Review of Victoria's Electricity Network Safety Framework
WorkSafe Victoria submission

Introduction

WorkSafe's vision is to ensure that Victorian workers return home safely every day and its mission is to actively work with the community to deliver outstanding workplace safety and return to work, together with insurance protection.

As the regulator of workplace health and safety, WorkSafe's key responsibilities include the prevention of workplace injuries, illness and fatalities by assisting employers meet their OHS obligations and to implement effective systems to prevent workplace injuries and enforcing Victoria's occupational health and safety laws.

WorkSafe is also responsible for managing Victoria's workers compensation scheme by providing reasonably priced insurance for employers and helping injured workers access compensation and support to aid recovery and to assist return to work.

WorkSafe's role, and the requirements and protections that apply to Victorian businesses and workers, are set out in the legislation, particularly in the Occupational Health and Safety Act 2004 and the Workplace Injury Rehabilitation and Compensation Act 2013.

WorkSafe Victoria welcomes the opportunity to provide comment on the Issues Paper - Review of Victoria's Network Electricity Network Safety Framework and provides its detailed submission below.

Terms of Reference

1. The terms of reference for the review provide that it 'is intended to examine the safety framework applicable to the electricity network in Victoria'. WorkSafe considers it is appropriate to limit the scope of the review to safety matters specific to network safety. This is in keeping with the main objective of the review which is "to enhance the safety of our electricity supply and reduce the risk of fires created by electrical assets"[1].
2. Occupational health and safety (OHS) regulation is not specific to electricity networks. General legal duties apply to a range of duty holders under OHS legislation at any workplace in Victoria. An outline of how these general duties apply in relation to electricity distributors is set out later in this submission.

Regulatory coordination

3. As noted on page 19 of the issues paper, WorkSafe and Energy Safe Victoria (ESV) entered into a memorandum of understanding (MOU) in September 2015 regarding cooperation in the regulation of Major Hazard Facilities (MHFs), and inspection and incident investigations where jurisdictions overlap.
4. In accordance with the MOU, WorkSafe and ESV meet on a quarterly basis. WorkSafe has provided ESV with information on the 2017 schedule of inspections and verifications. Information sharing under the MOU occurs when requested. In addition, ESV is advised when a MHF safety case is submitted to WorkSafe.
5. On an ad-hoc basis, WorkSafe construction and general field staff also contact and/or engage with ESV staff in the follow up and investigation of workplace incidents.

[1] Minister for Energy, Environment and Climate Change, Lily D'Ambrosio, Media Release 19 January 2017

6. As noted in the issues paper at page 19, the Blue Book (the Code of Practice on Electrical Safety for Work in or Near High Voltage Electrical Apparatus) is maintained by the Electrical Safety Committee. WorkSafe is represented on that committee. In addition to the Blue Book, ESV and WorkSafe collaborate on a range of guidance for employers and any person working on or near electrical installations and powerlines, including the Framework for Undertaking Work Near Overhead and Underground Assets.

OHS regulation of Victorian electricity networks

7. Each electricity distributor in Victoria has general health and safety duties as an employer under section 21 of the Occupational Health and Safety Act 2004 (OHS Act). Every employer must, so far as is reasonably practicable, provide and maintain for employees of the employer a working environment that is safe and without risks to health. This duty extends to contractors engaged by the employer, and any employees of those contractors.

8. Employers also have duties under section 23 of the OHS Act to ensure, so far as is reasonably practicable, that persons other than their employees are not exposed to risks to their health or safety arising from their business activities.

9. An electricity distributor may also have duties as a person with management or control of a workplace. Under section 26 of the OHS Act, a person who has, to any extent, the management or control of a workplace must ensure so far as is reasonably practicable that the workplace and the means of entering and leaving it are safe and without risks to health.

10. Section 20(1) of the OHS Act provides that a duty imposed on a person by Part 3 of the OHS Act (General duties relating to health and safety) or the regulations to ensure, so far as is reasonably practicable, health and safety, requires the person—

    (a) to eliminate risks to health and safety so far as is reasonably practicable; and

    (b) if it is not reasonably practicable to eliminate risks to health and safety, to reduce those risks so far as is reasonably practicable.

    Section 20(2) of the OHS Act sets out matters that must be considered in determining what is (or was at a particular time) reasonably practicable in relation to ensuring health and safety. WorkSafe has published a position 'How WorkSafe applies the law in relation to Reasonably Practicable' under section 12 of the OHS Act to provide further guidance to duty holders.

11. Additional duty holders under the OHS Act which may be relevant to electricity networks include: designers of buildings or structures; designers of plant; and persons installing, erecting or commissioning plant.

