

Government Response to the Independent Review of Victoria's Electricity and Gas Network Safety Framework



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Government Response to the Independent Review of Victoria's Electricity and Gas Network Safety Framework

Introduction

The Victorian Government is committed to the safety of Victorians. In January 2017, the government commissioned a review into Victoria's electricity and gas network safety framework. It has been more than a decade since the current energy network safety framework was put in place, and the review was commissioned to ensure the existing arrangements adequately reflect the needs of the Victorian community.

The review considered the design and adequacy of the regulatory system governing the safety of Victoria's electricity and gas networks including the regulator, Energy Safe Victoria (ESV).

The government appointed Dr Paul Grimes as the independent Chair for the review. The final report for the Independent Review of Victoria's Electricity and Gas Network Safety Framework was submitted to the Minister for Energy, Environment and Climate Change in December 2017. This report provides the government with recommendations to position Victoria at the forefront of safety regulation of electricity and gas networks.

The review was informed by extensive consultation with a range of energy regulators, distribution businesses, unions, industry associations, consumer groups, academic and industry experts and national and state government agencies. This included the opportunity to make submissions to the review's interim report, which contained the recommendations in draft form.

The review found that whilst Victoria has in place many of the key elements of a leading regulatory system, there are several areas for improvement. The review made 43 recommendations chiefly focussed on strengthening the capabilities and regulatory approach of the regulator, ESV, underpinned by consolidated and improved legislation.

Of these recommendations, 22 are directed to ESV to improve its internal systems and processes, engagement with other agencies, and its compliance and enforcement activities.

The Victorian Government's response to the Independent Review of Victoria's Electricity and Gas Network Safety Framework.

This statement details the government's response to the review's 43 recommendations. It outlines the government's support for 42 of the 43 the recommendations, ranging from those that the government is already taking steps to progress, to those that due to higher implementation complexity, funding considerations or legislative change, will undergo further consultation and analysis prior to implementation.

Making Victoria Safer

The government fully supports 21 of the 43 recommendations to strengthen Victoria's electricity and gas network safety framework and has already requested ESV and the Department of Environment, Land, Water and Planning (DELWP) to take steps to progress them. These include:

- **Strengthening ESV's internal corporate management systems and processes** to support well-informed, transparent regulatory decision-making (*Recommendations 3, 4, 5*).
- **Strengthening ESV's capability and preparedness to take strong regulatory action** through an integrated plan of action to strengthen its analytical capabilities, enhanced auditing and inspection resources supported by strong compliance and enforcement policies and a new charter of regulatory practice (*Recommendations 6, 7, 8, 9, 11, 42*).
- **Better integration across agencies** through improved engagement protocols and guidance materials to enhance role clarity and responsibilities, and promote a greater transparency and accountability around the delivery of safety programs by network businesses (*Recommendations 16, 17, 19, 20, 21, 22*).
- **Promoting workforce engagement** through the establishment of a consultative committee to improve the engagement and sharing of best practices between network businesses, major contractors, trade unions, WorkSafe Victoria and the workforce (*Recommendation 25*).

- **Delivering effective programs to reduce the risk of electrical assets causing catastrophic bushfires** (*Recommendations 26, 27, 28*).
- **Ensuring the regulatory safety framework is able to adapt to manage new sources of safety risk in the networks of the future** through the establishment of an expert advisory committee and development of a roadmap to ensure safety risks are identified early and managed effectively (*Recommendations 32, 33*).

Recommendations that the Victorian Government is taking steps to progress

Strengthening ESV's internal corporate management systems and processes

- 3 Building on its existing Conflict of Interest Policy, ESV should develop documented protocols and additional guidance to ensure that perceived and potential conflicts of interest are addressed in its regulatory decision making, particularly in cases where regulatory staff have previously been employed by network businesses or undertaken previous consulting engagements with network businesses.
- 4 The Executive Management Board of ESV should develop an overarching organisational reform roadmap that details key actions that have already been taken to strengthen ESV's corporate governance and management structures and processes, and the actions that have yet to be completed.
This roadmap should take account of actions in response to the recommendations of this Review of Victoria's Electricity and Gas Network Safety Framework and in response to the findings of previous reviews commissioned by the Director of Energy Safety. The roadmap should be reported publicly on ESV's website and updated quarterly until all key actions have been completed.
- 5 ESV should develop and implement a formal workforce strategy to support the attraction and retention of high performing staff. This strategy should include a specific focus on broadening the diversity of ESV's workforce over time, including gender diversity.

