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4 April 2011

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Dear Sir/Madam

Submission from the National Generators Forum on the Draft Model Work Health and Safety Regulations and Codes of Practice

Please find attached the submission from the National Generators Forum (NGF). The NGF represents the market-facing electricity generators in the National and Western Australia Electricity Markets. It represents some of Australia's largest businesses that add some \$17.8 billion in gross value to the national economy.

Electricity generators have an excellent work health and safety record that is the envy of other industries.

The NGF welcomes the opportunity to comment on the draft Model Work Health and Safety Regulations and related Codes of Practice. The NGF submission is very extensive and the key aspects of the submission have already been discussed with Safe Work Australia.

The submission is in three key parts: an overview of the key issues for NGF members, a chapter-by-chapter commentary as warranted, and a reworking of Chapter 6: Construction Work. The NGF's submission on the MCE's Discussion paper *Harmonisation of Energy Supply Industry Technical and Safety Regulation* is also attached in order to provide further context. In summary, NGF members have three overarching key issues that must be addressed decisively in order for the electricity generation sector to operate efficiently and effectively as a key infrastructure player. The overarching issues are:

- **Part 4.7: Electrical Work** – where electricity generators seek to be removed from the exemption of Part 4.7 if, indeed, a *full* exemption is meant to apply, or,

If only a *limited* exemption is meant to apply to Electricity Supply Authorities, ensure only one clear national definition of Electrical Supply Authority so that the jurisdictions will apply the regulations in a consistent manner.

- **Chapter 6: Construction Work** – The construction work issue has been a long-standing and frustrating issue for electricity generators because genuine non-construction activities, such as operation, testing, maintenance, repair, refurbishment and outage work on existing operational plant has been regarded in some jurisdictions as construction work, not in some other jurisdictions or applied inconsistently within jurisdictions.

The NGF offers three alternatives for separating out genuine construction work from non-construction work, with a clear preference for the first alternative and a greater preference for the second alternative over the third one. These alternatives are:

- **Option 1** – fully exempt non-construction industry sectors from the Construction Work regulations unless significant traditional housing, commercial, and civil engineering construction sector projects occur within the boundary of an operating site.
 - **Option 2** – modify clause 6.1.1 (3) and ensure the definition of “structure” explicitly excludes “plant” (at least for the purposes of Chapter 6).
 - **Option 3** – redraft Chapter 6: Construction Work to separate and appropriately address the management of high risk maintenance work and WHS planning for significant maintenance projects.
- **Excavation and Demolition** – treating all excavation and demolition work as construction work is not supported. However, regulations dealing with these activities should be treated as specialised hazardous work and should be included in Chapter 4: Hazardous Work in order to apply them more broadly to both construction and non-construction work.

Finally, the NGF has a very active Occupational Health and Safety Working Group and group members are pleased to provide any further requested information or participate in further discussion.

Please contact, as required, the NGF’s Technical Policy Advisor, Dr. Harry Schaap, on 03 9499 4249, 0413 623 043, or via email at Harry.Schaap@tpg.com.au.

Yours sincerely



Malcolm Roberts
Executive Director

Model Work Health and Safety Regulations and Codes of Practice

Organisation name: National Generators Forum

The National Generators Forum (NGF) represents electricity generators that have very well established occupational health and safety standards. Within the electricity supply industry in general, and within the generation subsector specifically, all businesses engage work health and safety professionals and implement work health and safety requirements to the highest level of 'best practice' in industry. The generation subsector had no fatalities amongst its workforce and contractors in 2008/09 and the statistics show comparatively few compensable claims, lost time injuries or work days lost due to injury.

General comments

The NGF thanks Safe Work Australia (SWA) for its efforts in developing the exposure draft of the Model Work Health and Safety Regulations within a relatively tight timeframe. The document forms the basis for harmonisation and, with some amendments, will provide a means for more efficient Regulation of industry.

From an NGF perspective, while specific comments and recommendations are made on a section by section basis in the table below, there are two key areas that in their present form are unacceptable to generators nationally – vis: Part 4.7 (Electrical Work) and Chapter 6 (Construction Work) (including excavation and demolition). A consolidated summary of the NGF position is provided here under 'general comments' with the details in the relevant parts that follow:

Part 4.7 Electrical Work:

- If intent is full exemption for Electricity Supply Authorities, remove Generators from the exemption;
- If intent is limited exemption for Electricity Supply Authorities, ensure no jurisdictional definitions are permitted – only allow one model WHS Regulations definition of Electrical Supply Authority in order to ensure national consistency in application of the regulations by the jurisdictions.

Chapter 6 Construction Work:

- **Fully exempt** non-construction industry sectors, or at the very least, Electrical Supply Authorities (including Generation) - unless significant "*traditional housing, commercial, and civil engineering construction sector*" projects occur within the bounds of an operating site (i.e. significant projects which are not the 'operation, testing, maintenance, repair, refurbishment, incremental improvement and overhaul / outage work performed on existing operational plant' or the 'testing, maintenance, repair, refurbishment, or replacement work of a minor nature carried out in connection with a structure');
- **Or** make recommended modifications to Section 6.1.1 (3) **and** ensure the definition of 'structure' explicitly excludes 'plant' (at least for the purposes of Chapter 6);
- **Or** revise Chapter 6 Construction Work to separately and appropriately address the management of high risk maintenance work and OHS planning for significant maintenance projects.

Excavation and Demolition:

- Treating all excavation and demolition work exclusively as 'construction work' is not supported;
- Their application must not be confined (or appear to be confined) to the 'construction industry', 'construction sites' or 'construction work' in the traditional sense or other use of these terms;
- Regulations dealing with Excavation and Demolition are best and legitimately placed as specialised 'hazardous work' (i.e. within Chapter 4 'Hazardous Work') and thereby applicable to both construction and non-construction activities; and
- Section 6.3.9 Notification of regulator of certain excavation work, however, must be applied exclusively to 'Construction Work'.

NGF members strongly believe that these key modifications to Parts 4.7 and Chapter 6 are so overwhelmingly essential that failing to address them adequately will:

- Negatively impact health and safety within the generation sector;
- Result in unnecessary and significant regulatory, operating and financial burdens on this industry sector for no effective workplace health and safety improvement;
- Potentially result in outcomes which will in turn significantly impact costs to end users / consumers;
- Render much of the national streamlining and harmonisation activities under the Model Work Health and Safety Law irrelevant to key regulations impacting the generation sector, as jurisdictions would continue their piecemeal approach to work health and safety regulation; and
- Initiate a plethora of applications to jurisdictional regulatory authorities for exemptions under Part 10.3 of the exposure draft, that:
 - Will unnecessarily tie up significant organisational and, particularly, regulator resources best expended elsewhere;
 - Require where exemption is refused, written notice of the refusal and the [sound] reasons for the refusal as per 10.3.13 of the exposure draft;
 - Where exemption is refused, lead to decisions being reviewed as per Part 10.1, and the subsequent costs to both individual organisations, but in particular, the jurisdictional regulatory authority and hence the community for something that can be so easily and legitimately addressed now.

To date these issues remain unresolved despite the substantial work over an extended period invested by the NGF members and other key stakeholders to inform and work with Safe Work Australia, prior to drafting the regulations. Regrettably so far, advice, to deliver the necessary safe, logical / sensible, and legitimate outcome in this area has not been heeded.

The NGF exhorts Safe Work Australia and other key stakeholders in decision-making positions around the drafting of the WHS Regulations (and Section 6 Construction Work in particular), to fully embrace sensible and reasonably practicable outcomes in this area.

The NGF remains committed to the effective, efficient national harmonisation of work health and safety legislation, and is willing to engage with SWA further on these issues.

Chapter Comments

Chapter 1: Preliminary

NGF members have expressed concern about the treatment of some definitions in Section 1.1.5 requiring further access to the Regulations and also the Schedules (e.g. *high risk construction work* and *high risk work*). Such links are not easy to follow and the NGF believes best practice would be to ensure all definitions are fully contained within the definitions section of the document.

Section 1.1.5 Definitions

- Control measure should be reworded as *“in relation to risk to health and safety, means a measure implemented to eliminate the hazard and or reduce or minimise the risk”*.
- Include the definition of an Electrical Supply Authority as described under general comments:

“Electricity supply authority” is a business whose primary purpose is the generation, transmission or distribution of electricity for the public.”

- If exemption from Chapter 6 Construction Work for generators and other industry sectors is not achieved, or work on plant is not excluded from Construction work, the new term “maintenance work” (as per the recommended rewording separating maintenance work from construction work) should be included in this section:

“Maintenance work - see Regulation 6.1.2”

***maintenance work** means defect repair, preventive routines, overhauls / outages, plant life extensions, incremental improvement, testing to fault find or to prove functionality, all carried out in connection with fixed plant following installation and commissioning and prior to decommissioning.*

This will require sectors other than the construction industry to meet the criteria for risk management set out in the Regulations for Chapter 6 without their current ‘high risk’ maintenance work practices being incorrectly defined as construction work. It will significantly minimise the associated negative impacts which will result from being considered as construction work, while ensuring ‘high risk’ maintenance work is subject to the rigour of the same proposed risk management processes.

- Should a full exemption to Chapter 6: Construction Work, not be achieved, and Option 3 above is executed, *“High risk construction work”* is to be retitled *“high risk construction and maintenance work”* and the definition for *“safe work method statement”* under (b) is revised to include the term *“high risk construction and maintenance work”*.
- “Structure” – for the purposes of Chapter 6, refer to Chapter 6.

Section 1.1.6

Determination by regulator – the section is difficult to follow and requires further clarification.

Part 1.2.1 Application

It appears there are words missing from this section which is difficult to follow in the absence of Schedule 1 being defined.

Chapter 2: Representation and participation

Parts of Chapter 2 are for smaller workplaces unnecessarily detailed and may detract from effective health and safety representation by being too prescriptive, such as Section 2.1.4. Allowance should be made for simpler and equally democratic processes to be applied where agreed between the PCBU and the workforce. In default of this, Regulation 2.1.4 would apply where requested by either party.

Section 2.1.7 *Training for health and safety representatives* is too specific and it should be amended so that persons conducting a business must ensure adequate health and safety training which achieves a set of recognised competencies, rather than specifying the number of training and refresher days. Failing this change, the NGF submit that a maximum of 5 days initial training with 1 day/annum refresher training has proven effective and is well accepted within the generation industry.

NGF members have expressed some concern about Part 2.2. *Issue Resolution*, particularly about the lack of clarity on dealing with issues that are not, or cannot be resolved. It is suggested that Section 2.2.1 be amended to include the following clause –

“(i) issues that cannot be resolved are to be addressed under Section 82 of the Model Work Health and Safety Act - Referral of issue to regulator for resolution by Inspector”.

The requirement to include the wording of the default resolution procedure within an agreed resolution procedure is unnecessary. Section 2.2.2 should therefore be removed. Guidance on the content of agreed resolution procedures could be included in a guidance note.

Chapter 3: General workplace management

Part 3.1 General working environment

NGF businesses have concerns about the wording in Section 3.1.3 dealing with ‘remote or isolated work’. For instance, there are several areas of power station sites that fit the definition of ‘remote or isolated work’ where the mandatory provision of ‘effective communication’ may not always be possible, although ‘assistance’ is generally within reach. It is also suggested that section 3.1.3 (2) be amended to allow for inclusion of the words “reasonably practicable” for the supply of effective communication.

Part 3.2 Personal protective equipment

The NGF recommends Section 3.2.1, 3.2.2 (subject to the comment below), 3.2.4, 3.2.5 and 3.2.6 be retained as Regulations. However, the detail in Section 3.2.3 – Air Respiratory Equipment - would be better drafted as a Code of Practice, referencing the appropriate Australian Standard. In particular the NGF notes:

- PCBUs must retain the right to mandate specific PPE for work on their worksite (this is not the worker’s choice).
- The requirement of Section 3.2.2 (a) that *“the equipment is selected to minimise risk to health and safety in accordance with [any relevant technical standard] published by Safe Work Australia on its website;”* should also refer to Australian Standards published on the Standards Australia website.

Part 3.3 First aid

The NGF considers this Part to be suitable but would appreciate an opportunity to review and comment on the ‘to be developed’ Code of Practice on first aid.

Part 3.4 Emergency plans

The NGF considers this Part to be suitable with the understanding that further detail is provided in the sections dealing with specific activities such as confined spaces, hazardous work and hazardous chemicals.

Part 3.5 Review of general workplace management measures

The NGF supports the regulated requirement to review general workplace management measures

Chapter 4: Hazardous work

Some general comments

Using Part 4.4: Falls as an example, the current drafting does not appear to provide for a risk-based hierarchy, rather the current drafting would require cumulative adoption of (perhaps inappropriate) risk controls. This also does not clearly recognise that a combination of controls, rather than controls at a single level of the hierarchy, are advisable in a number of real world applications.

This proposed regulation reflects the hierarchy of controls which currently exist in regulation 3.3.4 of the *Occupational Health and Safety Regulations 2007* (Vic). In those regulations a duty holder is required to either implement a higher order of risk control or, if that is not reasonably practicable, to implement the next practicable risk control in a descending order of priority. This approach reflects ordinary risk management practices and provides useful guidance and a clear duty for duty holders.

