Queensland Government

Submission from the Queensland Government

Draft of Energy Technical and Safety Harmonisation Enhancement Plan

Energy Technical and Safety Regulations Consultation Regulatory Impact Statement

Ministerial Council on Energy
Energy Technical and Safety Leaders Group

September 2009

PART A: OVERVIEW OF QUEENSLAND SUBMISSION

Introduction

The Ministerial Council on Energy (MCE) Energy Technical and Safety Leaders Group (the Leaders Group) has developed and released a *Draft Energy Technical and Safety Harmonisation Enhancement Plan* (Draft Plan) for public comment. The Plan is accompanied by a Consultation Regulatory Impact Statement (RIS) prepared by PriceWaterhouseCoopers (PWC).

This Queensland Government submission is based on issues raised by the Petroleum and Gas Inspectorate of the Queensland Department of Employment, Economic Development and Innovation (DEEDI) which regulates safety for the gas industry and the Electrical Safety Office of the Department of Justice and Attorney-General (JAG) which regulates electricity safety in Queensland.

The submission has three parts. Part A sets out the main concerns with both documents and provides some contextual or background information relevant to Queensland. Part B provides specific comments on the Draft Plan and has a response to every stakeholder comment box in the Draft Plan. Part C provides comments on the Consultation RIS.

Main Concerns

Queensland supports in principle a harmonised legislative framework within which State and Territory energy supply industry (ESI) technical and safety legislation will operate. However, the future approach should not compromise the existing standards, adversely impact on related safety regulation upstream and downstream or increase the regulatory burden for industry, with no additional benefit being gained.

In summary the main concerns are:

1. The Draft Plan and RIS do not provide substantive evidence that there is a problem with the current State-based safety regulation of electricity and gas distribution networks and pipelines, particularly in regard to Queensland. The Draft Plan and RIS repeatedly argue that the current regulatory requirements present problems where network operators have assets across State boundaries. This is not known to be an issue for Queensland for gas or electricity. The proposed solution to an undemonstrated problem is resource intensive to achieve, with little or no gain and has adverse impacts on related safety legislation.

2. Queensland regulators do not support a separate piece of legislation for these energy industry sectors or calling up legislation from another State. Queensland supports a harmonised legislative approach along the lines of the approach being used in the National Occupational Health and Safety (OHS) Review being undertaken by the Workplace Relations Ministerial Council (WRMC) and endorsed by the Council of Australian Governments (COAG). This approach requires model legislation to be mirrored in each State Act.

- For electricity and gas this would allow any modified provisions for network operators to reside with the safety requirements for upstream and downstream safety obligation holders such as gas plants, electrical contractors, workers and appliance manufacturers and suppliers under a single Act in each State.

3. The proposed governance model is not supported because it allows an industry-led body to provide oversight of the industry's regulation, via a Policy Committee containing only one electrical and one gas regulator amongst seven members.
   - Queensland recommends a Safe Work Australia model in terms of the role and composition of the Governance Committee that has been established to oversee and implement the National OHS Review and legislation by WRMC. This type of governance model is preferred as it provides that every State regulator has a seat at the table, along with two union representatives, two employer representatives and an independent chair. Legislative changes require a proportionate majority of committee members but cannot proceed without proportionate support from the regulatory members.
   - A more formalised role for the existing regulator groups, the Electrical Regulatory Authorities Council (ERAC) and the Gas Technical Regulators Committee (GTRC) is also supported.
   - Alternatively, an industry advisory body could be established that provides input to a more formalised Regulatory Policy Committee reporting to the MCE.

4. The Draft Plan and the RIS fail to address the impact of the proposals on safety regulation upstream and downstream of the two sectors (transmission and distribution) to be covered. Nor do the documents discuss the impact on jurisdictional regulator resourcing for the revised and differing safety regimes and the increased cost in policy/legislative change. These impacts could be significant and would create the same problem of variances in approach to safety regulation for related electrical, petroleum and gas sectors up and downstream.

5. Both the Draft Plan and RIS argue the regulatory framework impacts on worker mobility. This is not the case in Queensland, and no evidence is produced in the RIS and Draft Plan which demonstrates it to be a significant problem elsewhere. In Queensland, gas pipeline and distribution network workers are not required to be licensed and there is no regulatory barrier impacting on mobility. Electrical workers' licences for other jurisdictions are also accepted in Queensland, with mutual recognition entitling these workers to apply for a relevant Queensland licence. The important thing for mobility is for the core competencies of common worker types to be established and agreed.

6. The Draft Plan places heavy emphasis on up-front validation of a safety management system (safety case) by each network operator. The industry sectors involved are in the main mature substantive organisations

which have existing safety management systems. Up-front validation of the safety system prior to operations commencing is not considered to be the key safety regulatory imperative. Audit verification of implementation of the systems and ongoing inspection and compliance checking are of more relevance. These issues are not discussed in the Draft Plan.

