

Monday, 27 November 2017

Department of Environment, Land, Water and Planning
GPO Box 500
East Melbourne Vic 8002

By email: delwp.secretariat@delwp.vic.gov.au

Interim Report – Review of Victoria’s Electricity and Gas Network Safety Framework

Dear Sir/Madam,

Australian Gas Infrastructure Group (AGIG) is Australia’s largest gas distribution business, delivering natural gas to more than 2 million customers across Australia. In Victoria, AGIG owns and operates two of the States three distribution networks; Australian Gas Networks (AGN) Victoria network and the Multinet Gas (MG) network.

We welcome this opportunity to submit our response to recommendations outlined in the Interim Report on the Review of Victoria’s Electricity and Gas Network Safety Framework - released 31 October 2017. We agree with the conclusions of the interim report that Victoria has many of the key elements of a leading safety regulatory system in place – but there are areas requiring attention, particularly around implementation.

The report provides 43 draft recommendations covering 9 areas considered to be the building blocks of a world leading energy network safety regime. Not all the recommendations apply equally to electricity and gas networks. We have responded to those recommendations applicable to our area of business. Refer to Attachment A.

As an overview, we are supportive of most recommendations in the interim report. In particular we support those recommendations which aim to increase collaboration, encourage innovation, consolidate and simplify legislation, strengthen key safety controls (e.g. use of DBYD to mitigate asset damages) and formalise relationships between market participants.

Please contact me on 03 8846 9918 or via email mark.beech@ue.com.au if you would like to discuss this submission further.

Yours sincerely,



Mark Beech
General Manager – Network Operations

Attachment A – Response to Draft Recommendations

The Interim Report on the Review of Victoria’s Electricity and Gas Network Safety Framework (Released 31 October 2017) outlined 43 draft recommendations covering 9 areas considered to be the building blocks of a world leading energy network safety regime.

Not all recommendations apply equally to electricity and gas networks. AGIG has focused its responses to those recommendations applicable to its area of business – i.e. gas networks.

Chapter 1: ESV’s Regulatory and Corporate Governance

Draft Recommendations

- (1) ESV should be stabilised 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 commissioners should have equal voting rights, with decisions being made by consensus, or by 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.
- (2) The Chair of the ESV Commission should also serve as CEO of ESV and should have broad responsibility for the corporate leadership of ESV, advised by an Executive Management Board comprising the commission members and no more than five executive managers.
- (3) Building on 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 arrangements with network businesses.
- (4) The Executive Management Board of ESV should develop an overarching 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 and in response to 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.

AGIG Response:

AGIG supports action to improve ESV’s regulatory and corporate governance structures.

AGIG is supportive of the more collaborative approach adopted by ESV over the recent past. We welcome the proposed public reporting and tracking of ESV’s overarching reform roadmap (to be developed) with key performance measures.

AGIG supports the formal development and implementation of a Conflict of Interest (COI) policy for ESV, and guidance material of how this policy would be implemented. A formalised and transparent COI policy will serve to address potential conflicts as they arise.

AGIG considers the development and implementation of a formal workforce strategy to attract and retain talent as fundamental to the ongoing success of any organisation. Developing and maintaining safety and technical skills in safety regulators is difficult and particularly so in a relatively narrow and small employment market that exists in Victoria.

Chapter 2: ESV's Regulatory Approach and Capabilities

Draft Recommendations

- (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 inspection's 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 2017-202, and prepare an updated Charter of Consultation and Regulatory Practice and an updated Compliance and Enforcement Policy, to reflect this amended approach.
- (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.
- (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.
- (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 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.
- (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 Analytical Strategy.

AGIG Response:

AGIG is committed to network safety and carries out extensive asset replacement programs to this end. We note that all three Victorian DBs (Distribution Businesses) have been replacing high risk low-pressure cast iron mains at an accelerated rate over a period of more than 10 years and that this is resulting in a reduction in asset failures and gas leaks in general.

We note that Gas Network safety performance in Australia is high and has been high for decades in all States under a number of different safety regulatory models. Network Incidents that result in injury are rare due to the high standard of risk management controls adopted by DBs and a largely effective safety case regulatory framework.

We acknowledge areas for improvement in the implementation of the Victorian regulatory safety regime but we do not see increased auditing and scrutiny of Gas Network businesses addressing this issue. We believe that improvements in the quality of conduct of the audits together with stronger collaboration between ESV and DBs would address the current deficiencies in this area without additional costs to the safety regime which are ultimately borne by gas consumers. We believe it would be appropriate to

benchmark resource levels of ESV against similar bodies in other States to understand whether additional resources are required.

We acknowledge it is difficult for a technical regulator to attract and retain highly skilled and motivated people with the technical and regulatory skill required. This problem is greater in the gas industry than the electricity industry due to the gas industry being much smaller and employing far fewer people. Employee turnover within the gas industry is low and regulatory careers are not necessarily attractive for technically skilled people.

Greater use of external specialist resources by ESV (who understand the gas industry) could assist in improving the standard, effectiveness and timeliness of audits and safety case assessments. We note this approach is effective in other jurisdictions and has been used for many years by the Essential Services Commission Victoria when auditing DBs on compliance with distribution licence conditions. The use of tripartite audits (Regulator, DB and independent expert) has been effective in other jurisdictions and should be considered. In addition obligations for timely response to Safety Case and other regulatory mandated submissions should be considered to improve the efficiency of the regulatory process.