For example, the wording in proposed regulation 4.4.3 differs significantly from this.

Under proposed regulation 4.4.3 a duty holder would be required to first comply with regulation 4.4.3(1), then if this did not eliminate the risk of a fall, to comply with regulation 4.4.3(2), and again if this did not minimise the risk of a fall, comply with regulation 4.4.3(3), and so on. This differs from the accepted Victorian approach in that it requires that the higher order of control be '*complied with*' before proceeding to the next.

Obviously, it may not be possible or practicable to '*comply with*' the higher order of control before proceeding to the next.

By way of contrast, the drafting in proposed regulation 5.1.29(2) provides a hierarchy of guarding controls with respect to plant, which requires the duty holder to consider whether a higher order of control is reasonably practicable before proceeding to the next.

The need for a difference in approach as between Section 4.4.3, for example, and 5.1.29 is unclear. Moreover, the approach in 4.4.3 is inconsistent with ordinary risk management approaches.

The NGF supports an approach in line with the current Victorian, NSW and WA regulations which contain a hierarchy of alternative controls on the basis of implementing what is '*reasonably practicable*' in the circumstances. The NGF refers to regulation 5.1.29 as presenting a better drafting model.

Part 4.1 Noise

The NGF supports the proposed hierarchy used for the control of noise to ensure that exposure standards are not exceeded. Further, the NGF notes the repetitive nature of hierarchical control requirements for this and other parts of Chapter 4 and the health and safety representative request for a review for other parts of hazardous work (such as hazardous manual tasks) and recommends that the hierarchy of controls/health and safety representative review requirements be stated once in a Chapter 4 introductory section and then be referenced from the other Parts.

Part 4.2 Hazardous manual tasks

The NGF supports the principle of regulating requirements for hazardous manual tasks. It is noted however that this Part does not clearly articulate or detail what is and what is not a hazardous manual task (for example, as written, it could be argued that sitting at a desk could be classified as a hazardous manual task). In fact, all manual tasks could fall into the current definition of “*hazardous manual tasks*”.

The NGF recommends that a more practical approach to workplace safety would be to qualify hazardous manual tasks as “*those activities that may credibly result in a compensable injury*”.

Part 4.3 Confined spaces

The NGF expresses a strong preference for the definition of Confined Space as detailed in the Australian Standard AS2865: 2009 to be used instead of that in the draft Regulations. In particular, NGF members recommend that:

- Any reference to restricted access/egress is removed.
- Clause 4.3.2 (1) (d) (iii) on harmful concentrations of any airborne contaminants is modified as it provides insufficient guidance to industry. The criterion of ‘harmful concentrations of any airborne contaminants’ should be replaced with more definitive wording that reflects the potential risks to persons entering or working in a confined space. It is recommended that the definition clearly articulate the risk to persons, i.e. “a concentration of airborne contaminant which may cause impairment, loss of consciousness or asphyxiation”.
- Given the possible serious consequences - the words contained in AS2865 referencing concentrations of flammable airborne contaminants that may cause injury from fire or explosion are included.

The NGF recommends that Clause 4.3.3 be amended to eliminate some degree of vagueness along the following lines: ‘*A person enters a confined space if the person’s head and upper body is within, or has the potential to inadvertently be within, the boundary of the confined space*’.

The NGF consider that the wording of clause 4.3.8 (2) (b) is inconsistent with the definition as set out in clause 4.3.2 (10) (d) (iii). It is recommended that 4.3.8 (2) (b) be reworded as follows: “*if a hazard is associated with the level of oxygen or the concentration of airborne contaminants in the confined space, any change that may occur in the level of oxygen or the concentration of airborne contaminant;*”

The NGF strongly recommends that Clause 4.3.9 (2) (c) (ii), be deleted. Both the current and previous Australian Standards relating to Confined Spaces have not included this requirement – rather, it is more important to require effective mechanisms to be in place to 1) prevent entry by unauthorised persons, and 2) provide a record at each entry point of persons who have entered and exited the confined space. Requiring the names of confined space authorised persons on the confined space entry permit is an overly bureaucratic and prescriptive approach which provides no improved safety outcome, and for large confined spaces is totally impractical – particularly as there is no link between the names of persons on the permit, and the names of persons who have entered the confined space. Requiring an effective method to be in place to prevent unauthorised entry provides the desired ‘performance based’ outcome without mandating the impractical approach currently required by the draft regulations.

Clause 4.3.11 (b) requires a standby person to monitor conditions within the confined space. The NGF recommends that the wording be changed to “*monitoring general conditions within the confined space by a standby person who is in the vicinity of the confined space and, if practicable, observing the work being carried out*”. This recommendation is made to qualify what is meant by

'monitoring' ,as it may be confused with *'atmospheric monitoring'* which standby persons are not necessarily trained to carry out, and in fact may not be able to perform effectively as they are prohibited from entering the confined space. Additionally, standby persons should normally not be distracted from their duties of observing by being required to carry out atmospheric testing.

The NGF also strongly recommend that the regulations allow for alternate methods of monitoring a confined space by means other than a standby person, provided that those means are risk assessed and are determined to provide an equal or better safety outcome.

Clause 4.3.16 requires that *"A person conducting a business or undertaking must, if there is a possibility of fire or explosion in a confined space, ensure that no ignition source is introduced into the confined space from outside or within the space."* The NGF make two recommendations regarding rewording of this Clause: firstly, that consideration must be given to work being done external to the confined space which creates a source of ignition within the confined space – such as heating of the confined space surface through hot work activities.

Secondly, with regard to the requirement that no ignition source be introduced, the NGF recommends that Clause 4.3.16 is reworded to reflect the wording of Australian Standard AS/NZS60079.10.1:2009 "Explosive atmospheres - Classification of areas — Explosive gas atmospheres":

"In a situation in which there may be an explosive gas atmosphere, the following steps should be taken:

- a) eliminate the likelihood of an explosive gas atmosphere occurring around the source of ignition, or*
- b) eliminate the source of ignition.*

Where this is not possible, protective measures, process equipment, systems and procedures should be selected and prepared so the likelihood of the coincidence of a) and b) is so small as to be acceptable. Such measures may be used singly, if they are recognized as being highly reliable, or in combination to achieve the required level of safety."

and AS/NZS 61241.10:2005 – "Electrical apparatus for use in the presence of combustible dust Part 10: Classification of areas where combustible dusts are or may be present:

"The hazards presented by combustible dusts are as follows:

– the formation of a dust cloud from any source of release including a layer or accumulation to form an explosive atmosphere (see Clause 5);

– the formation of dust layers which are not likely to form a dust cloud and which may ignite due to self-heating or hot surfaces and cause a fire hazard or over-heating of equipment. The ignited layer may also act as an ignition source for an explosive atmosphere. Explosive dust clouds and combustible dust layers may exist and therefore sources of ignition should be avoided. If this cannot be done, then measures should be taken to reduce the likelihood of combustible dust and/or ignition sources so that the likelihood of coincidence is so small as to be acceptable."

In order to succinctly incorporate these concepts, the NGF recommends the wording of the South Australia OHS&W Regulations 2010 Section 4.3.16 *"Specific control - fire and explosion:*

(1) If the concentration of flammable contaminant in the atmosphere of a confined space is found to be between 5 and 10% of its LEL, an employer must ensure that a person does not enter or remain in the confined space unless a continuous monitoring and suitably calibrated flammable gas detector is used in the confined space while the person is present in the confined space.

(2) If the concentration of flammable contaminant in the atmosphere of a confined space is found to be 10% or more of its LEL, an employer must ensure that no person is allowed to enter or remain in the confined space.

(3) An employer must ensure that no work is carried out within a confined space, or on the outside surface of a confined space—

(a) if the work or any plant is likely to cause or create a risk to the health or safety of a person in the confined space; or

(b) if the work or any plant is likely to cause or create a risk of a fire or explosion.”

NGF members find the requirements of Clause 4.3.17 (2) too prescriptive and recommend that the initiation of first-aid procedures not be restricted to “outside the confined space” as there may be situations where they will be initiated from within the confined space. It is recommended that the Clause be reworded as *“A person conducting a business or undertaking must ensure that first aid and rescue procedures are initiated as soon as is reasonably practicable in the event of an emergency.”*

Section 4.3.2 (2) reads as if all confined spaces in mines are exempt. The NGF seeks clarification on whether this exemption applies to the physical workings of a mine, or whether it also includes confined spaces within plant and equipment used in a mining environment. The NGF seeks the opportunity to consult on this aspect during the drafting of the Mines Regulations.

Part 4.4 Falls

The NGF recommends that Clause 4.4.2 on hazard identification is amended to better convey the need to assess risk as follows: *“A person conducting a business or undertaking must, so far as is reasonably practicable, identify all fall hazards associated with the business or undertaking for the purposes of assessing risks associated with falls.”*

The NGF is concerned that the wording of 4.4.1 (2) d (ii) *“a slippery, sloping or unstable surface from which a person could fall”* may confuse *“falls”* with *“slips and trips”* – and suggests the following rewording *“a slippery, sloping or unstable surface at a height from which a person could fall.”*

With respect to the hierarchy of risk control, the NGF recommends that the example of *“ladder”* be removed from Clause 4.4.3 (5) (a) and replaced with *“engineering control”*, as 1) a ladder is not a risk control measure, and 2) ladders present their own fall hazards, are involved in a large number of falls from heights, and working off a ladder should not be promoted, and 3) where working off a ladder is necessary, that work should be subject to specific fall hazard control.

Sections 4.4.7 and 4.4.8 are somewhat repetitive and consideration should be given to deal with risk assessment hierarchies more collectively as recommended previously, augmented by detail in the relevant codes of practice. This is important because superior or equivalent forms of risk assessment could be able to deliver better outcomes. Their use is restricted by the very prescriptive and specific hierarchies contained in the draft regulations.

Part 4.5 High risk work

The title of this section, without an included qualification, confuses the common use of this term in workplaces across the nation. High risk work in these work places is much more than the narrow scope of high risk work required by regulation to be normally licensed. There is a strong need to qualify within the wording of the title in order to remove this opportunity for confusion (e.g. “*High Risk Work Licensing*”). The definition of ‘*high risk work*’ at 1.15 must also be modified – the term should be ‘*Licensed High Risk Work*’. In addition, the title of Schedule 4 ‘*Classes of High Risk Work*’ should be revised to Schedule 4 ‘*Classes of Licensed High Risk Work*’.

Clause 4.4.8.1 should include words regarding excluding persons as far as is reasonably practicable from potential drop zones, and swap PPE and administrative controls...and add the provision of providing so far as is as reasonably practicable a physical barrier between potential drop zones and persons.

It is noted that the duration for a regulator to make a decision about a high risk work licence is 120 days. It is submitted that this time period is excessive, and will place an unnecessary delay between a people being considered competent and being able to carry out the work.

Part 4.6 Abrasive blasting

The NGF does not have any particular comments on the part.

Part 4.7 Electrical work

The NGF’s position is that:

- Electricity generators seek exemption for all generators from the requirements of Clauses 4.7.13 and 4.7.14 in order that generators may, as an essential service, conduct work on live equipment (with appropriate risk control measures in place to ensure the health and safety of persons) while continuing to generate electricity.
- Generators do not want and have not sought exemption from the remainder of Section 4.7, and request that Clause 4.7.1 be reworded thus:

“This Part does not apply to the works of an electricity supply authority used for the transmission or distribution of electricity for the public”.

- In the interests of harmonisation, the ability of local jurisdictions to define an “*electrical supply authority*” should be removed, and that the definition be changed to:

“Electricity supply authority” is a business whose primary purpose is the generation, transmission or distribution of electricity for the public.”

The NGF strongly requests the removal of generators from full exemption as generators believe that applying the majority of Part 4.7 (i.e. with the exception of Clauses 4.7.13 and 4.7.14) to generator businesses ensures that generators, as distinct from transmission and distribution companies that operate in the public domain, are rightly treated consistently with other large industrial businesses (e.g. oil refineries, smelters and steelworks, etc.), and are required to meet the same electrical work standards.

The generators’ willingness to comply with the draft Model Work Health and Safety Regulations Part 4.7 Electrical Work is consistent with this approach and is the approach preferred by NGF member businesses.

The generation sector is not covered by the National Energy Technical and Safety Regulation harmonisation process being concurrently developed by the Energy Supply Industry Safety Committee (ESISC), and has been excluded as per the following scope excerpt from the Energy Technical and Safety Technical Regulation MCE *'Energy Technical and Safety Harmonisation Enhancement Plan'* :

"Although included in the Terms of Reference, electricity generation and gas plants have been excluded from the scope of the Plan by the Leaders Group as it is considered that:

- *they do not present the same level of risk in the public domain;*
- *the majority of risks can be adequately addressed by existing industry specific and/or the proposed model OHS legislation; and,*
- *in the case of gas plants, any risks not covered by OHS legislation is largely addressed through petroleum industry safety regulation."*

While the generation sector is regulated to a limited degree by some State and Territory jurisdictions via specific energy technical and safety legislation, as detailed within the NGF submission on the *"Discussion Paper – Harmonisation of Energy Supply Industry Technical and Safety Regulation"* to the Energy Technical and Safety Leaders Group which supported generator exclusion (copy attached), there is limited reason and support for the continued application of current energy technical and safety regulatory requirements (designed predominantly for the regulation of transmission and distribution networks and matters pertaining to electricity and public safety) to generators on a national or jurisdictional basis (the NGF notes that there is currently no process, or progress, to harmonise the differences in State and Territory based energy regulations for generators).