7. Queensland strongly objects to the requirement that a safety case be accepted or approved by the relevant regulator and does not support this approach. It is considered this makes the regulator a party to the safety system when clearly the safety of the plant/operations lies solely with operator. Prior approval by the regulator is also not supported because Queensland does not have the resources to undertake this role.

8. Queensland does not support the finalisation of the Energy Technical and Safety Harmonisation Enhancement Plan until any implications from the outcomes of the National OHS Review are known, and the issues raised in this submission have been addressed.

Alignment with COAG Agenda

Queensland notes that the following three COAG reforms are also occurring at this time:

- the WRMC National OHS Review and development of model OHS Laws;
- the ongoing energy market reforms led by MCE; and
- the COAG decision to introduce a National Licensing System for some occupations (including line workers, cable jointers, electricians and gas fitters).

The Plan and RIS seek to implement a national regulatory framework with ongoing implications for the technical regulation of the ESI. Therefore MCE needs to ensure that the proposals and findings that come from this Plan and RIS are consistent with, and are aligned as closely as possible to, these other key reforms, in particular the National OHS Review.

National OHS Review

The National OHS Review Final Report, completed on 30 January 2008, recommends an optimal structure and content of a model OHS Act which is expected to be adopted by all jurisdictions. The WRMC released the COAG initiated *National Review into Model OHS Laws: Second Report to WRMC* (the OHS Report) mid February 2009.

The OHS Report proposes uniform OHS legislation that is nationally consistent across sectors 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 regulation of OHS is contemplated or proposed to be continued, it must be demonstrated that it would produce better OHS results than coverage by the nationally-implemented model legislation. Even where this may be demonstrated, there must be an on-going

legislative and administrative inter-relationship between the two frameworks. Such an approach, subject to agreement, could be achieved by a decision of COAG, as provided for in 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.*

Queensland is supportive of regulatory framework and governance arrangements for the ESI being consistent with what is proposed in the National OHS Review while maintaining specific energy safety legislation – that is, model legislation adopted in each relevant State's energy safety Acts.

Context

Gas

Safety in the petroleum and gas industries in Queensland is regulated by the *Petroleum and Gas (Production and Safety) Act 2004* and the *Petroleum and Gas (Production and Safety) Regulation 2004*. This is undertaken by the Petroleum and Gas Inspectorate of the DEEDI.

The legislation covers naturally produced petroleum and natural gas, fuel gases such as Liquefied Petroleum Gas (LPG), Compressed Natural Gas (CNG), Liquefied Natural Gas (LNG) and related products, and sewage and other bio-gases.

Safety regulation covers a range of industries from production to use along with general safety in the community. Industries covered by the legislation include petroleum exploration and production, petroleum pipelines, gas distribution (including reticulation and gas cylinders), automotive LPG, gas

users (from power stations to pottery kilns) and the installation, servicing and use of domestic, commercial and industrial gas devices.

The Petroleum and Gas Inspectorate is responsible for:

- administering the safety and health, measurement and gas quality components of petroleum and gas-related legislation;
- licensing gas work and making approvals and exemptions to maintain safety standards;
- conducting regular audits and inspections of petroleum and gas plant and activities including drilling operations of related sectors;
- investigating accidents and incidents, and providing emergency response capability for petroleum and gas incidents in the general community, and
- delivering education programs to people involved in the gas industry, senior emergency service personnel, TAFE college students and the community.

The Petroleum and Gas Inspectorate currently administers a wide range of petroleum and gas industry sectors and gas use in the community. This enables the Inspectorate to provide a one stop shop of petroleum and gas safety regulation. Removal of some of the industry sectors would create some confusion for stakeholders and create interface issues with the upstream petroleum production and transmission pipelines and also at the downstream end when the distribution network supplies to consumer installations.

If a national regulation model was followed there would also be an impact on the inspectorate's ability to consistently regulate the remaining sectors due to the loss of synergies utilising the inspectorate skills and systems which are currently used across all sectors. In addition, Inspectors are currently regionally based providing the ability for localised industry inspection, audit and investigation and emergency response.

Given the current environment, the Queensland Government believes that it would be much more cost-effective to maintain existing regulator jurisdictions and separate legislation but is willing to pursue national harmonisation in line with model frameworks via the existing State and Territory regulators.

Electricity

Within Queensland, both the workplace health and safety and electrical safety legislation is performance-based and outcomes focussed. These pieces of legislation contain broad over-arching general duties to provide and maintain safety. This approach to regulation has been extensively adopted internationally in modern OHS legislation.