Strengthening ESV's capability and preparedness to take strong regulatory action

- 6 ESV should substantially increase its audit and inspection resources and activity compared to recent years, in accordance with the directions set out in its Corporate Plan 2017-2020. Performance against this plan should be reported publicly, including summary information that clearly explains, at a "plain English" level, what ESV has achieved and what more remains to be done to fully deliver its more intensive audit program. This should be supported by detailed information on the audits conducted each year, including: the number of audits, the sites and distribution businesses covered, the focus of the audits and the results of those audits. This should build on and extend existing safety performance reporting by ESV.
- 7 ESV should conduct an internal review of its expanded audit and inspections program in 2020 to determine whether a further change in the resourcing of these functions is required.
- 8 ESV should develop an integrated plan of action to strengthen its analytical capabilities and processes to support effective risk-based regulation. This action plan should build on the initiatives outlined in ESV's *Corporate Plan 2017-2020*. To promote accountability, it should include clear actionable milestones. Progress against the action plan should be reported annually until all planned milestones have been completed.
- 9 ESV should implement the more robust approach to regulatory compliance and enforcement outlined in its *Corporate Plan 2017-2020*, and prepare an updated *Charter of Consultation and Regulatory Practice* and an updated *Compliance and Enforcement Policy*, to reflect this amended approach.
- 11 ESV should continue to strengthen its internal systems and processes to facilitate robust and consistent compliance and enforcement decision making. This should include the continued operation of the recently re-established Compliance and Enforcement Panel, and any necessary improvements in the internal guidance to ESV officers in compliance and enforcement related roles to ensure timely and consistent decision making.
- 42 ESV should, in consultation with network businesses, further develop internal and external guidance on its expectations for safety cases, and its approach to evaluating safety cases for acceptance. This should include its approach and expectations for:
 - safety case components being clear, measurable and targeted to safety obligations;
 - how a precaution-based approach is applied to managing safety risk; and
 - safety case submission and revision processes.

Better integration across agencies

- 16 ESV should review each existing MOU with other regulators and government departments and agencies annually to ensure they remain current and fit-for-purpose.
- 17 ESV and DELWP should jointly develop an MOU to help manage their respective responsibilities. This should replace the MOU with the former Department of Primary Industries and update the arrangements to

Recommendations that the Victorian Government is taking steps to progress

reflect the current allocation of responsibilities between ESV and the department. The MOU should recognise and facilitate ESV's independence in regulatory decision making, and the department's role as the principal source of policy advice to the Minister for Energy, Environment and Climate Change.

- 19 ESV should review, and update where necessary, the *Electricity Hazards & Safety Handbook for Emergency Service Personnel* in consultation with DELWP, network businesses and the relevant emergency services agencies. This review should consider any areas in which current operational responsibilities require clarification. In addition, ESV should prepare a Gas Hazards and Safety Handbook in consultation with DELWP, the industry and the relevant emergency services agencies.
- 20 In consultation with the AER, ESV should annually evaluate the operation of its MOU with the AER. A summary of each evaluation should be published in ESV's Annual Report.
- 21 In consultation with the AER, ESV should prepare public guidance that sets out clear protocols to facilitate effective engagement between ESV and regulated network businesses as an input into price review processes conducted by the AER.
- 22 ESV should, in consultation with regulated network operators and the AER, evaluate its requirements for safety cases to ensure that all safety-related elements that have been factored into AER determinations, are identified and supported by clear implementation plans.
ESV should report on the progress made by regulated network operators in its annual network safety performance reports. The reporting should be sufficient to ensure that there is a high degree of transparency to the Victorian community about the progress in the implementation of safety programs.

Promoting workforce engagement

- 25 ESV should establish a consultative committee under Section 8 of the *Energy Safe Victoria Act 2005*. This committee should:
 - provide advice to ESV to assist in its consideration of workforce engagement issues;
 - contribute to the development of broader workforce engagement strategies, including the sharing of best practices; and
 - be comprised of representatives from network businesses, major contractors, trade unions, WorkSafe Victoria and the workforce.

Continuing to deliver effective programs to reduce the risk of electrical assets causing catastrophic bushfires

- 26 DELWP should develop a transition plan that outlines a clear pathway for the closure of its program components of the Powerline Bushfire Safety Program and handover arrangements for residual components to ensure the learning gained through the program is maintained into the future.
- 27 The mandate of the Powerline Bushfire Safety Committee should be expanded to require it to provide annual implementation reports on the deployment of REFCL technology to satisfy the *Electricity Safety (Bushfire Mitigation) Regulations 2013*. The implementation reports should include information on the costs and risk reduction benefits in light of actual experience, and an assessment of emerging issues that may require adjustments to program timing or technical requirements. The first report should be provided through the Director of Energy Safety to the Minister for Energy, Environment and Climate Change by May 2018.
- 28 ESV should continue to work closely with distribution businesses, and with the assistance of the Powerline Bushfire Safety Committee, to provide timely advice to the Minister for Energy, Environment and Climate Change on the need for any exemptions from the performance standards contained in the *Electricity Safety (Bushfire Mitigation) Regulations 2013*.