As has been demonstrated to be a successful model in New South Wales, where generators have been and are not currently subject to any energy technical and safety regulation, the NGF strongly supports generators being predominantly subject to OHS legislation and regulation alone (i.e. no or at least very limited energy technical and safety regulation).

With regard to the definition of "Electricity Supply Authority", there is significant concern that state based regulators will not take a harmonised approach in their application of the definition, with the result that some jurisdictions may treat different types of generators differently within that State (e.g. wind-farms could possibly be exempt and coal fired power stations not) and that different jurisdictions will differ in their approach (e.g. coal fired power stations exempt in one state and not in another). The different approaches by different jurisdictions currently results in duplication of effort within organisations, where that effort would, through a harmonised approach through application of a consistent definition, be better used in improving workplace safety.

The NGF notes that there is some confusion regarding the intended application of the Clause 4.7.1 exemption, as follows:

- The SWA Issues Paper states in relation to Part 4.7 Electrical work, that:
 - *"Importantly, the Part is not intended to apply to the works of an electricity supply authority (however described) used for the generation, transmission or distribution of electricity for the public as these authorities are generally regulated elsewhere."*
- Some understand this to mean that transmission, distribution and generator organisations are fully exempt from these proposed '4.7 Electrical work' regulations.

- However, NSW's WorkCover has communicated in February 2011 to a number of NSW's NGF members that the exemption was not intended to be a full exemption from all the requirements of Part 4.7, but only an exemption from complying with those requirements for the specific 'works of an electrical supply authority **[actually] used** for the generation, transmission or distribution of electricity to the public' (this to better accommodate industry specific management of areas such as live line work, and areas believed to be covered by energy technical and safety regulation). The perspective is that all other 'electrical supply authority' works which are **not directly used** for the generation, transmission or distribution of electricity to the public need to comply with all Divisions of Part 4.7 (e.g. office, workshop, and plant electrical installations and associated electrical work not directly used to generate, transmit or distribute, etc., should not be exempted).

The NGFs arguments remain valid and are supported by the above interpretations.

Finally, some additional comment on clause 4.7.23 - this clause establishes requirements related to work near overhead electrical lines but it should be clarified so that; *"this part does not apply to work undertaken by or on behalf of an electrical supply authority in relation to electrical equipment or an electrical installation that is part of the works of an electrical supply authority"*.

Part 4.8 Diving work

The NGF has no specific comments on this part.

Chapter 5: Plant and structures

The NGF strongly recommends that:

- The current confusion surrounding the definitions of "Plant" and "Structure" are removed.
- That the definition of "Structure" for the purposes of Chapters 5 and 6 does not include reference to "Plant".
- That the definition of "structure" in the Model Work Health and Safety Act be amended to remove the current confusion.

The wording of the definitions contained in the Act have been used by the NGF to demonstrate how they may be, and are being, interpreted – that all plant must be considered a subset of structure, as all plant, whether fixed or moveable, temporary or permanent, has been constructed. The NGF supports the clear separation of "plant" from its possible inclusion within the definition of "structure".

Further, as there are definitions for both "structure" and "plant" in the Act, they are therefore exclusive, and clearly different.

The draft model regulations imply that "plant" and "structures" are considered to be different things, and, for example:

- the requirements of Sections 5.1.19 "Duties of persons conducting businesses or undertakings that install, construct or commission plant" and Section 5.1.20 "Duties of persons conducting businesses or undertakings that install, construct or commission structures" are exactly the same – implying again that "plant" and "structures" are different rather than "plant" being items contained within "structures".

The distinction is particularly important when dealing with some key issues in Chapter 6: Construction Work.

The NGF has concluded that the draft regulations have been written on the basis of a different definition of “*structure*” than that contained in the Model Work Health and Safety Act (or on the basis of a different interpretation of the definition of ‘*structure*’ within the model act) and – as the representative of owners of significant civil structures and large items of industrial plant – NGF members require that the consequent confusion should be removed, possibly by the giving of examples of what is considered to be “*structure*” (such as an industrial shed) and what is considered to be “*plant*” (such as a power station boiler or turbine).

Section 5.1.21 details the hierarchy of controls to be used for managing risks associated with the operation of plant. The NGF repeats its comments on Part 4 above – that consideration should be given to a single section which details the use of the hierarchy of controls.

Section 5.1.24 should be amended to include a reasonably practicable test – i.e.: *“The person in charge of a business or undertaking at a workplace must ensure that as far as is reasonably practicable measures are implemented to prevent alterations to or interference with the plant that are not authorised by the person.”*

Section 5.1.31 is written as if plant maintenance is carried out by a single person only, when in reality a maintenance team may be involved in the work. The NGF recommends that the wording of Section 5.1.31 2 (b) be changed from *“cannot be operated by any person other than the person who is carrying out the maintenance or cleaning of the plant; and”* to *“cannot be operated by any person other than either the person who is carrying out the work or – if more than one person – at the direction of the person responsible for carrying out the work”*.

Chapter 6: Construction

Key Issues

As discussed in the introductory section of this submission, the NGF exhorts SWA and other decision-making stakeholders to:

- 1) Fully exempt the Electrical Supply industry sector from Chapter 6: Construction Work regulations as per the drafted exemption for “mining or the exploration for or extraction of minerals”, or;
- 2) To make the following changes – effectively expanding the exemptions contained in Chapter 6: Part 6.1.1 (3) to also exclude work on plant, and work of a minor nature on a structure:, thus:

“(3) In this Part, construction work does not include:

*(a) the manufacture, **maintenance, repair, refurbishment, replacement, or incremental improvement** of fixed plant; or*

...

*(c) testing, maintenance, repair, **refurbishment, or replacement work** of a minor nature carried out in connection with a structure; or*

*(d) **operation, testing, maintenance, repair, refurbishment, incremental improvement and overhaul / outage work performed on existing operational plant.***

(etc.”.

- 3) If the above outcomes are not delivered, the NGF recommends the reworking of Chapter 6 – Construction Work – with the clear aim of delineating “Construction Work” and “Maintenance Work” with the specific objectives of:
- Defining “maintenance work” as being different from “construction work” in Part 6.1, and minor subsequent amendments;
 - Defining “maintenance project” in 6.1;
 - Defining “high risk work” as meaning both “construction” and “maintenance” work involving the risks identified by the unaltered points (a) to (r) in Part 6.1;
 - Modifying Part 6.3 by adding “maintenance” as required to be consistent with Parts 6.1 and 6.2 and with minor consequential amendments;
 - Adding “maintenance work” to safe work method statement in section 6.3.6;
 - Renaming and reworking Part 6.4 to “Workplace Health and Safety (WHS) Management Plan” with subsequent changes to deal with significant “maintenance projects”;
 - Inserting a new Part 6.5 “Additional Duties of Principle Contractor” by using the section removed from Part 6.4 (i.e. sections 6.4.1 and 6.4.2);
 - Consequential renumbering of Part 6.5 as Part 6.6 with minor changes to exclude “maintenance work”.

A marked up copy of the proposed amended draft of Chapter 6: Construction, which NGF members would propose if the NGF’s first and second preferred options are unsuccessful is attached as Appendix 1 for ease of comparison.

Note also that if the exemptions/alterations as detailed above are not made, the NGF forecast that all businesses impacted by the inappropriate application of the construction regulations will seek individual exemption through the application of Section 10.3, and that these requests for exemption:

- Will unnecessarily tie up significant organisational, and particularly, regulator resources best expended elsewhere;
- Require where exemption is refused, written notice of the refusal and the [sound] reasons for the refusal as per clause 10.3.13 of the exposure draft (the NGF maintains there are no sound reasons for the approach in the current draft in these two areas);
- Where exemption is refused, lead to decisions being reviewed as per Part 10.1, and the subsequent costs to both individual organisations, but in particular, the jurisdictional regulatory authority and the community for something that can be so easily and legitimately addressed now;
- Result in burdening regulators and the review processes with work that they will not be resourced to deal with.

Additionally, Clause 6.3.9 *Notification of regulator of certain excavation work* must be applied exclusively to “Construction Work” as per the NGF’s position above, as it is not only inappropriate to be applied to maintenance excavation work of non-construction industry sectors, but it is totally unworkable for organisations such as energy, telecommunications, water and sewage utilities businesses to meet these regulated notification requirements (e.g. written notice of 5 days before commencing work).

The unnecessary application of such requirements to non-construction industry sectors would also have flow on effects impacting provision of services in circumstances unlike the planned execution of a construction project where the notice may be not only necessary given construction industry work health and safety performance but the application is also achievable. In addition, jurisdictional regulators would not have the resources to respond to and review the plethora of additional unnecessary notifications that would result from the application of this notification requirement to all industry sectors, with the significant risk of construction industry excavations which are the intended target of such notifications, being lost in the large amount of paperwork.

Further, while including “*demolition work*” within the list of “*high risk construction work*” in Clause 6.1.2 is desirable – treating all demolition work exclusively as “*construction work*” is not supported. Operating sites, such as manufacturing sites, gas plants and power stations (which are also not construction sites in the traditional or any other sense) may undertake minor demolition activities and engage specialist contractors to perform such demolitions as necessary.

The NGF generally considers the South Australian approach to regulating demolition to be an effective one, and it aligns with the way other “*hazardous work*” is treated within the draft model WHS Regulations in *Chapter 4: Hazardous Work*, and NGF recommendations in relation to excavation work detailed above. Demolition and excavation are ‘*Hazardous Work*’ categories in their own right – irrespective of what industry sector they take place in. To exclusively treat them as “*Construction Work*” is confusing and problematic for non-construction industry sectors. This aspect must also be addressed.

Detailed Comments

The NGF, in conjunction with the Master Builders Association (MBA), the Energy Networks Association (ENA) and other industry bodies, has for several years been arguing legitimately and cogently that maintenance works at manufacturing facilities ***must not be considered construction work***.

The NGF appreciate that the word “*plant*” is not included in the definition of “*structure*” in Section 6.1.1, and support this exclusion provided that the intent in its omission is to ensure that the maintenance, refurbishment and repair of plant is not caught up in “*construction work*” regulations. The NGF seeks clarity with respect to the intent of this section.

The associated section of the Safe Work Australia Issues Paper states the following regarding the National Standard for Construction Work:

*“The **National Standard for Construction Work** makes it clear that ‘structures’ for this purpose also includes things like fixed plant, ships and submarines. These things are covered by Chapter 6 of the model WHS Regulations to the extent they may be described as ‘anything that is constructed, whether fixed or moveable, temporary or permanent’.*

Consideration should be given as to the kinds of structures that should be covered by the model WHS Regulations on construction.”

The NGF finds the National Standard approach to work other than genuine construction work to be totally unacceptable. However, the NGF welcomes the Safe Work Australia prompt to consider the kind of structures that should be covered by the model regulations.

The following revision of Clause 6.1.1 (3) is very strongly encouraged by the NGF:

“(3) In this Part, construction work does not include:

*(a) the manufacture, **maintenance, repair, refurbishment, replacement, or incremental improvement** of fixed plant; or*

(b) the prefabrication of elements as standard stock for sale; or

(c) testing, maintenance or repair work of a minor nature carried out in connection with a structure; or

(d) operation, testing, maintenance, repair, incremental improvement and overhaul / outage work performed on existing operational plant.

(e) mining or the exploration for or extraction of minerals.

The NGF also welcome the following excerpt from the recent ‘Draft Model Work Health and Safety Regulations: Signpost and Summary of Key Changes in NSW’, (developed by WorkCover NSW following the release of the draft of the WHS Regulations) which states:

Unlike the definition of construction work in the OHS Regulation, ‘works related to the provision of services such as communications, drainage, sewerage, water and energy supplies’ are not included in the definition of construction work. This means that work at power generation stations will no longer be automatically included as construction work. Of course, construction work at power generation plants is still construction work and will be covered by the provisions in chapter 6 of the model WHS Regulations.

If the NSW’s explanation reflects the intent of the draft model regulations in this area, then this needs to be better clarified within Chapter 6: Construction Work.