The Electrical Safety Office (ESO) administers the *Electrical Safety Act 2002* (the Act) which establishes the legislative framework for electrical safety in Queensland from generation at the power stations to point of use. ESO also administers the *Electrical Safety Regulation 2002*. The provisions of the *Electricity Regulation 2006* relating to energy efficiency and the performance

of electrical equipment provisions are also administered under delegation from the DEEDI.

To ensure Queensland homes, workplaces and other environments are electrically safe, the ESO:

- develops and implements a legislative and policy framework for electrical safety;
- delivers inspection and enforcement services;
- approves and registers electrical equipment, electrical systems and energy efficiency labels;
- maintains a licensing regime which ensures only suitably qualified persons perform electrical work and provide electrical services to the public;
- manages accreditation systems under the electrical safety legislation; and
- provides information, education and advisory services to encourage compliance with electrical safety legislation and reduce the risk of death, injury and destruction caused by electricity.

The proposals contained in the Draft Plan would effectively remove the energy network operations from the general electrical and gas safety and OHS frameworks. This will create additional, specific regulation for this industry segment. This approach is inconsistent with the National OHS Review, which seeks to minimise specific industry regulation and requires consistency with the proposed generic OHS legislative framework.

Co-location of the electrical network safety regulator with the electrical appliance and electrical contractor and worker safety regulator allows all inter-related segments of the industry to be monitored and regulated appropriately and consistently. This is currently the case in Queensland where the Queensland Government made a conscious decision to centralise all electrical safety functions into the *Electrical Safety Act 2002*. This approach has since been shown to provide improved safety outcomes over other jurisdictions where these functions are splintered. Any move to separate the ESI into a separate piece of legislation would be seen by the Queensland Government to be potentially detrimental to safety.

The way forward

The Queensland submission highlights a number of concerns with both the process to date and the proposed Draft Plan and supporting RIS. However, the Queensland Government does support in principle a harmonised legislative framework within which State and Territory ESI technical and safety legislation could operate. To achieve this Queensland supports:

- An industry-specific national energy safety system covering all participants consistent with the nationally agreed OHS system for Australia;
- A national model legislation and a governance model that aligns with that proposed in the National OHS Review and endorsed by COAG
- A consistent approach to Safety Management Systems for energy network operators across Australia; and

- Reduction in administrative burden for network operators particularly where an asset crosses a State border, provided safety is not compromised.

Queensland also holds that the Draft Plan and RIS do not adequately articulate a problem, or provide appropriate analysis to justify how any of the proposed options would alleviate this problem. The approach proposed in the Draft Plan and RIS will be resource-intensive to achieve, with little or no gain and has adverse impacts on related safety legislation.

Queensland considers that the mutual recognition of safety management systems across jurisdictions is a much simpler solution. In Queensland and New South Wales, Country Energy currently uses its New South Wales Safety Case to supply electricity to parts of Queensland as agreed between regulators in those States. Further agreements of this nature between other jurisdictional regulators may be all that is needed to eliminate the regulatory burden referred to in the Draft Plan and RIS.

Queensland believes that more consultation and information gathering is needed to determine the extent of any problem. The current legislative requirements should be better mapped and discussed with regulators to determine areas of commonality and how these can be easily extended.

The issue of standards development also needs to be highlighted and considered as part of the national reform agenda. Regulators rely on robust and professional standards, yet the proposed development model from Standards Australia jeopardises the ability for standards to be quickly and impartially developed or modified.

PART B: RESPONSE TO SPECIFIC ISSUES RAISED IN THE MCE LEADERS GROUP DRAFT HARMONISATION PLAN

Background

Queensland does not support energy safety regulation being incorporated into general occupational health and safety legislation. For both electrical safety and petroleum and gas safety regulation, Queensland supports separate State legislation as is currently in place due to the unique hazards and significant energy sources involved in these industries, where specialised knowledge is needed to deal with these issues and the lowering of safety standards could be an outcome of the process.

A National Mines Safety Framework (NMSF) is currently being developed under the auspices of the Ministerial Council for Mineral and Petroleum Resources. A key part of the strategy is development and implementation of a nationally consistent legislative framework for mining safety and health. The NMSF does not propose or consider a single national regulator or incorporation under a national regulator, and development of the legislative framework for mining-specific issues is unlikely to be finalised until the final draft of the national OHS legislation is released. A similar approach should be taken to development of the Final Plan by the MCE and the Leaders Group, if a fully consistent and harmonised OHS system is to be achieved.

Should the MCE wish to continue to pursue a separate regulatory model for the transmission and distribution network sectors, 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 have been done prior to proposing a national RIS. Queensland also believes that any proposals contained in the Draft Plan should be aligned as closely as possible to the National OHS System, as contained within the National OHS Report.