12. The Occupational Health and Safety Regulations 2007 (OHS Regulations) prescribe the way in which duties or obligations imposed by the OHS Act must be met in relation to certain hazards and risks. Work on an electricity network is likely to engage a number of specific requirements under the OHS Regulations. For example:

    - risks to health and safety associated with any construction work on an electricity network, must be controlled in accordance with the *Construction* part of the OHS Regulations (Part 5.1, OHS Regulations);
    - any construction work on or near energised electrical installations or services is 'high risk construction work', which must be undertaken in accordance with a safe work method statement (Part 5.1, OHS Regulations);
    - work on overhead power lines is likely to include risks associated with falls from height, which employers must control in accordance with the *Prevention of Falls* part of the OHS

Regulations (Part 3.3, OHS Regulations); and

- work on electricity networks may also involve the use of plant. The *Plant* part of the OHS Regulations imposes duties on employers to, amongst other things, comply with the hierarchy of control for risks associated with plant and additional requirements for specific risk controls (eg guarding) and certain types of plant (eg powered mobile plant) (Part 3.5 OHS Regulations).

OHS consultation duties

13. The issues paper identifies safety culture and workforce engagement as a topic for consideration (page 14).
14. Under Part 4 of the OHS Act (Duty of employers to consult), employers must consult with employees (including any contractors engaged by the employer, and the contractor's employees) and their health and safety representatives on health and safety matters that directly affect them, so far as is reasonably practicable. Section 35 details the matters that an employer must consult on, and section 36 sets out how an employer must undertake the consultation. WorkSafe publishes extensive guidance on the duty to consult.

Electricity Safety Management Scheme (ESMS) and OHS regulation interaction

15. Under the Electricity Safety Act 1998 (the ES Act), every major electricity company must operate their distribution networks in accordance with an ESMS approved by ESV. Compliance with an approved ESMS is a defence against the general obligation to design, construct, operate, maintain and decommission a supply network to minimise hazards and risks to the safety of any person, or the damage of property, arising from the supply network as far as practicable. This includes minimising the risk of bushfire danger arising from the network. Compliance with an approved ESMS is not a statutory defence against a breach of OHS legislation.
16. Regulation 25A of the Electricity Safety (Management) Regulations 2009 provides that a distributor's ESMS must comply with AS 5577-2013: Electricity network safety management systems. That standard expressly provides that nothing in the standard 'relieves any persons designing or working on or near electricity networks of any safety obligations imposed under jurisdictional or national work health and safety legislation' .
17. In addition, the 'Statement from the Director of Energy Safety' in the Blue Book explains that 'under the Electricity Safety (Management) Regulations 2009, the Blue Book is a published technical standard that major electricity companies in Victoria must comply with, unless they establish a level of safety in their ESV-accepted [ESMS] that is at least equivalent to that provided by the Blue Book'. It is in this manner that the Blue Book (see issues paper pages 14 and 19) is relevant to network safety in Victoria.

Use of safety cases in OHS regulation: Major Hazard Facilities and Mines

18. Safety case methods are used in OHS regulation for some complex industries, and may be a useful comparison to the safety case framework for major electricity companies under the Electrical Safety Act 1998. As part of the remaking of the OHS regulations these safety case methods were recently reviewed and determined to remain the most appropriate OHS regulatory approach for these industries. Further detail is set out below.

A. Major Hazard Facilities

19. A major hazard facility (MHF) is a facility where large quantities of dangerous goods (eg explosives, flammable gases and hazardous substances) are present or likely to be present.

WorkSafe may also determine a facility to be a MHF. There are approximately 40 MHFs in Victoria.

20. MHFs are subject to a safety case regime under Part 5.2 the OHS Regulations, in addition to general duties under the OHS Act and other Parts of the OHS Regulations (eg Part 4.1– Hazardous Substances). MHFs may also be subject to duties under dangerous goods legislation and the Emergency Management Act 2013.
21. The safety case approach was introduced in 2000 following the recommendations of the Royal Commission into the 1998 Longford gas explosion. The regime adopted elements of the 1996 'National Standard for the Control of Major Hazard Facilities' and accompanying Code of Practice declared by the former National Occupational Health and Safety Commission.
22. No major incidents comparable to the Longford gas explosion have occurred since the introduction of the safety case approach. However, there have been 21 'major incidents' (incidents involving the release of substances listed in Schedule 9 of the OHS Regulations, which posed a serious and immediate risk to health and safety).

