142	<p>A central register is not necessary, and would impose unnecessary red tape and costs on industry. The parties needing to know about an ENSS are:</p> <ul style="list-style-type: none"> <li>• the network operator to which the ENSS applies;</li> <li>• the jurisdictions in which the network resides; and</li> <li>• accredited service providers engaged by customers to work on the networks.</li> </ul> <p>This knowledge can be readily imparted to these parties by:</p> <ul style="list-style-type: none"> <li>• the network operator lodging the ENSS with all relevant jurisdictions, together with a nomination of the primary jurisdiction;</li> <li>• the network operator to make the ENSS available to accredited service providers as required.</li> </ul>

		(consider publication of plan, as is done in NSW). If the framework does require independent certification of auditors, any list of 3 <sup>rd</sup> party certification bodies is a matter for the accrediting agency, of which there may be several. This does not require a register.
Small Networks	126	In principle, there should be no difference in the regulatory framework applied to large and small networks. However, within that framework, it may be appropriate for small networks to have simpler ENSS than large networks. Even small networks should be required to have an appropriate management system, including risk management, and to undergo independent auditing.