To again re-iterate the NGF position in relation to the potential and seriously flawed application of “Construction Work” regulations to non-construction industry sectors:

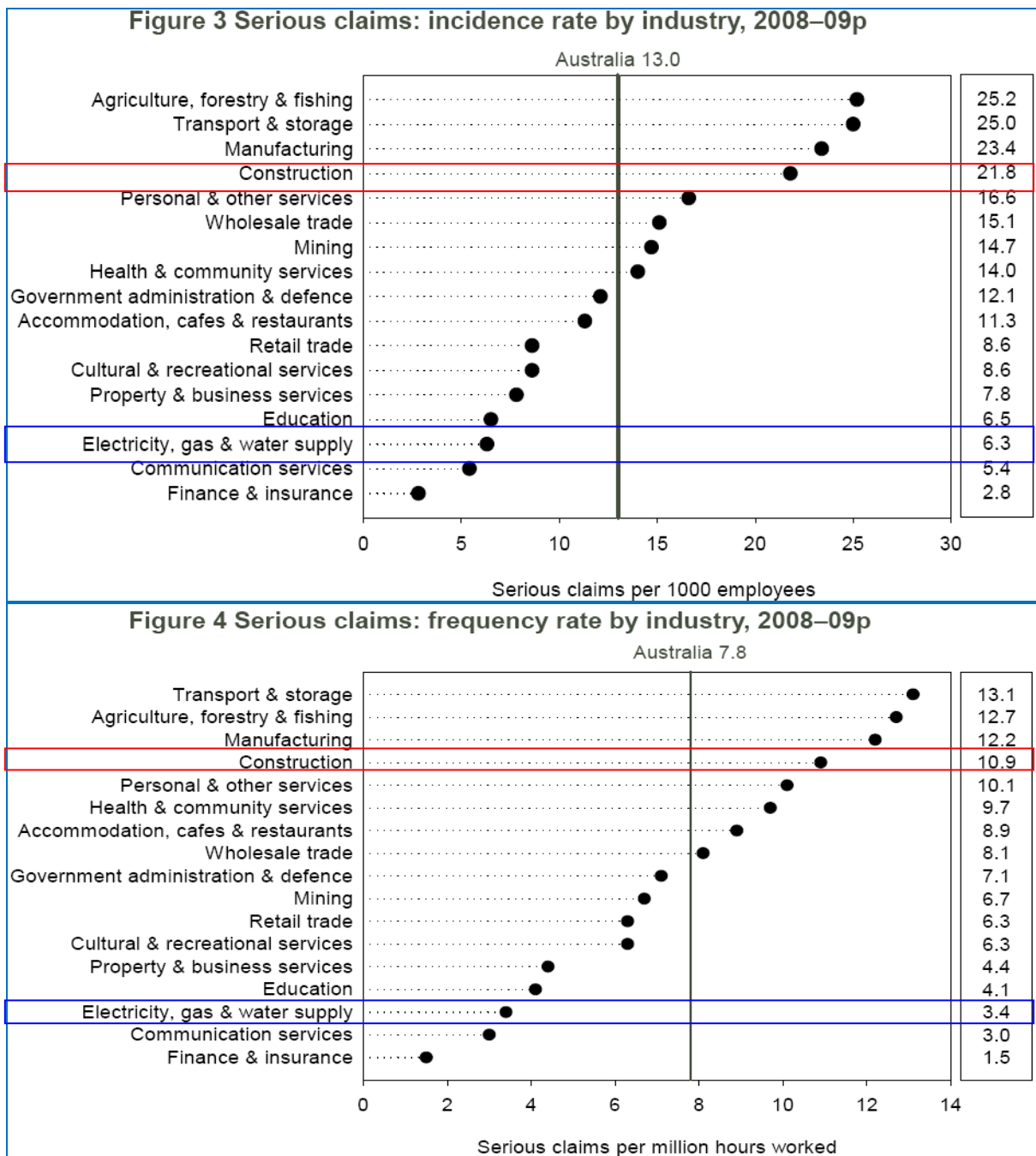
- The generation sector is not part of the construction industry sector;
- The National Standard was never intended to be applied to operation, repair, maintenance and outage activities associated with generation assets (or the operational assets of other industry sectors) – it was for this reason that the consultation process that took place during the development of the National Standard did not include the generation sector or other impacted industry sectors outside the “traditional housing, commercial, and civil engineering construction sectors” where WorkSafe Victoria has acknowledged that “nearly all construction takes place”;
- The National Standard definitions of construction work, construction site, structure and any similar approach proposed within the draft OHS Regulations will incorrectly, illegitimately capture other work – as described by the MBA’s submission to the review of Model OHS Laws “every bit of repair, modification, maintenance, refurbishment and maintenance work within every operating plant and factory across the nation and deliver unsustainable / unjustifiable costs when the target was and continues to be the traditional construction industry”;

- If the traditional construction industry - given its nature and history - requires additional regulation to drive step changes in its poor safety performance, then the construction regulations should address specifically what is needed to improve its OHS management rather than attempting to drive improvement by calling all high risk work within industry 'construction work' and thereby effectively blunting the instrument that would otherwise serve to correct the identified problem. To spread the focus over industries which have no identified need for this additional regulation only blurs the objective, which can only lessen the resultant improvement sought. There is no justifiable reason for expanding the requirements outside of the conventional construction industry – or for requiring other industries to undergo the associated costs for no quantifiable improvement in safety performance.
- If specific types of high risk work need improved regulation to deliver improved performance across all industries, than the specific high risk work regulations (e.g. working at height; excavation; demolition; etc.) must be improved irrespective of whether the work takes place within generation, oil and gas, manufacturing or the construction industry sectors. Confusing the need to improve the safety management of a particular industry sector with the requirements to manage specific high risk hazards more generally, is a seriously flawed approach and is clearly in conflict with the identify hazard – assess risk – control risk approach detailed in the Standard on Safety Management Systems (AS/NZS4801).

The generation sector enjoys a significantly superior OHS performance. Please note below and compare the number of serious claims and the related incidence rates by the Construction Industry and the Electricity, Gas and Water Supply Industry in 2008 / 2009 as detailed below (our highlighting) – a consistent trend over many years:

Industry	Number of serious claims			Percentage		
	Females	Males	Total	Females	Males	Total
Manufacturing	3 320	19 190	22 510	8%	22%	17%
Health & community services	12 930	3 255	16 185	30%	4%	13%
Construction	395	14 345	14 740	1%	17%	11%
Retail trade	6 225	6 770	12 995	15%	8%	10%
Transport & storage	1 135	9 730	10 865	3%	11%	8%
Property & business services	2 815	6 270	9 085	7%	7%	7%
Education	2 940	3 480	5 205	7%	4%	5%
Government administration & defence	1 190	5 155	6 420	3%	6%	5%
Wholesale trade	3 250	2 795	6 345	8%	3%	5%
Accommodation, cafes & restaurants	1 690	4 065	6 045	4%	5%	4%
Personal & other services	3 575	1 630	5 760	8%	2%	4%
Agriculture, forestry & fishing	865	3 420	4 285	2%	4%	3%
Cultural & recreational services	930	1 590	2 520	2%	2%	2%
Mining	165	2 230	2 395	0%	3%	2%
Communication services	305	950	1 255	1%	1%	1%
Finance & insurance	790	285	1 075	2%	0%	1%
Electricity, gas & water supply	50	590	640	0%	1%	0%
Total^a	42 660	86 075	128 735	100%	100%	100%

^a Includes claims for which Industry was not stated.



This significantly better level of performance within the generation sector has been delivered:

- under jurisdictional structures that existed before the application of the National Standard For Construction Work;
- through active across industry sector OHS committees, and the subsequent development of industry sector specific standards and codes of practice;
- through strong and established organisational OHS cultures, commitment, resourcing and implemented OHS management systems subject to ongoing continuous improvement over a long period - including effective contractor selection and management processes; and
- within the context of an industry sector with a substantially different risk profile and stakeholder base than the construction industry sector – namely with a stable long-term, well-

trained workforce and leadership, and proven overarching corporate structures and governance processes.

The application of requirements surrounding construction industry work practices on the basis of the type of industry, rather than the nature of the hazard, is seriously flawed. The 2007 Council of Australian Governments *'Best Practice Regulation Guidelines'* state that, among other things, good regulation:

- minimizes the burden on the public;
- minimizes the administrative burden;
- provides clear accountability;
- provides regulatory impact assessment;
- devises least cost compliance strategies; and
- ensures regulations focus on outcomes rather than inputs.

Application of the proposed draft construction work regulations to the generation and other manufacturing sectors:

- does not meet the COAG best-practice regulation guidelines;
- does not add further health and safety improvements, and can divert precious OHS resources;
- does not augment current power station OHS systems and in fact distracts from proactive prevention focus;
- adds confusion in delineation of work;
- adds significantly and unjustifiably to cost; and
- has the potential to delay returning vital infrastructure to service.

Operating plant drivers, environments and associated processes and hazards are significantly different to those for a *'traditional housing, commercial, and civil engineering construction sector'* project.

Currently, plant operators look to avoid as far as is reasonably practicable performing maintenance work on or within functioning operating plant as it is much safer being bundled up with similar maintenance work and performed during a planned outage. Such processes involve the safe shutdown, isolation and preparation of operating plant, and its safe recommissioning, de-isolation and re-start.

Outage windows are critical in terms of minimising impacts on stakeholders, which for generators importantly includes energy end users. The people who know the existing operating plant, its hazards, systems, processes and culture directly manage operating plant *"maintenance work"*.

Hazard identification, assessment, and control processes in relation to maintenance within an existing operating plant are in place and subject to cycle after cycle of ongoing continuous improvement and learning year after year - something that cannot be achieved anywhere near as effectively within the short term period of a construction project. They are not the same.

Construction projects generally deal with:

- 'constructing' structures and installing / commissioning plant on 'green-field' sites which are not and have not been utilised previously,
- operational sites where the 'new' construction project and environment is effectively segregated from currently operating plant until it is fully commissioned,
- final decommissioning of non-operational 'brown-field' sites / structures or non-operational 'brown-field' units / structures within an operational site effectively segregated from the

operating plant.

Plant operators are not directly involved in managing “*construction projects*” as principle contractors are generally utilised.

Construction projects in the context of maintenance activities over the life of an operating plant are very short term, and are not subject to the same rigorous ongoing continuous improvement processes as operating plant maintenance work. They are very different contexts, with different work health and safety performance challenges. It is not only nonsensical to apply construction industry specific regulation to maintenance work at operating plants - it would negatively impact work health and safety efforts and outcomes in the non-construction industry sectors.

In essence, for reasons including those listed above, the application of the term “*construction work*” to industry sectors outside of the construction industry sector will significantly detract from workplace safety in those industries.

If it is believed that an industry sector based approach is necessary for the construction industry, then it is equally important to limit the scope of that approach. As such, the generation sector and other manufacturing sectors should, from the time of commercial operation until the time of final decommissioning and removal, not be considered part of the construction industry.

The NGF notes with regret that in Victoria, where the State OHS Regulations already treat “*maintenance work*” as “*construction work*”, costs and work practices associated with the traditional construction industry are already beginning to flow to the manufacturing sector, including electricity generation. It is anticipated that if maintenance within the generation sector continues to be considered as “*construction work*”, these work practices and their associated costs will, within a few years, result in increases in generation maintenance costs of ~20% and will result in higher electricity prices across the electricity market as generation is withdrawn from the system for longer periods owing to the restrictive work practices of the construction industry.

In addition, delays in returning plant to service would affect the wholesale electricity market price in other ways. In particular, shortage of supply would lead to more volatile and higher pool prices in the National Electricity Market and the WA Market. In the NEM, prices would readily spike above \$5000/MWh (compared to the average of around \$40/MWh) and could, on occasions, reach the market price cap of \$12,500/MWh.

NGF concerns in this area have been noted in writing by the Federal Minister for Resources Energy and Tourism, and communicated in writing by that Minister to the then Minister for Employment and Workplace Relations as per the following letter excerpt received by the NGF on the 8th of October 2009:

While the interpretation of the National Standard for Construction Work by jurisdictions is a matter best taken up with them, I have written to my colleague, the Hon Julia Gillard MP, Minister for Employment and Workplace Relations, raising your concerns and seeking her consideration of your proposal to be exempted from the Standard. I have also asked that Safe Work Australia work closely with the energy industry, and state and territory governments to resolve this issue.

To date this issue remains unresolved within the wording of the draft regulations in Chapter 6: Construction Work despite the substantial work invested by the NGF, the MBA, the ENA and other non-construction industry sectors to inform and work with Safe Work Australia, prior to drafting

the regulations. Regrettably so far, advice, to deliver the only necessary safe, sensible, logical and legitimate outcome in this area has not been heeded.

The NGF exhorts Safe Work Australia and other key stakeholders in decision-making positions around the drafting of the WHS Regulations Section 6 Construction Work, to fully embrace common sense in this area.

The workplace health and safety of people in non-construction industry sectors will be negatively impacted by the unwarranted application of construction work regulations and its roll on effects.

The illogical and unnecessary application of construction work regulations to non-construction industry sectors will also result in unnecessary and significant regulatory, operating and financial burdens on these sectors for no effective workplace health and safety improvement. This will result in outcomes which will in turn significantly impact costs to end users / consumers.

Where “traditional housing, commercial, and civil engineering construction sector” projects greater than \$200k occur within the bounds of an operating site, the generation sector accepts that the proposed construction regulations must apply. Predominantly, such projects are able to be separated from existing operating plant and a principle contractor is generally appointed. However, these regulations must not be applied to maintenance work at operating sites (e.g. defect repair, preventive routines, overhauls, plant life extensions / refurbishment, minor replacement of structures, testing to fault find or to prove functionality all carried out in connection with fixed plant following installation and commissioning and prior to decommissioning) for which the Construction Work Standard and subsequent draft regulations are not designed or ever intended.