Ensuring the regulatory safety framework is able to adapt to manage new sources of safety risk in the networks of the future

- 32 ESV should establish an expert advisory committee under Section 8 of the *Energy Safe Victoria Act 2005* to advise on emerging trends in electricity and gas networks and possible changes to regulatory settings that might be considered necessary to manage new sources of safety risk.
- 33 ESV should develop a roadmap of emerging issues and proposed actions to ensure the safety risks arising from new technologies and network structures are identified early and managed effectively. Progress against the roadmap should be reported annually in ESV's Annual Report and network safety performance reports.

The government supports in principle 21 of the 43 recommendations and will draw on the outcomes of further consultation and analysis to determine how these recommendations can best be implemented. These include:

- **Strengthening ESV’s governance structure** by moving ESV from a single-member agency to a three-person commission (*Recommendation 1*). The government is also considering options to establish a technical advisory panel to provide advice to ESV on matters relating to the regulation of the networks.
- **Strengthening the safety regulatory regime through revised and consolidated legislation** - a single new energy safety Act, consolidating the *Gas Safety Act 1997*, the *Electricity Safety Act 1998*, elements of *Pipelines Act 2005* and the *Energy Safe Victoria Act 2005* (*Recommendations 34, 35, 36, 37, 38, 39, 40, 41, 43*). The government is also considering options for the introduction of a licensing scheme for electrical lineworkers to enhance ESV’s oversight of the industry.
- **Improving ESV’s capabilities to support effective risk-based regulation** by implementing a more mature data analytics, collection and management system, further enhancements to its auditing and inspection regime, a broader suite of compliance and enforcement tools and increased penalties for non-compliance (*Recommendations 10, 12, 13, 14, 15*).
- **The government will request the Essential Services Commission commence a review of its regulatory distribution codes** to consider the role of ESV in promoting and enforcing compliance with technical standards (*Recommendation 18*).
- **The government will consider the case for a formal reliability standard for the gas network** (*Recommendations 23, 24*).
- **Delivering enhanced programs to address bushfire safety** through further research and development into new technologies to manage bushfire risk from electrical assets (*Recommendation 29*).
- **Enhancing the safety regulation of underground assets** by making Dial Before You Dig mandatory and the provision of better advice to government to protect underground assets (*Recommendations 30, 31*).

Recommendations supported in principle

Strengthening ESV’s governance structure by moving from a single-member agency to a three-person commission

- 1 Energy Safe Victoria should be established as a commission with three commissioners. One commissioner should serve as a full-time chair, with reserve powers in the event of emergencies. The remaining two commissioners should be appointed on a part-time basis. The commissioners should each have equal voting rights, with decisions being made by consensus, or by a simple majority if a consensus cannot be achieved. Commissioners should be appointed for five year terms, with the ability for these terms to be renewed once only.

Improving ESV’s capabilities to support effective risk-based regulation

- 10 ESV should maintain a sufficient capability to initiate strong enforcement actions, including legal prosecution, when justified on public interest grounds. This should include standing arrangements to ensure it can effectively draw on specialist external resources if and when required. ESV’s capabilities to support strong enforcement actions should be reviewed by ESV’s Executive Management Board annually.
- 12 The range of compliance and enforcement tools provided in legislation should be expanded, including provision for injunctions and adverse publicity orders, and giving ESV the capacity to enter into enforceable undertakings. In addition, existing regulatory tools available to ESV should be reviewed to:
 - remove unnecessary limitations on what the tools can be used for, including expanding the scope for infringement and improvement notices to be used;
 - better align them between electricity and gas sectors; and
 - identify any further improvements that may be required.
- 13 The penalty levels for offences related to electricity and gas networks should be reviewed with a view to increasing them to levels that apply in other leading safety regimes in Australia. As part of this process, the penalties for similar offences applying to pipelines, gas and electricity networks should be aligned.
- 14 The development of a mature data analytics capability, including the data collection and management systems to support robust statistical analysis, should form a central component of ESV’s integrated action plan to strengthen its analytical capabilities. Clear milestones should be developed to promote accountability.

Recommendations supported in principle

- 15 ESV should consider and respond to all recommendations of the report *Assessment and Analysis of Incident Data Held by Energy Safe Victoria* as part of strengthening and expanding its Data Management and Analytics Strategy.

The government will request the Essential Services Commission to commence a review of its regulatory distribution codes

- 18 The ESC should complete its review of the voltage variation standards under Clause 4.2.2 of the *Electricity Distribution Code* as soon as practicable. The planned broader reviews by the ESC of the *Electricity Distribution Code* and the *Gas Distribution Code* should ensure technical standards are clearly defined and consider the role of ESV in promoting and enforcing compliance with these standards.