AGIG is supportive of ESV adopting a more advanced data analytics approach but is conscious of the information requirements needed from industry for this to be effective. A collaborative approach by ESV in the establishment of reporting requirements from the network businesses is essential otherwise there is a risk of unnecessarily driving up DB costs. There should be clear objectives in collecting data from DBs and there should be demonstrable outcomes from the process.

Chapter 3: Engagement across Regulatory and Interagency Boundaries

Draft Recommendations

- (16) ESV should review existing memoranda of understanding (MOU) with other regulators and government departments and agencies annually to ensure they remain current and fit-for-purpose.
- (17) ESV & DELWP should jointly develop an MOU to help manage their respective responsibilities.
- (18) Not applicable to AGIG
- (19) ESV should prepare a Gas Hazards and safety handbook in consultation with DELWP, the industry and relevant emergency services agencies.

AGIG Response:

AGIG is supportive of the recommendations to clarify ESV's respective responsibilities with other agencies, particularly the DELWP.

Chapter 4: Integrating Safety Regulation with Economic Regulation

Draft Recommendations

- (20) In consultation with the AER, ESV should annually evaluate the operation of its Memorandum of Understanding 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 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 have been factored into AER determinations, are identified and supported by clear implementation of safety programs.
- (23) The Victorian Government should request the Australian Energy Market Commission, in close consultation with stakeholders, to develop a clear reliability standard for gas supply to support consideration of a robust, economically justified level of investment for reliable and secure gas supply.
- (24) The Victorian Government should request the Australian Energy Market Commission, in close consultation with stakeholders, to develop a coordinated planning process to enable overall system planning and to improve the assurance of reliable supply of gas to all declared transmission system and distribution network gas customers in an economically efficient manner.

AGIG Response:

AGIG has been encouraged by the interaction the AER and ESV on the access arrangements for both of its Victorian Networks, particularly on the proposed Mains Replacement Programs for the 2018-22 Access Arrangement Period. AGIG is supportive of the recommendations aimed at codifying and periodically evaluating the relationship between ESV and AER.

AGIG does not consider there is a need for the AEMC to develop a gas supply reliability or system planning standards. Gas supply reliability in Victoria is such that a customer can expect to have an unplanned interruption about once every 40 years. It is not clear what benefit regulatory intervention would provide and additional regulation is likely to result in reduced efficiency.

Chapter 5: Promoting Workforce Engagement

Draft Recommendations

- (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

AGIG Response:

Employee consultative processes in relation to safety are already prescribed within occupational health and safety legislation and observed by AGIG through its safety management systems and internal processes. The involvement of ESV explicitly in employee engagement in relation to workplace health and safety management via a consultative committee is likely to conflict with Worksafe Victoria and create regulatory overlap.

Chapter 6: Addressing Bushfire Risk in Victoria

Recommendations #26 to #29 are not applicable to AGIG network operations.

Chapter 7: Regulating Underground Assets

Draft Recommendations

- (30) The Victorian Government should note the review's support for the Major Hazard facilities Advisory Committee's recommendations to formalise the membership of the Development Around Pipelines Working Group and to task the group with providing advice to government to improve planning around high pressure gas pipelines.
- (31) Subject to the completion of a positive impact assessment, Dial Before You Dig should be made mandatory in Victoria following the approach adopted in NSW.

AGIG Response:

AGIG is supportive of both recommendations outlined in Chapter 7.

Urban development around high pressure pipelines is considered a major risk to pipeline integrity and public safety. Currently those responsible for the planning schemes have limited visibility of transmission pipelines and their vulnerabilities outside of the awareness programs adopted by networks.

Mandating the use of Dial Before You Dig (DBYD) in Victoria will help strengthen a key control implemented to reduce the risk and incidence of 3rd party damage to network assets. The mandating of DBYD will place further onus on the excavation industry to take appropriate precautions to prevent 3rd party incidents and provide ESV a clear measure for potential prosecution.

Chapter 8: – Regulating Networks for the future

Draft Recommendations

- (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 the 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

AGIG Response:

AGIG is supportive in principle of both recommendations outlined in Chapter 8.

At this stage it is unclear to what extent emerging trends pose a challenge to the current regulatory arrangements.

Chapter 9: Strengthening the Foundations for Future Network Safety Regulation

Draft Recommendations

- (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 as far as “reasonably practicable” aligning with the definition adopted in the Occupational Health & 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
- (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) Not applicable to AGIG
- (39) Not applicable to AGIG
- (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) Not applicable to AGIG
- (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 base approach is applied in managing safety risk; and
 - Safety case submission and revision processes
- (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.

AGIG Response:

AGIG is supportive of the recommendation that all energy safety legislation should be consolidated in a single new energy safety act (effectively 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).

AGIG is supportive of the development of guidance materials on evaluating Safety Cases. Guidelines need to be developed in consultation with DBs. The process for evaluation of Safety Cases should be covered in the guideline including timeframes for response by ESV and greater clarity should be provided as to the scope of documentation required for an approval. Approvals should be capable of being obtained within a reasonable period of time. It may be appropriate for the development of guidance material to be undertaken in consultation with other State jurisdictions that also operate under Safety Case regimes.