Scope

Comment Box

The Draft Plan mentions electricity generation and ‘gas plants’. Gas plants are not defined and it is unclear whether this is intended to include upstream on-tenure petroleum and gas processing facilities and/or downstream type petroleum and gas refineries. In either case these are outside the scope of pipelines and distribution networks and should not be included. Power generators should be excluded from the scope both from a gas and an electricity perspective.

The Draft Plan makes little or no mention of LPG reticulation networks of which there are a number in Queensland but it is presumed that these fall under the definition of distribution networks and would be included.

The scope suggests that the harmonisation and nationalisation of gas metering regulation would be included however it is understood that this may be occurring separately as part of national metering agendas

Reform pressures from current arrangements

The Draft Plan provides no detailed analysis of current jurisdictional arrangements, their variances and how electrical and gas safety and technical matters are currently regulated. Without such an analysis problems can only be speculated on.

There is also no clear separation of gas issues and electricity issues in many areas of the plan.

In Queensland and New South Wales Country Energy currently uses its New South Wales Safety Case to supply electricity to parts of Queensland as agreed between regulators in those states. Further agreements of this nature may be all that is needed to eliminate the regulatory burden referred to in the Draft Plan and RIS.

Problems with current arrangements

Workforce Mobility

The Draft Plan raises issues with regard to "limits on workforce mobility". The Queensland Government is not aware of any regulatory impingement in the Queensland gas industry. Gas network and transmission pipeline workers are not licensed nor are specific operating procedures prescribed. Electrical workers' licences from other jurisdictions are also accepted in Queensland, allowing free movement of electrical workers into Queensland under mutual recognition, whereby an out-of-State licence holder is eligible to apply for and receive a relevant Queensland licence. Furthermore, under COAG direction, a national licensing system is due to commence operation in July 2012 and national electrical licences are planned from that date.

Limits to cross border emergency response

There are no gas issues raised in the Draft Plan, and at this time, DEEDI is not aware of any regulatory impingement on this issue.

In Queensland and New South Wales, Country Energy currently uses its New South Wales Safety Case to supply electricity to parts of Queensland as agreed between regulators in those States. Further agreements of this nature between other jurisdictional regulators may be all that is needed to eliminate the regulatory burden referred to in the Draft Plan and RIS.

Regulatory inconsistency and compliance burden

Paragraph 99 makes a number of generalised and unsubstantiated comments but provides no evidence to substantiate or quantify differences in regulation and compliance.

For Queensland gas network operators, no prescribed format or separate documentation is required for a safety management plan. Organisations can "map" their current systems to the legislative content requirements. Therefore there is only limited additional impact.

Benefits of Harmonisation

The Queensland Government supports harmonisation of regulatory arrangements. Indeed it is considered that a harmonisation model as opposed to the proposed national regulatory model would be just as effective, require less time and resources to achieve and maintain and would not have the consequences on related energy safety regulation upstream and downstream.

Legislation and a new Australian Standard

Queensland does not support single national legislation. Queensland does support harmonisation of current State and Territory legislation that is consistent with the National OHS Review that allows for specialised legislation to address specific industries or local issues. States and Territories also need to retain their ability to inspect, audit, investigate and take compliance action against operators, if required.

The legislative model recommended in the Draft Plan assumes that legislation passed in one State would be adopted by all other responsible Parliaments as a complementary law without alteration or addition. The plan argues that this is the only way to avoid State deviations from a nationally agreed legislative model. This is not the case, as some Parliaments may wish to add or subtract elements when calling up the complementary law in the same way the Leaders Group has argued that model legislation could be amended when mirrored into State Acts.

The legislative model articulated in the National OHS Review, where States follow the model in adapting their law to give an agreed outcome, provides greater capacity for the laws to be adopted without alteration. This could be included in an Inter-Governmental Agreement (IGA) similar to the IGA for Regulatory and Operational Reform in Occupational Health and Safety.

Any issues where a state failed to meet the agreed outcome of the model legislation in its own legislation could be dealt with at the MCE. This is the case in the National OHS Review where model legislation is created by Safe Work Australia (as described above) and States align to the model via the WRMC. This is an established method of national uniformity which has been endorsed by COAG.

Comment Box

Both the Draft Plan and the RIS make no discussion of the impact of the proposals on safety regulation upstream and downstream of the two sectors involved or the impact on jurisdictional regulators' resourcing for the revised and differing safety regimes and the increased cost in making policy/legislation change.

In Queensland petroleum and gas "operating plant" both upstream (drill rigs,

production and processing facilities), midstream (pipelines and distribution networks) and downstream (gas users over 50GJ/hr) are all required to have safety management plans. The requirements and obligations are the same for all these sectors.