OHS Regulations for MHFs

23. MHF operators must be licensed by WorkSafe or, as an interim measure, the MHF may be registered with WorkSafe. A licence application must include a Safety Case, and WorkSafe may only grant a licence if it is satisfied that the Safety Case has been prepared in accordance with Division 4 of Part 5.2 of the OHS Regulations. A licence must be renewed every five years, and the renewal application must include a revised Safety Case.
24. A Safety Case demonstrates that the MHF's Safety Management System (SMS) will control risks arising from major incidents and major incident hazards, and demonstrates the adequacy of the risk control measures.
25. In turn, the SMS is the primary means of ensuring the safe operation of a MHF in respect of major hazards, by providing a comprehensive and integrated system for the management of all aspects of adopted risk control measures. The SMS needs to reflect the hazards that are present and support the actual practices of the MHF. For the prescribed content of a SMS see regulation 5.2.5(3) and Schedule 10, OHS Regulations.
26. A SMS must be revised at least every five years and: if WorkSafe directs; before a modification to the MHF; after a major incident at the MHF; when an effectiveness test indicates a deficiency in a risk control measure; if there is a change in the circumstances that formed the basis of the Property Protection Assessment; or if a health and safety representative requests a review.
27. While WorkSafe must be satisfied a Safety Case meets the requirements of the OHS Regulations before it can grant a licence to a MHF operator, WorkSafe does not 'approve' Safety Cases. This is a notable difference to the requirement for ESV to approve an ESMS under the Electricity Safety Act 1998. The grant of a licence to a MHF operator, or compliance with a Safety Case or SMS, is not a statutory defence to the operator's general duties as an employer or person with management or control of a workplace under sections 21, 23, and 26 of the OHS Act.

Guidance

28. WorkSafe publishes extensive guidance to assist MHF operators in complying with their OHS duties. See: http://www.worksafe.vic.gov.au/safety-and-prevention/your-industry/major-hazard-

facilities.

B. Mines

29. Health and safety in high risk mines in Victoria is also subject to a safety case methodology (in addition to general duties under the OHS Act, OHS Regulations and dangerous goods legislation). Specific regulation of mines was introduced in 2002, taking into account the National Mine Safety Framework –Realising a Safe and Healthy Mining Industry: the contribution of Government (Ministerial Council for Mineral and Petroleum Resources, 2002) and the International Labour Organisation's Safety and Health in Mines Convention 1995 (ILO 176).

OHS Regulations for mines

30. A tiered, risk-based approach distinguishes between high and lower risk mines. Under Part 5.3 of the OHS Regulations, all mine operators are required to adopt a risk-management approach to control risks associated with mining hazards.

31. Operators of 'prescribed mines' (underground mines or determined by WorkSafe to be a prescribed mine) have additional duties, including to implement a SMS. As with the regulation of MHFs, the SMS is the primary means of ensuring the safe operation of a prescribed mine. It must be reviewed every three years and whenever a mine modification is made or an incident involving a mining hazard occurs.

Guidance

32. WorkSafe publishes guidance to assist mine operators, including five detailed self-assessment tools to guide prescribed mine operators through their core duties. See: http://www.worksafe.vic.gov.au/safety-and-prevention/your-industry/mines.

C. Review of safety case regimes

33. The safety case approach for MHFs and mines was reviewed as part of the remaking of the OHS Regulations, which sunset in June 2017. New OHS Regulations will come into effect on 18 June 2017. The Regulatory Impact Statement for the new regulations is available at consultation.worksafe.vic.gov.au/OHS-Regulations-Reform.

MHFs

34. Analysis of the MHF regime determined that the safety case approach remains the most appropriate to balance both the specialised knowledge required to manage the safety risks at an MHF with the need to maintain regulatory oversight in keeping with the significance of the risks. The review considered approaches to MHF regulation under the model Work Health and Safety (WHS) laws, which have not been adopted by Victoria, and the European Union directive 'Seveso III'. Both alternatives are variations of the safety case method.

Mines

35. Two options were identified for the regulation of mines:
    i. reliance on general OHS duties requirements for specific hazards under the OHS Regulations which apply across all workplaces, supported by mining-specific guidance; or
    ii. in addition to the above, impose duties on mine operators regarding risk control measures or prohibitions, specified processes (including the requirements for an SMS), and record keeping.
36. Reliance on general duties was not recommended as the risks were considered to be too great

for the community, given the hazardous nature of the mining industry and its history of industrial accidents and disasters.

37. The review considered adopting the draft mines framework under the model WHS, which applies a safety case method across all mines and quarries. It was not recommended as it would not be a proportionate approach to regulating mines according to their risk profiles.