The government will consider the case for a formal reliability standard for the gas network

- 23 The Victorian Government should consider the case for a formal reliability standard for the gas network, in consultation with relevant stakeholders. If the adoption of a formal reliability standard is preferred, the Victorian Government should request the AEMC to determine the best approach to develop a framework and governance arrangements for establishing a reliability standard to support consideration of a robust, economically justified level of investment for reliable and secure gas supply.
- 24 The Victorian Government, in consultation with relevant stakeholders, should consider the development of mechanisms to support effective coordination in system planning for the declared transmission system and gas distribution network in an economically efficient manner.

Delivering enhanced programs to address bushfire safety through further research and development into new technologies to manage bushfire risk from electrical assets

- 29 The Victorian Government should provide ongoing funding for further research and development into new technology to manage the bushfire risk from electric lines. Any funding should be contingent on being at least matched by contributions from distribution companies. The ongoing program should be managed jointly with distribution companies and involve input from university researchers. It should be subject to evaluation at least every four years, with the continued provision of public funding to be contingent on satisfactory research performance.

Enhancing the safety regulation of underground assets

- 30 The Victorian Government should note the Review's support for the Major Hazard Facilities Advisory Committee's recommendations to formalise the membership and operation of the *Land Development Around Pipelines Working Group* and to task the working group with providing advice to government to improve planning around high pressure gas pipelines.
- 31 Subject to the completion of a positive regulation impact assessment, *Dial Before You Dig* should be made mandatory in Victoria following the approach that has been adopted in New South Wales.

Strengthening the safety regulatory regime through revised and consolidated legislation - a single new energy safety Act

- 34 All energy safety legislation should be consolidated in a single new energy safety Act, replacing the *Gas Safety Act 1997*, *Electricity Safety Act 1998*, those elements of the *Pipelines Act 2005* that relate to safety, and the *Energy Safe Victoria Act 2005*.
- 35 The general safety duties within the new consolidated energy safety legislation should be based around a consistent application of the principle that risks should be reduced so far as is "reasonably practicable" aligning with the definition adopted in the *Occupational Health and Safety Act 2004*.
- 36 The general safety duties within the new consolidated energy safety legislation should be presented clearly, with the aim that they:
- are aligned, but retain necessary sector-specific differences;
 - cover a range of circumstances in energy network safety;
 - do not easily become outdated and can cover emerging risks and industry changes;
 - are clearly expressed as to the obligations imposed and classes of duty holders;
 - are enforceable in practice;
 - function effectively with safety case provisions under the Act, including enabling the regulator to take compliance and enforcement action in response to unacceptable risk; and
 - remain outcomes-based allowing flexibility in compliance arrangements.

Recommendations supported in principle

- 37 The consolidated energy safety legislation should provide consistent foundations for the safety case regime in the regulation of electricity and gas network safety. The legislation should make it clear that safety case based regulation must be supported by detailed systems and prescribed standards applied within network businesses. It should also be clear from ESV's objectives, functions, and business' safety duties that long-term asset integrity and sustainability are encompassed within the safety case regime and ESV's regulatory remit.
- 38 In developing new consolidated energy safety legislation, consideration should be given to improving the structure and operation of regulations under the Act, including, for example, integrating the Code of Practice for Electric Line Clearance into the *Electricity Safety (Electric Line Clearance) Regulations 2015* and setting the expiry period to ten years rather than five.
- 39 The full responsibility for administering the civil penalty provisions applying to electricity network businesses should be assigned to ESV when it is established as a commission under the new consolidated safety legislation. Any decision to exempt a business from the application of the requirements subject to civil penalties should remain with the responsible Minister.
- 40 The safety case provisions in the consolidated energy safety legislation should facilitate effective regulation by ESV including:
- providing broad discretion for ESV to request changes;
 - providing the capacity for ESV to accept changes or request revisions without it requiring a full revision resetting the five-year revision period;
 - providing the capacity for ESV to require a full revision of a safety case resetting the five-year revision period, under circumstances where there has been a material change warranting a full revision; and
 - incorporating effective provisions to ensure network businesses have adequate safety cases in place.
- 41 As part of the consolidated safety legislation, ESV should be given sufficiently wide powers across sectors for requesting information to assist ESV in performing its functions. This should be informed by the powers available to the AER under the *National Electricity Law*.
- 43 The consolidated safety legislation should provide for the review of ESV by an independent expert panel appointed by the responsible Minister every five years.

The review's second recommendation is not supported by government. Clear lines of accountability and role clarity are supported by the best practice governance model of the minister appointing a governing body and the governing body employing the chief executive officer, to allow for a clear separation between those setting strategy and the day to day management of the entity.

Recommendations not supported

Strengthening ESV's governance structure

- 2 The Chair of the Energy Safe Victoria Commission should also serve as Chief Executive of ESV and should have responsibility for the corporate leadership of ESV, advised by an Executive Management Board.

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