Creating a separate regulatory framework for the 'midstream' sectors would create the very same problem/issues the plan purports to rectify for organisations operating in Queensland in multiple sectors. The organisations would then be subject to different requirements and regulation and potentially have different safety obligations and "approval" processes.

Similar issues would arise with electrical contractors who increasingly work for both the general public in domestic premises and workplaces and network operators on the distribution network. Under this plan, these contractors would have separate and differing electrical safety obligations and requirements depending on which type of electrical work they are undertaking. At the moment they have the same obligations in either context. This would actually increase the regulatory burden on this segment of the electrical industry.

The Plan and RIS also do not consider the impact on jurisdictional regulator resourcing. Additional resources would be required because there are different regimes to administer. In addition, from a gas perspective regulation could increase as "safety cases" would have to be received and assessed, or third party audits reviewed and assessed, which is different from the current arrangements.

There would also be an additional policy and legislative review and maintenance costs in dealing with what are effectively separate safety regulation systems.

In regard to the legislative framework, more work should be undertaken to look at the existing state-based legislation and develop a model framework based on the best practice aspects of that legislation rather than create stand-alone national legislation.

An example of best practice can be found in Queensland and New South Wales where Country Energy currently uses its New South Wales Safety Case to supply electricity to parts of Queensland as agreed between regulators in those states. Further agreements of this nature may be all that is needed to eliminate the regulatory burden referred to in the Draft Plan and RIS.

Energy Network Safety System

The key regulatory instrument proposed in the Draft Plan is the Energy Network Safety System (ENSS), which is consistent with the performance-based safety management systems (also known as 'safety cases' in some jurisdictions) which currently operate in most States and Territories.

The Queensland Government supports moves to harmonise safety management system requirements in principle, although the Draft Plan and RIS do not provide substantial evidence that current requirements are inconsistent. The fundamental difference for Queensland is that the existing legislation does not require the safety management system to be approved or 'accepted' up-front. This issue is discussed in more detail under the "Validation, Submission and Acceptance" heading.

Currently, operators of gas pipelines or gas distribution networks in Queensland require a compliant safety management system that addresses content issues (elements) listed under s675 of the *Petroleum and Gas (Production and Safety) Act 2004*. These elements are consistent with current Australian Standards (AS4801:2001 and AS4804) for safety management plans (SMP). These requirements are generally not prescriptive but are performance-based and the plan itself has no prescribed format so that a new SMP document does not have to be made as long as all the elements are addressed.

Queensland also considers that an ENSS must be asset-specific (or network-specific in the case of the scope of the Draft Plan). A company operating across all of Australia should not have one ENSS. However, where an asset crosses a State boundary then one ENSS can apply.

Mandatory standards

Should mandatory standards be adopted by the new national framework then Queensland would only support a limited number of mandatory standards relating to critical electrical safety issues, which could include:

- overhead powerline exclusion zones;
- overhead powerline ground clearances;
- high voltage live line work; and
- bushfire mitigation.

The Petroleum and Gas (Production and Safety) Act 2004 currently has a system of mandatory standards and preferred standards (see section 7 of the *Petroleum and Gas (Production and Safety) Regulation 2004*) and this concept is supported as it provides flexibility for other approaches where it can be demonstrated there is equal or less risk provided by the alternative method. Currently AS2885 is a mandatory standard. AS4645 and other relevant standards are also preferred.

Comment box

Queensland supports a limited number of mandatory standards as outlined above.

Robust and professionally developed standards that are impartially developed are supported and are a key part of the regulatory framework.

Validation, Submission and acceptance of an ENSS

Currently there is an obligation to make, implement and comply with a SMP for Queensland gas networks and pipelines. Queensland does not require SMPs to be independently validated before operations commence. Also safety management plans are not required to be submitted, accepted or approved prior to the commencement of operations.

These plans are not "approved" by the regulator, however, the regulator has the ability to require revision and issue directions. The regulator undertakes inspections and audits to ensure compliance with the SMP.

Comment box

Queensland objects to the requirement that a safety case be accepted or approved by the regulator and does not support this approach. It is considers this makes the regulator a party to the safety system when clearly responsibility for the safety of the plant/operations lies solely with the operator. Prior approval by the regulator is also not supported because Queensland does not have the resources to undertake this role.

The Queensland gas regulator would support independent validation of safety cases prior to operation as a regulatory requirement. However, the regulators' ability to audit and review a safety case at any time and require modification to it should remain.

A safety management system is a "living system" subject to change and modification so any one-off validation by a regulator is precisely that. It would only be a validation that the system at the time of the audit met the content requirements (i.e. a desktop audit). An audit that merely confirms that a system exists, and covers the elements required by the standards or regulation, has only limited value. The implementation of the safety management system is of far more importance and where most non-compliances are found. The Draft Plan seems to totally focus on the up-front validation to the detriment of other aspects of safety regulation.