If:

1. A total exemption from Chapter 6: Construction Work to sectors other than the construction industry (as is currently applied to the mining sector) cannot be achieved; or
2. The proposed exemption in Clause 6.1.1 (3) for “(d) operation, testing, maintenance, repair, refurbishment and outage work performed on existing operational plant”;

are not accepted, the NGF submits the proposed rewording of Chapter 6 as detailed in Appendix 1 to this submission to demonstrate the changes that can easily be made to remove maintenance work (i.e. “defect repair, preventive routines, overhauls / outages, plant life extensions, incremental improvement, associated minor demolition, testing to fault find or to prove functionality all carried out in connection with fixed plant and associated structures following installation and commissioning and prior to decommissioning”) from the definition of construction work - whilst ensuring the following key elements for effectively managing high risk maintenance work and significant maintenance projects (elements shared with the effective management of high risk construction work and significant construction projects) are appropriately applied:

- Safe Work Method Statement requirements stipulated within Chapter 6 are applied to all “high risk” maintenance work – including excavation and demolition (i.e. not only hazardous maintenance work where the cost exceeds \$200,000); and
- Site-specific Workplace Health and Safety Management Plan requirements stipulated within Chapter 6 are applied to significant maintenance projects (i.e. projects where the cost of the maintenance work is \$200 000 or more).

Part 6.3 Division 3 Excavation Work

The NGF does not support the exclusive inclusion of Part 6.3 Division 3 “*Excavation Work*” within Chapter 6: Construction Work, rather regulations for “*Excavation Work*” must be predominantly contained within Chapter 4: Hazardous Work.

Excavation work occurs outside the traditional housing, commercial, and civil engineering construction sectors. For example, energy (both electricity and gas), water, and sewage utilities / businesses all have underground services that require planned and unplanned excavation work that is maintenance / repair / refurbishment – not ‘construction’ in a traditional or any other sense.

Noise, Hazardous Manual Tasks, Confined Spaces, Falls, High Risk Work Licensing, Abrasive Blasting, Electrical Work, and Diving – like Excavation Work – are areas of regulation for specific high risk hazards / activity / work which are not industry sector specific.

Including excavation work within the list of high risk construction work in Section 6.1.2 is desirable. However, calling all excavation work exclusively “*construction work*” is another thing. This must be addressed.

Where there are additional specific elements within the regulations targeted exclusively for excavation within the construction industry sector (i.e. *Section 6.3.9 “Notification of regulator of certain excavation work”*), these must, however, be retained within *Chapter 6 Construction Work*.

Section 6.3.9 Notification of regulator of certain excavation work must be applied exclusively to “*Construction Work*” as it is not only inappropriate to be applied to maintenance excavation work of non-construction industry sectors, it is totally unworkable for organisations such as energy, telecommunications, water and sewage utilities businesses to meet these regulated notification requirements (e.g. written notice of 5 days before commencing work).

The unnecessary application of such requirements to non-construction industry sectors would also have flow on effects impacting provision of services in circumstances, unlike the planned execution of a construction project where the notice may be not only necessary given construction industry performance – but also achievable. In addition, jurisdictional regulators would not have the resources to respond to and review the plethora of additional unnecessary notifications that would result from the application of this notification requirement to all industry sectors, with the significant risk of construction industry excavations which are the intended target of such notifications being lost in the paper work.

Demolition

While including demolition work within the list of high risk construction work in Section 6.1.2 is desirable – treating all demolition work exclusively as ‘construction work’ is not supported. Operating sites such as manufacturing sites, gas plants and power stations (which are also not construction sites in the traditional or any other sense) may undertake minor demolition activities and engage specialist contractors to perform such demolitions as necessary.

South Australia, in its Occupational Health, Safety and Welfare Regulations 2010—13.1.2011, has a set of Demolition specific regulations within Part 6 ‘Hazardous Work’ ...

“Part 6—Hazardous work

Division 2—Demolition

227 Preliminary

- 228 Risk assessment and control
- 229 Prevention of access and warning notices
- 230 Overhead protection
- 231 Working on or from fragile material
- 232 Use of existing stairs for access
- 233 Emergency measures in event of instability
- 234 Protection of persons in public places
- 235 Approval to carry out certain demolition work.”

These regulations require jurisdictional approval for higher risk demolitions as follows:

“235—Approval to carry out certain demolition work(1) If it is proposed to—

(a) use explosives on a demolition site; or

(b) demolish a building or structure using mechanical equipment that needs to be supported by any part of the building or structure,

the demolition must not be commenced before a proposed demolition work plan has been submitted to the Director, and the Director has given approval to the commencement of the work (and the Director may attach conditions to any such approval)”.

The NGF generally considers the South Australian approach to regulating demolition to be an effective one, and it aligns with the way other “*hazardous work*” is treated within the draft model WHS Regulations at Chapter 4: Hazardous Work, and NGF recommendations in relation to Excavation Work above. Demolition and Excavation are “*Hazardous Work*” categories in their own right, irrespective of what industry sector they take place in. To exclusively treat them as “*Construction Work*” is confusing and problematic for non-construction industry sectors. This must be addressed.

There is a Division on “*Demolition and Refurbishment*” within Part 7.3: Asbestos within the draft regulations (which is fine there as it deals directly with asbestos related demolition and refurbishment issues), but it does not pick up the content within the South Australia *Division 2 - Demolition* regulations. A “*Demolition*” section within the draft model WHS Regulations at Chapter 4: Hazardous Work would address this gap. However, as for the discussion on excavation work above, where there are additional specific elements needed within regulations targeted exclusively for demolition within the construction industry sector - these must be incorporated only within Chapter 6: Construction Work.

In conclusion, there must be no confusion as to when and where demolition and excavation regulations apply both inside and outside the traditional housing, commercial, and civil engineering construction sectors. Regulations dealing with excavation and demolition are best and legitimately placed as ‘*hazardous work*’ (i.e. within Chapter 4: Hazardous Work) and their application must not be confined (or appear to be confined) to the construction industry or “*construction sites*” in the traditional sense or other use of the term.

Chapter 7: Hazardous chemicals

Part 7.1 Hazardous chemicals

The definition of hazardous chemicals is very convoluted and not very clear from the outset, particularly in understanding the exclusions and the relationship to substances, or mixtures of

substances, defined in Schedule 7 and in relation to Schedule 15 chemicals (major hazard facility chemicals). GHS hazard class chemicals, dangerous goods and C1 combustible liquids could be better detailed, either by examples or by listing.

However, overall Part 7.1, although quite complex, is well constructed and very systematic.

Section 7.1.34 creates an obligation for a duty holder to ensure appropriate signage in certain circumstances (e.g. in relation to PPE at draft regulation 3.2.4 or in relation to confined spaces at 4.3.10). However, the model regulations do not appear to create a relevant duty in relation to signage under Part 7.1. This being the case, it is not clear what role proposed regulation 7.1.34 performs, or how it could be enforced. It is to be treated as a Level 2 offence. Arguably, a duty holder would be better placed by *removing* signage in circumstances where there is uncertainty about whether they have complied with this section, or if it is impracticable to make the sign clearly visible in the workplace.

This may lead to duty-holder reducing safety warnings, in order to avoid non-compliance under the regulations.

The NGF sees this as an example of the regulations being overly prescriptive (and potentially operating to the detriment of safety) and recommend that this regulation be removed, redrafted and dealt with at the guidance material level.

Section 7.1.37 provides guidance to PCBU's at a workplace to reduce combustible material to the lowest practicable level. It is to be treated as a Level 1 penalty.

It is not clear how this proposed regulation would be enforced. In circumstances where a flammable substance is being properly stored at a workplace, and isolated from ignition sources or in circumstances where there is a risk of fire risk.

Where the risk of ignition and fire is being controlled in accordance with proposed regulation 7.1.38, this proposed regulation is unnecessary.

It may be good practice to reduce levels of flammable materials, but it is not clear how a regulation requiring them to be reduced to the lowest practicable level could be meaningfully enforced. At the least, this section would create a reverse onus on the duty holder to show that the quantity required was practicable for the workplace, where that reverse obligation is unwarranted to effectively control risk.

The NGF sees this as an example of the regulations being overly prescriptive and recommends that this regulation be removed and dealt with at the guidance material level.

Section 7.1.69 dangerous goods exemptions column 2 quantities are very low for a number of the listed substances, making the exemption not particularly effective. Examples include limits of 500 L of LPG gas (near buildings), 50 L of compressed gas and 100 Kg or L of sodium hypochlorite.

Part 7.2 Inorganic lead

Like Part 7.3, this Part dealing with working with inorganic lead is relatively prescriptive. However, the NGF supports the proposed approach based on defining relevant lead processes, and if present, followed by a systematic determination of lead risk work based on the potential to exceed listed blood lead levels.

The NGF is concerned that the duty of employers include some requirements that may not be within the control of the employer, particularly if an employee independently seeks medical advice with respect to lead levels without informing the employer, e.g. Clause 7.2.11 - Duty to obtain information from medical practitioner. The NGF seeks clarification of what are considered to be 'reasonable steps' to obtain the information.

Part 7.3 Asbestos

The NGF submits that the regulations should reference the Customs (Prohibited Import) Regulations that prohibit the import of plant that contains asbestos, and includes the national ban on the use of asbestos criteria set out in the NOHSC Code of Practice: -

“In 2001 NOHSC declared a prohibition on all uses of chrysotile (white) asbestos from 31 December 2003, subject to a very limited range of exemptions, and confirmed earlier prohibitions of the use of amosite (brown) and crocidolite (blue) asbestos. (There are no known current uses in Australia of the other three forms of asbestos: actinolite, anthophyllite and tremolite.)

Under the National Model Regulations for the Control of Workplace Hazardous Substances this white asbestos ban prohibits the use (i.e. production, handling, storage, transport and disposal) of white asbestos except for:

- *bona fide research or analysis;*
- *removal, handling and storage for disposal;*
- *white asbestos products which were in situ on 31 December 2003, which may remain in situ but may be replaced only by products which do not contain white asbestos;*
- *white asbestos encountered during non-asbestos mining; and*
- *a small number of time-limited exemptions for particular, specified uses for which substitution by an alternative to white asbestos is technically impossible or would create significantly greater health, safety and environmental risks.”*

The NGF notes that clause 7.3.4 - *Asbestos to be identified or presumed at a workplace* and clause 7.3.7 *Asbestos register* – require every workplace to have an identification process and an Asbestos Register. It is suggested that these requirements have no application to new workplaces constructed since the effective banning of the import and use of asbestos containing materials (ACM) and that the application of a timeframe (such as pre-January 2001 contained in the Queensland Work Health & Safety Regulations or pre-2003 referred to in the NOHSC Code) would make the application of these clauses more practical.

The NGF fully supports the making available of the Asbestos Register as required by Section 7.3.9. The NGF submits that to give a copy of the entire register (which may contain many thousands of line items and understanding that when ACM is removed from a workplace, the item is not removed from the register, but rather the line item is updated to show that the asbestos has been removed) to the person involved in the work serves no purpose and will only introduce confusion and delay. The NGF also submits that a person undertaking work should be made aware of all ACM that may be disturbed by the work, in order that asbestos fibres are released and become airborne. The NGF submits the following rewording of clause 7.3.9 (2) for consideration:

“If a person conducting a business or undertaking carries out, or intends to carry out, work at the workplace that involves a risk of exposure to ACM or airborne asbestos fibres, the person with management or control of the workplace must ensure that the person undertaking the work is provided with all information (such as that contained in the relevant part of the asbestos register) that will enable the risks associated with exposure to the ACM to be appropriately managed.”

The NGF submits that the words “*from time to time*” should be removed from clause 7.3.11 (1) (b) and clause 7.3.13 (1) (b) as they add no value, and only serve to confuse.

The NGF notes that the reference in clause 7.3.15 (2) to Division 3 may be a drafting error, as Division 3 does not address the release or disturbance of fibres. It is also suggested that to avoid confusion between the term “*person*” and “*persons*” the introductions to clauses 7.3.15 (3), (4) and (5), clauses 7.3.16 (2), (3) and (4) should be reworded “*The person with management or control of a workplace must.....*”

With regard to the health surveillance requirements of clause 7.3.16, the NGF requests that some clarity be provided between *the duties of a person in charge of a business or undertaking* (PCBU – most likely the owner) and *a person conducting a business or undertaking at a workplace* (who may be the owner, and who also be a contractor engaged to undertake specific works such as asbestos removal, or maintenance where ACM is present, and whose workforce are not permanently based at the workplace, and may even be itinerant). The requirement for the PCBU to be responsible for the health surveillance of contractors or itinerant workers cannot be practically applied. The NGF recognises that health surveillance of these persons is equally important, but NGF members do not understand how the requirement of clause 7.3.16 can be applied in its current form.

The NGF requests that the requirements of clause 7.3.17 be reviewed by a person familiar with the requirements of the Privacy Act, as there are several aspects (such as item (1) – *the PCBU to ensure that the results are obtained*, Item (3) – *a copy to be given to the regulator*, and Item (4) *a person to ensure that actions are taken on the basis of the results*) which may need rewording so as to not be in conflict with Privacy laws.

The NGF believes that clause 7.3.21 (2) could be improved by greater clarity around the use of the word “*minor*”.