What is essential is a verification audit which needs to be undertaken on an ongoing basis. In addition, the sampling used in the audit needs to be undertaken across all facets and regions of the organisation. This would mean verification inspection/audit should occur broadly for an organisation operating in all States. A State regulator would not accept any audit that did not include verification across activities within that State.

Small and Isolated Networks

Electricity Industry

There are a number of isolated grids in Queensland's more rural and regional areas however these are generally operated by Ergon Energy which has comprehensive safety management systems. There is a number of very small (i.e. 30 connections) isolated network operators, for example on Moreton

Island. These very small network operators are not currently required to have a safety management system. They are required to ensure their works are electrically safe and comply with AS/NZS 3000. Queensland supports these current arrangements continuing.

Entities such as QRail and operators of large facilities such as aluminium smelters may also require alternate compliance paths, so Queensland would require for this option to remain open to them.

Gas Industry

With respect to gas there are also many small or isolated networks in Queensland, particularly LPG networks. Flexibility is already provided in the Queensland legislation (see s675 (2) of the *Petroleum and Gas (Production and Safety) Act 2004*) for these small networks.

Small and isolated networks would need to be defined and flexibility in approach is preferred over exemptions.

Issues with respect to "embedded networks" at single premises are currently being considered by DEEDI. It is proposed that the definition of a distribution network would be modified such that the pipe work within the single premises is excluded and dealt with as a particular type of installation, subject to AS5601 'Gas installations' along with some additional emergency response and maintenance requirements.

Central ENSS Register

A central ENSS Register would be required under any national legislation and/or national regulator model, particularly if systems are to be approved up-front. If third-party auditors are to be certified, these details would need to be included. The details of any subsequent audits, inspections or investigations could also be included. Details of incidents could also be recorded. Maintenance of this register and access to it will be significant issues if such a register is to be current and effective.

Standards Development

Comment Box

Standards development in Australia has reached crisis point with Standards Australia removing itself from standards development unless the standards are sponsored by participating organisations. It is critical to ensure that any standard development process incorporates adequate regulator participation to balance and control industry interests to ensure high safety outcomes are maintained.

MCE needs to press COAG to look at the whole issue of standards development in Australia.

From a gas perspective there have been instances on standards committees where industry business imperatives have sought to override safety

outcomes. Allowing an industry body (such as ENA or even the Leaders Group which only has two regulators on it) to develop standards raises similar issues and is not supported.

It must be noted that regulators will not support the call up of standards in legislation that do not provide for safety outcomes as good as reasonably practicable.

Legislative Implementation

Queensland does not support national regulation. This seems an unnecessary solution to address unsubstantiated problems. It would also cause conflict with existing safety legislation upstream and downstream.

Comment box

Queensland does not support a separate piece of legislation for these energy industry sectors or calling up legislation from another State. Rather a harmonisation model is preferred and it is suggested the approach being used in the National OHS Review, being undertaken by WRMC and endorsed by COAG, be considered. This would require model legislation to be mirrored in each State Act. For electricity and gas this would allow any modified provisions for network operators to reside with safety requirements for other safety obligation holders such as upstream and downstream gas plant, electrical installations and contractors under a single Act in each State.

Worker Mobility

Much is made of this issue in the Draft Plan, yet for gas this is not an issue. In Queensland there is no requirement for workers on distribution networks or pipelines to be licensed. Electrical workers' licences from other jurisdictions are also accepted in Queensland, allowing free movement of electrical workers into Queensland through mutual recognition, which entitles an out-of-State licence holder to apply for and receive a relevant Queensland licence. While competence of workers to undertake the work they perform must be demonstrated under a safety management system, no evidence is provided in the Draft Plan or RIS that demonstrates how worker mobility is a significant problem elsewhere in Australia.

National Energy Skills Passport

Queensland has been working with Energy Skills Queensland and industry stakeholders with a view to the possible introduction of minimum competency requirements for identified worker types in gas distribution networks. These would be based on national competencies and would provide a minimum competency requirement for all workers. A similar requirement has already been introduced in Queensland for petroleum drilling rig workers. The requirement would provide a minimum competency or entry level and the assessment of skills and training required for a particular role still needs to be accommodated under the safety management system. This proposal would allow for greater mobility of workers, particularly as many are contractors.

Queensland supports the worker passport system and is participating in a trial of the system for electrical workers but only on the basis that this system is in addition to the occupational licensing system for electrical workers.

Comment Box
Maintenance of a national energy skills passport, if it was introduced, should sit entirely with industry. It is not a role for government.