The NGF suggests that the duty to obtain a copy of the Asbestos Register in clause 7.3.24 and clause 7.3.38 (1) be extended to require the person to also review the relevant part of the register, and take whatever actions are necessary to control exposure of persons to airborne asbestos.

The requirements of clause 7.3.25 as drafted apply to all buildings, structures or plant, irrespective of age. The NGF makes the same comments as were earlier made with respect to clause 7.3.4 and clause 7.3.7 – the application of a timeframe would remove the need to apply these requirements to buildings structures or plant which have been constructed after the banning of the use of ACM. It is also suggested that the word “*determination*” in clause 7.3.25 (3) should be replaced with “*inspection*” (to provide consistency with clause 7.3.25 (2)).

The NGF suggest that the wording of clause 7.3.39 (3) (b) be changed from “*at the workplace*” to “*at the asbestos removal worksite*”, and that clause 7.3.40 (4) (e) (iii) “*kind of workplace*” has little meaning and may be deleted.

Clause 7.3.45 (1) requires that decontamination facilities be available for all asbestos removal work, and makes no allowance for the amount of asbestos to be removed or the likelihood of airborne asbestos fibres. The NGF suggests that the requirement for decontamination facilities should be an outcome of a risk assessment process, rather than a blanket provision.

The NGF believes that (with reference to clause 7.3.47 (2)) the onus of ensuring an asbestos clearance certificate is completed by an independent competent person should rest with the asbestos removalist, as they are best suited to advise of when removal has been conducted and are responsible for any additional work that may be required to achieve compliance. It follows that the wording of clause 7.3.50 (5) be reworded to require the asbestos removalist to provide the clearance certificate to the person who commissioned the removal of the friable asbestos.

The NGF strongly recommend that – with reference to clause 7.3.49 - there must be an additional requirement to also notify the person who commissioned the asbestos removal work and the person in management control of the workplace if the asbestos fibre level is too high.

Code of Practice - How to Safely Remove Asbestos - the labels for waste containers and drums (clause 4.3 page 25) are different to those provided in the NOHSC Code of Practice. The NGF suggests that the provisions of the Code of Practice be adopted within the regulations in order to avoid relabelling existing containers.

Code of Practice - How to Manage and Control Asbestos in the Workplace - requires labels and the number of labels and location of labels to be determined by a competent person and the locations to be listed in the register (Section 4 page 23). Greater detail on these requirements would be appreciated – for example “labels on pipes lagged with ACM should be placed on the pipes at intervals not greater than 4 metres”. The NGF also notes that the requirement to record the location of labels within the Asbestos Register is overly onerous, and serves no useful purpose.

Code of Practice - How to Manage and Control Asbestos in the Workplace - requires labels and the number of labels and location of labels to be determined by a competent person and the locations to be listed in the register (Section 4 page 23). This is insufficient detail on what is reasonably required. The code should state that labels be applied every 4 metres along pipe work etc. Current asbestos registers do not identify the locations of the warning labels.

Chapter 8: Major Hazard facilities

The NGF has no specific comments.

Chapter 9: Mines

This chapter is still to follow and NGF will provide comments as required.

Chapter 10: General

Part 10.1 Review of decisions

The NGF notes the processes for both internal and external review and has no issues with the proposed review processes detailed in the regulations.

Part 10.3 Exemptions

The NGF has no issue with the provisions and checks-and-balances of opportunities to seek exemptions from the regulator. However, depending on the outcomes of dealing with the issues raised with respect to Part 4.7 Electrical Work and Chapter 6: Construction Work, the legitimate use of

Part 10.3 could lead to a very significant number of applications for exemptions, potentially swamping regulators. The NGF strongly support the current drafting of this Part, and related Parts of Chapter 10 General.

Model codes of practice

Apart from a brief examination of the asbestos related codes of practice, NGF members have not had sufficient time to examine other codes in detail. NGF members have undertaken an on-going review of the codes of practice and will advise Safe Work Australia of any issues of potential concern.

Appendix 1: Reworking of Chapter 6: Construction Work

As detailed in the main part of the submission, NGF members would see the reworking of Chapter 6: Construction Work to separate out genuine '*construction work*' from '*maintenance-type work*' (as defined below) as the third preferred option for dealing with non-construction activities at operating plant. As explained in the text, the NGF would prefer the detailed option 1 over option 2, and option 2 over the reworking of Chapter 6.

Below is a complete reworking of Chapter 6: Construction Work for your consideration.

CHAPTER 6 CONSTRUCTION & MAINTENANCE WORK

Part 6.1 Preliminary

6.1.1 Meaning of *construction work*

- (1) In this Part, *construction work* means any work carried out in connection with the construction, alteration, conversion, fitting-out, commissioning, renovation, refurbishment, demolition, decommissioning or dismantling of a structure.
- (2) Without limiting subregulation (1), *construction work* includes:
 - (a) any installation, **commissioning or decommissioning** carried out in connection with an activity specified in subregulation (1); and
 - (b) the removal from the workplace of any product or waste resulting from demolition; and
 - (c) the prefabrication or testing of elements, at a place specifically established for the construction work, for use in construction work; and
 - (d) the assembly of prefabricated elements to form a structure, or the disassembly of prefabricated elements forming part of a structure; and
 - (e) the installation, **commissioning or decommissioning** of an essential service in respect of any structure; and
 - (f) any work connected with an excavation or any preparatory work or site preparation (including landscaping as part of site preparation) carried out in connection with an activity specified in subregulation (1); and
 - (g) an activity specified in subregulation (1), that is carried out on, under or near water, including work on buoys and obstructions to navigation.
- (3) In this Part, *construction work* does not include:
 - (a) the manufacture, **maintenance, or incremental improvement** of fixed plant; or
 - (b) the prefabrication of elements as standard stock for sale; or
 - (c) **maintenance work as detailed in regulation 6.1.2 below.**
 - (d) mining or the exploration for or extraction of minerals.

6.1.2 Meaning of maintenance work

- (1) In this Part, ***maintenance work*** means defect repair, preventive routines, overhauls, plant life extensions and incremental plant improvement, associated minor demolition, testing to fault find or to prove functionality, all carried out in connection with fixed plant and associated structures following installation and commissioning and prior to decommissioning.
- (2) Without limiting subregulation (1), ***maintenance work*** includes:
 - (a) any repair required to return fixed plant to design conditions (including the replacement of parts with equivalent functionality).
 - (b) preventive routines intended or necessary to defer repairs or replacement which would otherwise become necessary.
 - (c) testing or fault finding carried out in conjunction with repair or preventive routines, or required to determine the condition of fixed plant in order that decisions may be made regarding repairs or preventive routines.
 - (d) overhauls, outages or plant shutdowns which consist of a number of repairs, preventive routines, incremental improvements or tests.
 - (e) the disassembly and re-assembly of fixed plant which is necessary to conduct a repair, preventive routine or test
 - (f) the removal from the workplace of any product or waste resulting from ***maintenance and associated minor demolition work***; and
- (3) In this Part, ***maintenance work*** does not include:
 - (a) the manufacture of fixed plant; or
 - (b) the installation, commissioning or decommissioning of fixed plant.
 - (c) construction work as detailed in regulation 6.1.1 above.

6.1.3 Meaning of high risk work

In this Chapter, ***high risk work*** means construction or maintenance work that:

- (a) involves a risk of a person falling more than 2 metres; or
- (b) is carried out on a telecommunication tower; or
- (c) involves demolition of an element of a structure that is load-bearing or otherwise related to the physical integrity of the structure; or
- (d) involves, or is likely to involve, the disturbance of asbestos; or
- (e) involves structural alterations or repairs that require temporary support to prevent collapse; or
- (f) involves a confined space; or
- (g) involves:
 - (i) a shaft or trench with an excavated depth greater than 1.5 metres; or
 - (ii) a tunnel; or

- (h) involves the use of explosives; or
- (i) is carried out on or near pressurised gas distribution mains or piping; or
- (j) is carried out on or near chemical, fuel or refrigerant lines; or
- (k) is carried out on or near energised electrical installations or services; or
- (l) is carried out in an area that may have a contaminated or flammable atmosphere; or
- (m) involves tilt-up or precast concrete; or
- (n) is carried out on, in or adjacent to a road, railway, shipping lane or other traffic corridor that is in use by traffic other than pedestrians; or
- (o) is carried out at a workplace in which there is any movement of powered mobile plant; or
- (p) is carried out in an area in which there are artificial extremes of temperature; or
- (q) is carried out in or near water or other liquid that involves a risk of drowning; or
- (r) involves diving.

6.1.4 Meaning of *construction project*

In this Chapter, a ***construction project*** is a project that involves construction work, if the cost of the construction work is \$200 000 or more.

6.1.5 Meaning of *maintenance project*

In this Chapter, a ***maintenance project*** is a project that involves maintenance work, if the cost of the maintenance work is \$200 000 or more.

6.1.6 Meaning of *principal contractor*

- (1) In this Chapter, a person conducting a business or undertaking that commissions a construction project is, subject to this regulation, the ***principal contractor*** for the project.
- (2) If the person specified in subregulation (1) engages a person conducting a business or undertaking as principal contractor for the construction project and authorises the person to have management or control of the workplace to the extent necessary to discharge the duties imposed on a principal contractor under this Chapter, the person so engaged is the ***principal contractor*** for the project.
- (3) If the owner of residential premises is an individual who engages a person conducting a business or undertaking to undertake a construction project in relation to the premises, the person so engaged is the ***principal contractor*** for the project if the person has management or control of the workplace.
- (4) A construction project has only one principal contractor at any specific time.

Note

A person with management or control of a workplace must comply with section 20 of the Act.

Part 6.2 Duties of Designer of Structure and Person Who Commissions Construction Work

6.2.1 Person who commissions work must consult with designer

- (1) A person conducting a business or undertaking that commissions construction work on a structure must, so far as is reasonably practicable, consult with the designer of the whole or any part of the structure about how to ensure that risks to health and safety arising from the design during the construction work are:
 - (a) eliminated, so far as is reasonably practicable; or
 - (b) if it is not reasonably practicable to eliminate the risks, minimised so far as is reasonably practicable.
- (2) Consultation under subregulation (1) must include giving the designer any information that the person conducting the business or undertaking that commissions the construction work has in relation to the hazards and risks at the workplace where the construction work is to be carried out.

6.2.2 Designer must give safety report to person who commissions work

The designer of a structure or any part of a structure that is to be constructed must give the person conducting a business or undertaking that commissioned the construction work a written report that specifies the hazards associated with the design of the structure that:

- (a) create a risk to the health or safety of persons who are to carry out construction work on the structure or part; and
- (b) are associated only with the particular design and not with other designs of the same type of structure.

6.2.3 Person who commissions project must give information to principal contractor

If a person conducting a business or undertaking that commissions a construction project engages a principal contractor for the project, the person must give the principal contractor any information the person has in relation to hazards and risks at or in the vicinity of the workplace where the construction work is to be carried out, including a copy of the report given to the person under regulation 6.2.2.

Part 6.3 Duties of Person Conducting Business or Undertaking

Division 1 General

Note

As a principal contractor is a person conducting a business or undertaking, this Part also applies to a principal contractor.

6.3.1 Control of risk in construction or maintenance work

- (1) This regulation applies if it is not reasonably practicable for a person conducting a business or undertaking to eliminate risks to health and safety associated with construction or maintenance work.
- (2) If it is not reasonably practicable to eliminate risks to health and safety associated with construction or maintenance work, a person conducting a business or undertaking must minimise those risks so far as is reasonably practicable by implementing any of the following risk control measures:
 - (a) substituting, for a hazard giving rise to a risk to health and safety, a new activity, procedure, plant, process or substance that lessens the risk to health and safety; or
 - (b) isolating persons from the hazard; or
 - (c) implementing engineering controls; or
 - (d) combining any of the risk control measures specified in paragraphs (a), (b) and (c).
- (3) If complying with subregulation (2) does not minimise the risks so far as is reasonably practicable, the person must minimise the remaining risk, so far as is reasonably practicable, by implementing administrative controls.
- (4) If complying with subregulations (2) and (3) does not minimise the risks so far as is reasonably practicable, the person must minimise the remaining risk, so far as is reasonably practicable, by providing appropriate personal protective equipment to persons who are at risk.

6.3.2 Review of risk control measures

- (1) A person conducting a business or undertaking must review and as necessary revise control measures implemented to control risks to health and safety associated with construction or maintenance work in the following circumstances:
 - (a) before any change is made to:
 - (i) the way the construction or maintenance work is carried out; or
 - (ii) a system of work associated with the construction or maintenance work; or
 - (iii) the location of the construction or maintenance work;
 - (b) if a new hazard associated with the construction or maintenance work is identified or new or additional information about a known hazard becomes available;

- (c) if a notifiable incident occurs in relation to construction or maintenance work;
 - (d) if a control measure does not control risk;
 - (e) if a health and safety representative at the workplace requests a review.
- (2) A health and safety representative at a workplace may request a review of risk control measures if the health and safety representative believes on reasonable grounds that:
- (a) a circumstance specified in subregulation (1)(a), (b), (c) or (d) exists; and
 - (b) the person conducting the business or undertaking has not adequately reviewed the risk control measures in response to that circumstance.