Governance
Queensland does not support the proposed governance arrangements of a single national regulator or uniform legislation. Separate policy and regulatory groups are not supported nor is any model that does not provide for appropriate regulator participation and policy development. What the Draft Plan fails to realise is that the majority of technical/safety jurisdictional regulators also develop and maintain the policy and legislative framework. Separation of these roles cannot provide for best practice because policy would be developed in a technical or industry knowledge vacuum.

Comment Box
In regard to governance, the proposed model is not supported because it allows an industry-led body to provide oversight of the regulation of the industry, via the Policy Committee containing only one electrical and one gas regulator amongst seven members.

- Queensland recommends the Safe Work Australia model in terms of the role and composition of the governance committee that has been established to oversee and implement the national OHS review and legislation by WRMC under the auspices of COAG.
- This governance model provides that every State regulator has a seat at the table, along with two union representatives, two employer representatives and an independent chair. Legislative changes require the support of a majority of committee members but cannot proceed without the support of a majority of the regulatory members.

Alternatively an industry advisory body could be established that provides input to a Regulators Policy Committee which then reports to MCE.

Framework Implementation
This section outlines the considerable work that will need to be undertaken to implement any proposals. The key concerns here are that currently there are multiple reform agendas across many areas. For agencies that cover all aspects of petroleum and gas this provides for an unachievable workload.

Given that there appear to be no significant problems to resolve and that the proposed reforms need to firstly consider broader reforms of national OHS legislation, it is proposed that any further work on the harmonisation plan be delayed until any implications from the outcomes of the National OHS Review are known, and the issues raised in this submission have been addressed. This would both stagger workload for agencies and allow for a more considered approach to be taken.

PART C: RESPONSE TO SPECIFIC ISSUES RAISED IN THE CONSULTATION REGULATORY IMPACT STATEMENT

Summary

Queensland has significant concerns with RIS in that:

1. It does not follow COAG best practice.
2. PWC does not seem to have consulted many actual operators of networks (see table 1). Therefore the responses in many of the tables (particularly those purported to represent "business") would have to be considered as unrepresentative.
3. Many of the tables are incomplete.
4. Much of the RIS's rationale and analysis lies solely on figures provided by the Victorian Regulation RIS. There is no supporting information on how this number was calculated or indeed if it is representative of the likely costs of compliance in other states.
5. There has been no consideration or analysis of the adverse impacts of the proposals.

It is considered therefore that the RIS is seriously flawed and adds little to the Draft Plan.

General comments

It is the position of the Queensland Government that the *Energy Technical and Safety Regulation Consultation Regulatory Impact Statement* (the RIS) does not adequately outline any problems in the industry. Page nine of the COAG *Best Practice Regulation: A Guide for Ministerial Councils and Standard Setting Bodies* (October 2007) states that:

> *The RIS should clearly identify the problem(s) that need to be addressed. This part of the analysis must:*
>
> - *present evidence on the magnitude (scale and scope) of the problem;*
> - *document relevant existing regulation at all levels of government, and demonstrate that it is not adequately addressing the problem;*
> - *if the problem involves risk, identify the relevant risks and estimate the probability of an adverse outcome, including where no new or amended regulations are made and where government action would reduce the risk; and*
> - *present a clear case for considering that additional government action may be warranted, taking account of existing regulation and any risk issues.*

The RIS does not present any real evidence, nor does it offer any real analysis, on the scale or scope of the problem and on how the proposed options can address or alleviate this problem.

The RIS states that the overarching objective of the proposed changes is to simplify specific processes undertaken by businesses operating in the ESI. It is hoped that simplifying requirements will lead to a reduction in the administrative burden:

- associated with the preparation of an ENSS across all jurisdictions;
- associated with getting an ENSS verified; and
- for employees moving jurisdictions.

The RIS states that the objective of harmonising and implementing legislation will be to reduce the level of administrative burden experienced by businesses that are required to develop more than one ENSS and the additional administrative tasks that are associated with translating and communicating state and territory requirements. However, the RIS does not provide any indication of how many businesses currently are required to develop more than one ENSS. Furthermore, on page 52, the RIS notes:

> *Businesses have indicated that the majority of ENSS requirements between jurisdictions are for the majority similar and do not cause additional administrative burden.*

This statement is contradictory to the central argument being presented in the RIS. If businesses themselves have indicated that the majority of ENSS requirements between jurisdictions are similar and do not cause additional administrative burden, then it is not clear how harmonising ENSS requirements will contribute to the objective of the RIS (which is a reduction in the administrative burden).

As noted in the RIS, in Australia there is one electricity transmission business in each State or Territory, with specific cross-border interconnectors. In addition, a majority of the electricity distribution networks are monopoly assets within defined geographical areas. Therefore, there is a very limited scope where these bodies can enter into cross-border arrangements or operations (or operate in more than one State or Territory and therefore be subject to more than one ENSS).