Division 2 High risk work—safe work method statements

6.3.3 Safe work method statement required for high risk work

- (1) A person conducting a business or undertaking that includes the carrying out of high risk work must, before high risk work commences, ensure that a safe work method statement for the proposed work:
- (a) is prepared; or
 - (b) has already been prepared by another person.
- (2) A safe work method statement must:
- (a) identify work that is high risk work; and
 - (b) specify hazards associated with that high risk work and risks associated with those hazards; and
 - (c) describe the measures to be implemented to control those risks; and
 - (d) describe how the risk control measures are to be implemented, monitored and reviewed.
- (3) A safe work method statement must:
- (a) take into account all relevant matters including:
 - (i) circumstances at the workplace that may affect the way in which the high risk work is carried out; and
 - (ii) if the high risk work is carried out in connection with a construction project or maintenance project, the WHS management plan that has been prepared for the workplace; and
 - (b) be set out and expressed in a way that is readily accessible and comprehensible to persons who use it.

6.3.4 Review of safe work method statement

A person conducting a business or undertaking must ensure that a safe work method statement is reviewed and as necessary revised if relevant risk control measures are revised under regulation 6.3.2.

6.3.5 Compliance with safe work method statement

A person conducting a business or undertaking that includes the carrying out of high risk work must put in place arrangements for ensuring that:

- (a) high risk work is carried out in accordance with the safe work method statement for the work; and
- (b) if high risk work is not carried out in accordance with the safe work method statement for the work, the work:
 - (i) is stopped immediately or as soon as it is safe to do so; and
 - (ii) resumed in accordance with the statement.

6.3.6 Safe work method statement—copy to be given.

A person conducting a business or undertaking that includes carrying out high risk work in connection with:

- (a) a construction project must, before the high risk work commences, ensure that a safe work method statement is given to the principal contractor.
- (b) maintenance work must, before the high risk work commences, ensure that a safe work method statement is provided to and agreed by the persons conducting the high risk work.

6.3.7 Safe work method statement must be kept

- (1) A person conducting a business or undertaking must ensure that the safe work method statement is, for the period specified in subregulation (3), kept so as to be readily available for inspection under the Act.
- (2) A person conducting a business or undertaking must ensure that a copy of the safe work method statement is made available to any person engaged by the person conducting the business or undertaking to carry out high risk work, on request.
- (3) A safe work method statement must be kept:
 - (a) if a notifiable incident occurs in connection with the high risk work to which the statement relates, for at least 2 years after the incident occurs; and
 - (b) in every other case, until the high risk work is completed.

Division 3 Excavation work

6.3.8 Excavation work—underground essential services information

- (1) A person conducting a business or undertaking who proposes to carry out excavation work must have current underground services information relating to the workplace and areas adjacent to the workplace, before commencing the work.
- (2) A person conducting a business or undertaking must, in carrying out excavation work, have regard to the information referred to in subregulation (1).

Notes

- 1 Legislation relating to essential services may also impose duties on the person conducting the business or undertaking and the persons carrying out the work.
- 2 See the jurisdictional note in the Appendix.

- (3) A person conducting a business or undertaking must, for the period specified in subregulation (5), ensure that the information referred to in subregulation (1) is kept so as to be readily available for inspection under the Act.
- (4) A person conducting a business or undertaking must ensure that a copy of the information referred to in subregulation (1) is made available to any person engaged by the person conducting the business or undertaking to carry out excavation work, on request.
- (5) Information kept under this regulation must be kept:
 - (a) if a notifiable incident occurs in connection with the excavation work to which the information relates, for at least 2 years after the incident occurs; and
 - (b) in every other case, until the excavation work is completed.

6.3.9 Notification of regulator of certain excavation work

- (1) A person conducting a business or undertaking who proposes to carry out construction work that includes excavation work involving a trench, tunnel or shaft must ensure that the regulator is given written notice at least 5 days before commencing the work if:
 - (a) an excavation to be made by the proposed work is more than 1.5 metres high (when measured from the bottom of the excavation); and
 - (b) either:
 - (i) the excavation is capable of allowing a person to enter; or
 - (ii) there is a possibility that a person who is involved in carrying out the work or is in the vicinity of the work or an excavation could be injured by a fall or by the dislodgement of soil or rock.
- (2) A notice must state:
 - (a) the name and contact details of the person conducting the business or undertaking; and
 - (b) if the high risk work is in connection with a construction project, the name and contact details of the principal contractor for the project or of the principal contractor's representative; and
 - (c) the name and contact details of the person directly supervising the work; and
 - (d) the date of the notice; and
 - (e) the nature of the excavation; and
 - (f) whether explosives will be used in carrying out the work and, if so, the licence details of the person who is to use the explosives; and

Note
See the jurisdictional note in the Appendix.

 - (g) when the person conducting the business or undertaking reasonably believes the work is to commence and to be completed; and
 - (h) where the work is to be carried out.

(3) This regulation does not apply if the excavation to be made by the excavation work is:

- (a) a mine; or
- (b) a bore to which the [relevant water law] applies; or

Note

See the jurisdictional note in the Appendix.

- (c) made for the purpose of rescuing a person or the carrying out of any other emergency response by an emergency service; or
- (d) made for the purpose of carrying out other emergency work; or
- (e) made of use as a place of burial or interment of the dead.

Part 6.4 Workplace Health & Safety (WHS) Management Plan

6.4.3 WHS management plan—preparation

- (1) The principal contractor for a construction project must prepare a written WHS management plan for the workplace before work on the project commences.
- (2) The person in charge of a business or undertaking a maintenance project must ensure that a WHS management plan is prepared before any of the maintenance project work is undertaken.
- (3) A WHS management plan must include the following:
 - (a) the names and positions of all persons at the workplace whose positions or roles involve specific health and safety responsibilities in connection with the construction or maintenance project work;
 - (b) the arrangements in place, between any persons conducting a business or undertaking at the workplace where the construction or maintenance project work is being undertaken, for consultation and cooperation in relation to compliance with their duties under the Act and these Regulations;
 - (c) the arrangements in place for managing any work health and safety incidents that occur;
 - (d) any site-specific health and safety rules, and the arrangements for ensuring that all persons at the workplace are informed of these rules;
 - (e) the arrangements for the collection and any assessment, monitoring and review of safe work method statements at the workplace.

6.4.4 WHS management plan—duty to inform

The principal contractor for a construction project or the person in charge of the business or undertaking for a maintenance project must ensure, so far as is reasonably practicable, that each person who is to carry out construction or maintenance project work is, before commencing work, made aware of:

- (a) the content of the WHS management plan for the workplace, to the extent that it relates to the work to be carried out by the person; and
- (b) the person's right to inspect the WHS management plan under regulation 6.4.7.

6.4.5 WHS management plan—review

- (1) The principal contractor for a construction project or the person in charge of the business or undertaking for a maintenance project must review and as necessary revise the WHS management plan to ensure that it remains up-to-date.
- (2) The principal contractor for a construction project or the person in charge of the business or undertaking for a maintenance project must ensure, so far as is reasonably practicable that each person carrying out the work is made aware of any revision to the WHS management plan that is relevant to the work being carried out by the person.

6.4.6 High risk construction and maintenance work—safe work method statements

The principal contractor for a construction project, or the person in charge of a business or undertaking for a maintenance project must, before any high risk construction work or maintenance work commences, take all reasonable steps to obtain from each person conducting a business or undertaking that is to carry out high risk work a copy of the safe work method statement relating to that work.

Note

The WHS management plan contains arrangements for co-operation between persons conducting a business or undertaking at the construction project or maintenance project workplace, including in relation to the preparation of safe work method statements (see regulation 6.4.3(2)(b) and (e)).

6.4.7 Copy of WHS management plan must be kept

- (1) The principal contractor for a construction project or the person in charge of a business or undertaking for a maintenance project must ensure that a copy of the WHS management plan is, for the period specified in subregulation (3) kept so as to be readily available for inspection under the Act.
- (2) The principal contractor for a construction project or the person in charge of a business or undertaking for a maintenance project must ensure that a copy of the WHS management plan is made available to any person who is to carry out construction or maintenance work, on request.
- 3) A WHS management plan must be kept:
 - (a) if a notifiable incident occurs in connection with the construction project or the maintenance project to which the plan relates, for at least 2 years after the incident occurs; and
 - (b) in every other case, until the construction project or maintenance project to which the plan relates is completed.

6.4.8 Further health and safety duties

- (1) The principal contractor for a construction project or the person in charge of a business or undertaking for a maintenance project must put in place arrangements for ensuring compliance at the workplace with the following:
 - (a) regulation 3.1.1;
 - (b) regulation 3.1.2;
 - (c) Part 3.2;
 - (d) Part 3.3;
 - (e) Part 3.4;
 - (f) Part 4.4.

Note

All persons conducting a business or undertaking at the construction project or maintenance project workplace have these same duties (see Chapter 3 of these Regulations and section 19(3)(e) of the Act). Section 16 of the Act provides for situations in which more than one person has the same duty.

- (2) The principal contractor for a construction project and the person in charge of a business or undertaking for a maintenance project must ensure, so far as is reasonably practicable, that the following are without risks to health and safety:

- (a) the storage, movement and disposal of materials and waste at the workplace;
 - (b) the storage at the workplace of plant that is not in use;
 - (c) traffic in the vicinity of the workplace that may be affected by construction **or maintenance** work.
 - (d) essential services at the workplace.
- (3) The principal contractor for a construction **project and the person in charge of a business or undertaking for a maintenance project** must ensure, so far as is reasonably practicable, that the workplace at which the construction **or maintenance work** is undertaken is secured so as to prevent unauthorised access.

Part 6.5 Additional Duties of Principal Contractor

6.5.1 Application

This Part:

- (a) applies in relation to a construction project; and
- (b) imposes duties on the principal contractor for the project that are additional to the duties imposed under Part 6.3.

6.5.2 Specific control—signage identifying principal contractor

The principal contractor for a construction project must ensure that signs are installed, that:

- (a) show the principal contractor's name and telephone contact numbers (including an after hours telephone number); and
- (b) show the location of the site office for the project, if any; and
- (c) are clearly visible from outside the workplace where the construction project is being undertaken.

Part 6.6 General Construction Industry Induction Training

Note

See the jurisdictional note in the Appendix.

Division 1 General Construction Industry induction training requirements

6.6.1 Duty to provide general induction training

A person conducting a business or undertaking must ensure that general induction training is provided to a worker who is to carry out construction work, if the worker:

- (a) has not successfully completed general induction training; or
- (b) successfully completed general induction training more than 2 years previously and has not carried out construction work in the preceding 2 years.

6.6.2 Duty to ensure worker has been trained

- (1) A person conducting a business or undertaking must not direct or allow a worker to carry out construction work unless:
 - (a) the worker has successfully completed general induction training; and
 - (b) if the worker completed the training more than 2 years previously, the worker has carried out construction work in the preceding 2 years.
- (2) For the purposes of subregulation (1), a person conducting a business or undertaking must ensure that:
 - (a) the worker holds a general induction training card; or
 - (b) if the worker has applied for but not yet been issued with a general induction training card, the worker holds a general induction training certification, issued within the preceding 60 days.

Division 2 General induction training cards

6.6.3 Issue of card

- (1) A person who has successfully completed general induction training in [this jurisdiction] may apply to the regulator for a general induction training card.
- (2) The application must:
 - (a) be made in the manner and form required by the regulator; and
 - (b) include the applicant's name and any evidence of identity required by the regulator; and
 - (c) include either:
 - (i) a general induction training certification issued to the applicant; or

- (ii) a written declaration by the person who provided the general induction training on behalf of the relevant RTO that the applicant has successfully completed general induction training; and
- (d) be made
 - (i) within 60 days after the issue of the general induction training certification; or
 - (ii) if the application is accompanied by a declaration referred to in paragraph (c)(ii), at any time after completion of the general induction training; and
- (e) be accompanied by the relevant fee.

Note

See the jurisdictional note in the Appendix.

- (3) The regulator must issue a general induction training card to the applicant if:
 - (a) the application has been made in accordance with subregulation (2); and
 - (b) the regulator is satisfied that the applicant has successfully completed general induction training.
- (4) The regulator must make a decision on the application as soon as reasonably possible.
- (5) If the regulator has not decided on the application within 60 days, the applicant is taken to hold a general induction training card until a decision is made.

6.6.4 Content of card

A general induction training card must:

- (a) state:
 - (i) that the card holder has completed general induction training; and
 - (ii) the name of the card holder; and
 - (iii) the date on which the card was issued; and
 - (iv) a unique identifying number; and
 - (v) the State in which the card was issued; and
- (b) contain space for the signature of the card holder.

6.6.5 Replacement of card

- (1) If a general induction training card issued by the regulator is lost, stolen or destroyed, the card holder may apply to the regulator for a replacement card.
- (2) An application for a replacement general induction training card must:
 - (a) include a declaration about the circumstances in which the card was lost, stolen or destroyed; and

- (b) be accompanied by the relevant fee.

Note

See the jurisdictional note in the Appendix.

- (3) The regulator may issue a replacement card if satisfied that:
 - (a) the general induction training card has been lost, stolen or destroyed; and
 - (b) the general induction training card has not been cancelled; and
 - (c) the applicant has successfully completed general induction training.

6.6.6 Refusal to issue or replace card

The regulator may refuse to issue a general induction training card or a replacement general induction training card if satisfied that the applicant:

- (a) gave information that was false or misleading in a material particular; or
- (b) failed to give information that should have been given; or
- (c) produced a general induction training certification that had been obtained on the basis of the giving of false or misleading information by any person or body.

6.6.7 Cancellation of card—grounds

The regulator may cancel a general induction training card issued by the regulator if satisfied that the card holder, when applying for the card:

- (a) gave information that was false or misleading in a material particular; or
- (b) failed to give information that should have been given; or
- (c) produced a general induction training certification that had been obtained on the basis of the giving of false or misleading information by any person or body.

6.6.8 Cancellation of card—process

- (1) The regulator may cancel a general induction training card:
 - (a) on the regulator's own initiative; or
 - (b) on receiving a complaint from any person; or
 - (c) on receiving advice from a corresponding regulator.

Note

Under section 4 of the Act, a *corresponding regulator* is the holder of a public office, or a public authority, of the Commonwealth, or of a State or Territory, who or which is responsible for administering the WHS law in that jurisdiction.

- (2) Before cancelling a general induction training card, the regulator must give the card holder:
 - (a) written notice of the proposed cancellation that outlines all relevant allegations, facts and circumstances known to the regulator; and
 - (b) a reasonable opportunity to make representations to the regulator in relation to the proposed cancellation.

- (3) On cancelling a general induction card, the regulator must give the card holder a written notice of its decision, stating:
 - (a) when the cancellation takes effect; and
 - (b) the reasons for the cancellation; and
 - (c) when the card must be returned to the regulator.

6.6.9 RTO may enter agreement to issue cards

Note

See the jurisdictional note in the Appendix.

- (1) The regulator may enter into an agreement with an RTO that empowers the RTO to exercise the functions and powers of the regulator under regulations 6.5.3, 6.5.4, 6.5.5 and 6.5.6, with any necessary alterations.
- (2) If an RTO with whom the regulator has entered an agreement under this regulation exercises functions and powers of the regulator in accordance with the agreement, the exercise of those functions and powers has the same effect as if they had been exercised by the regulator.
- (3) Nothing in an agreement under this regulation prevents the regulator from exercising its functions and powers in accordance with this Division.

Division 3 Duties of workers

6.6.10 Duties of workers

- (1) A worker carrying out construction work must keep available for inspection by an inspector:
 - (a) his or her general induction training card; or
 - (b) if the worker has applied for a general induction training card and has not been notified of the decision on the application, a certification held by the worker that was issued no more than 60 days before applying for the card.
- (2) A card holder, on receiving a cancellation notice under regulation 6.5.8(3), must return the card in accordance with the notice.



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8 April 2009

The Secretary
Department of Resources Energy and Tourism
10 Binara St,
Canberra ACT 2601

Attention of Secretariat, Energy Technical and Safety Leaders Group
MCEMarketReform@ret.gov.au

Submission on the “Discussion Paper – Harmonisation of Energy Supply Industry Technical and Safety Regulation”

Dear Sir

Thank you for the opportunity to comment on the above discussion paper.

The NGF represents the electricity generators in the National Electricity Market (NEM), which includes some of Australia’s largest businesses with diverse electricity generation portfolios involving coal, gas, hydro and a range of other renewable sources. The principal Western Australian generators are associate NGF members. The annual revenue of the NEM exceeds \$12 billion.

The NGF is fully committed to continuous improvement in the provision of a safe and healthy workplace for all persons on generation sites, and fully supports initiatives which result in improving the current high OH&S performance of this sector of the energy supply Industry.

As a significant industry sector operating across the full range of Australian jurisdictions, NGF members operate in environments which are subject to different energy sector specific technical legislation and regulation and to different OHS legislation and regulations – all having various degrees of regulation on the prescriptive / performance based continuum. The resultant division of resources or additional workload does not support the effective and efficient meeting of minimum standards as defined in each jurisdiction’s legislation, and importantly also distracts and detracts from efforts to drive genuine continuous improvement towards meeting and sustaining zero harm objectives across the industry sector.

Industry sector and organisation-wide technical and safety management standards and systems are very difficult and costly to develop and maintain. There are differences across state and territory boundaries leading to significant and unnecessary complexity and duplication.

This impacts upon the clarity, usability and potential effectiveness of these systems in the workplace where it is critical that they make an ongoing difference to performance in terms of the health and safety of people, and the safe / reliable operation of industry sector assets.

Auditing processes should only be sized to verify with reasonable confidence that critical outcomes are being delivered - a "chock" just large enough to retain ground already taken on the continuous improvement journey to 'zero harm' and ongoing safe, reliable operations. The resources that are currently being consumed on satisfying and resourcing multiple external regulatory audit processes (e.g. those of the technical regulator, WorkCover self-insurance, legislative audits by State OHS Regulators) - all of which significantly overlap - are resources that are not being invested in continuous improvement. The industry is unable to sustain this use of resources. National regulations and a single national regulator would reduce this auditing burden significantly (as well as increase the efficiency and arguably the effectiveness of regulators themselves).

Currently with each state / territory and the Commonwealth resourcing the production of multiple sets of similar regulations with the same objectives but just enough difference to create confusion and thereby require an individually tailored approach in each jurisdiction, wasted resources must abound. The NGF suggests that a much reduced level of resources could be engaged in developing a single set of leading-edge, nation-wide Technical (industry sector specific) and OHS legislation / regulations, with the resources saved re-invested in quality OHS research and positive education or support initiatives for proactive and targeted driving of continuous improvement.

Differences in regulations across state boundaries negatively impact the effective and efficient transfer of people within national organisations within industry. This makes recruitment and movement of people to organisations in different states an exercise in retraining and competency assessment. A single technical and OHS regulator with a single set of regulations would enable our entire industry to speak the same language, apply the same standards and procedures; and make movement across the country less onerous, more efficient and significantly less costly. In addition, as access to skilled personnel decreases over time, the need for increased levels of flexibility to meet business challenges and maintain asset reliability is increasing.

Differences in technical and safety legislation across jurisdictions within the National Electricity Market is a key factor in sustaining an uneven playing field, and facilitates competing agendas across states and territories (e.g. for business investment).

The NGF does not believe that a 'national harmonisation' approach which falls short of national legislation and regulations will significantly improve the status quo. As evidence of the confusion caused and the time, energy and resources that can be expended when individual state and territory jurisdictions differently interpret a single national standard, reference should be made to the National Standard for Construction Work. This standard has been applied in a variety of ways to the generation sector, even though neither the standard nor the Final Report of the Royal Commission into the Building and Construction Industry references the generation industry.

The NGF members are of the firm view that harmonisation is only possible through a single set of legislation and regulations and a single regulating body. To fall short of this outcome will continue to waste resources and create confusion, all to the detriment of improving safety at the workplace. The NGF's response to the national review into Model OHS laws has been prepared on this basis. However, the NGF will support and seek to be actively involved in any process that leads towards harmonization; be it national standards or national model legislation, and the consistent and sensible adoption of those standards and legislation by each jurisdiction.

The objective of the NGF is to seek, in order of preference:

- a. A single national OH&S regulator, with coverage over generator sites (i.e. no coverage of generators by a separate energy regulator).
- b. Multiple OH&S regulators consistently applying a national regulatory model, each with coverage over generator sites in their respective jurisdictions (i.e. no coverage of generators by separate energy regulator/s).
- c. A single national OH&S and a single national energy technical regulator, each with coverage of the generator sites.

The NGF members are aware that at the COAG meeting of 3 July 2008 it was agreed that there is to be no single national OHS regulator. In the light of this decision it is essential that means are found to correct the current situation of different regulators interpreting and applying national standards in different ways without adequately consulting the affected industries.

Failing the move to a single national OHS regulator or a single national energy regulator, the NGF seeks – as an outcome of the process of harmonisation of energy supply industry technical and safety regulation – to be covered by a single regulator in each State, and that that regulator be responsible for all OHS aspects on generation sites.

To achieve this outcome, the NGF desires that current energy regulatory requirements be restricted in scope to transmission and distribution networks and to matters pertaining to public safety (such as approval of appliances / equipment and licensing of electrical workers who undertake works in the public domain). This is therefore the thrust of the NGF's comments on the "Discussion Paper – Harmonisation of Energy Supply Industry Technical and Safety Regulation". It is noted that the outcome sought by the NGF is already in place in NSW.

With this outcome and the NSW model in mind, the NGF submits the following:

- a. **Licensing of electrical workers** -- that the requirement to use licensed electrical workers - with qualifications based upon domestic and commercial application of AS3000 – should not apply to generation sites as they have little relevance to the specialised equipment and associated maintenance activities (such as high voltage testing and in-situ work on generator windings). The NGF proposes that a requirement to use competent electrical workers (as is currently the case in NSW, Victoria, South Australia and West Australia) when working on other than domestic or commercial-style installations is more appropriate.
- b. **Standards, Guidelines & Codes** -- that the related Australian Standards pertaining to electrical safety would be called up in the model OH&S Regulations.
- c. **Licensing of Generators** -- that the requirement for licensing of generators would be removed, as – given the requirements of the AER and NEMMCO registration process – the licence adds no value to either reliability or quality. Note that generators are not required to be licensed in NSW.
- d. **Electrical Incidents** -- that electrical incidents would be reported to the OH&S regulator/s, as they currently are in a number of jurisdictions.
- e. **Community Education** -- that with the absence of exposure by the public to generator assets, the need for community education with respect to electrical hazards falls away.
- f. **Inspection / Enforcement** -- that inspection / enforcement relating to all incidents or site visits will fall under the OH&S regulator/s – as they do now.

- g. **Approval of Appliances / Equipment** -- that as this matter pertains to public safety it will remain the province of the Energy Regulator/s.
- h. **Bushfire Mitigation / Vegetation Clearance** -- that bushfires and encroaching vegetation which present risks to the public are not considered being relevant to generation assets. These matters would therefore remain the province of the Energy Regulator/s.
- i. **Cathodic Protection Schemes** -- that the need to register cathodic protection schemes is driven by the risks to public assets from stray currents, that it is considered that the risks to public / other assets from stray currents associated with power station cathodic protection schemes is negligible, and that registration of those schemes may remain the province of the Energy Regulators and not be applied to generators.

With respect to the proposal for the “Energy Network Safety System (ENSS)”, the NGF acknowledges the ENA’s position for transmission and distribution network operators, and that owing to their geographic spread and exposure to the public and risks to public assets, an ENSS is an appropriate response for ENA network businesses.

The NGF submits that for generators, the application of an ENSS is significantly less critical as, unlike transmission and distribution companies, generators are not – for the main part – required to have a safety case. A mandated safety case will impose additional burden and cost, distract a workforce from opportunities to improve, result in no improvement in safety performance within the asset, and has no relevance outside the asset (i.e. in the public domain). In particular:

- a. Generation technology – and therefore the operating and maintenance regime – is relatively stable. Typically the development of technology does not outstrip the advancement of regulation – enabling the current regulatory regime to provide sufficient flexibility in operation and work practices.
- b. Repair, maintenance and overhaul (either scheduled or unscheduled) activities within generators are planned, assessed for risk, undertaken on a controlled and stable site with no public access, and managed according to clearly defined safety procedures.
- c. Activities at a power station are similar to those of any heavy manufacturing industry.
- d. The historical risk profile of generator OHS performance does not indicate any need for movement to the safety case regime.
- e. The introduction of the safety case regime has the potential to increase diversity between generators through different adoption of Standards, Codes of Practice, etc, – increasing barriers caused by different approaches to safety management.
- f. Maintenance plans exist for the whole of plant life (60 – 80 years).
- g. Major maintenance activities are undertaken on a cyclic basis to a detailed program.
- h. Power stations have procedures, processes and practices in place to ensure that hazards are understood and risks are – wherever possible – as low as reasonably practicable.
- i. If the nature of generation facilities presents a significant risk, that risk is managed through the application of existing Major Hazard regulations.

In summary, the NGF does not support the inclusion of generators within the proposed Energy Network Safety System and associated safety case requirements.

Nor does the NGF support the continued application of current energy and technical regulatory requirements (designed predominantly for the regulation of transmission and distribution networks and matters pertaining to electricity and public safety) to generators on either a National or jurisdictional basis.

Rather, as per the discussion above and, as has been demonstrated adequately in New South Wales, the NGF strongly supports generators being subject to OHS legislation and regulation alone (i.e. no energy / technical regulation), and preferably national OHS legislation and regulation administered through a single national OHS regulatory body.

Where agreement on a single national OHS Regulator cannot be reached through the current national harmonisation process, the NGF supports the nationally consistent implementation, interpretation and administration of a single national OHS Act and set of national OHS regulations by the jurisdictional OHS regulators across Australia.

The NGF is committed to working with key stakeholders to deliver these outcomes, which will in turn deliver significant OHS and efficiency improvements to generation organisations across the nation.

Yours sincerely

A handwritten signature in blue ink that reads "John Boshier". The signature is written in a cursive style with a large initial "J" and "B".

John Boshier
Executive Director