Within the RIS, there seems to be a real lack of understanding of how the ENSS operates. This is made evident on page 53 of the RIS, where it asks industry operators the following:

- how long it takes to develop an ENSS;
- how often an ENSS is required to be developed;
- how often an ENSS is reviewed;
- if a single harmonised legislative framework was introduced, how much time would be saved in developing ENSS; and
- if a single harmonised legislative framework was introduced, how much time would be saved in translating and communicating requirements in each state and territory?

This information is central to the core argument for the proposed changes. It would have made sense for this information to have been included in the RIS, and be used to justify the need for the proposed change. Instead, the RIS

appears to be asking industry for information to support the assumptions made within the RIS that there is a need for change.

As noted on page 5 of the RIS:

> *The consultation RIS includes many unanswered questions on the cost of the current situation (the base case) and the difference any changes would make (proposed regulatory options). Using information collected after the consultation RIS has been released, a more robust and rigorous assessment of the outcomes of the proposed changes will be included in stage two of the RIS process which is the release of the decision RIS.*

This is another example of how the RIS fails to define or articulate what the current problem is, nor does it present a clear case for change. The approach outlined above will not allow State-based regulators or other stakeholders to provide informed feedback and commentary on the more rigorous and robust assessment of the options which are intended to be contained in the final or decision RIS. This approach, and the inability of the RIS to define or articulate what the current problem is, or present a clear case for change, is not consistent with good regulatory practice.

Further specific comments on statements made in the RIS can be found in Attachment 1.

Queensland also notes that in its *Annual Review of Regulatory Burdens on Business* released in September 2009, the Productivity Commission noted that the work of the Leaders Group should be consistent with regulatory best practice processes and regulatory design principles as required under the COAG Best Practice Regulation Guide. The Productivity Commission further noted it will be important to take into account the compliance burden associated with different options and noted that outcomes-based regulatory approaches are generally more efficient because they enable businesses to adopt compliance strategies that are most cost effective.

Attachment 1 – Further Comments on RIS

2.2 Gas Supply Chain

Table 4 lists 7 gas pipelines for Queensland, yet there are over 114 pipeline licences in Queensland with more than 12 pipeline operators.

Table 5: Queensland has one natural gas network operator (APA Group) along with several operators of small LPG networks (Origin, Elgas and Kleenheat and some other small companies with very small networks).

Table 5 makes the mistake of listing the network owners rather than operators. It is the operators that need to make, maintain and comply with safety management systems, not the owners. It also is noted that PWC does not seem to have consulted many actual operators of networks (see table 1).

3.2 Regulatory Inconsistencies

Table 7 which outlines the approach taken by different regulators is incomplete. Not only does it not include all jurisdictions but the information is not completed for those included.

The Queensland approach to safety management systems should be considered. In Queensland there is no requirement for a specific new document or system to be developed. It is expected that an organisation will have an existing safety management system, and that this can be mapped across to the legislative content requirements in Queensland. In this way the impost is minimised and content requirements will be largely similar in all jurisdictions.

Table 8 is incomplete and has spelling mistakes. For Queensland gas, the regulator does not accept or approve an ENSS. The box should state “no approval required”. *Frequency of audit box*: replace with “Gas audits are scheduled on a risk basis. The regulator can issue direction for plan to be modified or non-compliances to be rectified”.

Extrapolation of the information used in the two Victorian RIS to calculate administrative burden is flawed. For example, this is the cost taken to prepare a Victorian safety case. No analysis of the actual differences in ENSS requirements has actually been made.

The RIS repeatedly states industry has indicated that differences are minimal, but goes on to say there must be an additional administrative burden, despite lacking verifiable evidence.

3.3 Worker mobility

Both the Draft Plan and RIS argue the current regulatory framework impacts on worker mobility. This is not the case in Queensland. Gas pipeline and distribution network workers are not required to be licensed and there is no regulatory barrier impacting on mobility. Electricity transmission and distribution workers are licenced, but out-of-State workers are mutually

recognised for a similar licence to the one they hold. Mobility will be further improved with the introduction of national licensing from July 2012.

6 Impact Analysis

Harmonising Legislation

Table 11: The reported response from Regulators is illogical. How can there be overall support when NSW and GTRC (gas regulators) do not support it?

The key issue for a central register is who is going to maintain it? The costs in setting up such a register and for all regulators/parties to be able to have various levels of access would be considerable. These have not been estimated.

Governance

It is not understood why the RIS spends considerable time discussing the cost benefit of a national regulator when the Draft Plan does not support this option.

Certification of ENSS summary table p 64 – table states that a "con" of certification by the governing body is a conflict of interest? This is incorrect for Queensland gas assets which are privately owned and operated.