AUSTRALIAN ENERGY COUNCIL

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Safe Work Australia

Submitted online to https://engage.swa.gov.au/review-consultation

09th April 2018

Review of model WHS laws submission

The Australian Energy Council (the Energy Council) welcomes the opportunity to make the attached submission to Safe Work Australia on the review of the model WHS laws. Also attached is a briefing paper sent to jurisdictions and regulators in 2011 by a predecessor organisation of the Energy Council, the National Generators' Forum (NGF) in an endeavour to change the draft model WHS Regulations before final approval.

The Energy Council is the industry body representing 21 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

Any questions about our submission should be addressed to Carol Tran, Data and Statistical Analyst by email to [redacted] by telephone on [redacted].

Yours sincerely,

[redacted]

Ben Skinner
General Manager, Policy & Research
Australian Energy Council

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Attachment 1: Australian Energy Council Submission to Safe Work Australia

The Energy Council supports the intention and overall effectiveness of the model WHS laws. In the interest of a concise submission, the Energy Council submission will cover only questions where the Energy Council considers the need for a comment is relevant. For the questions in the review where a response is not provided, it should be considered as support for the current provisions / requirements.

Question 2: Have you any comments on whether the model WHS Regulations adequately support the object of the model WHS Act?

In response to this question the Energy Council refers to the use of the terms "plant" and "structure" in the model WHS Regulations (the Regulations), which does not support the use and definitions of those terms as detailed in the model WHS Act (the Act).

For reference, Part 1, Division 3, Subdivision 1 of the Act includes the following definitions:

> ***plant*** includes—
>
> (a) any machinery, equipment, appliance, container, implement and tool; and
>
> (b) any component of any of those things; and
>
> (c) anything fitted or connected to any of those things;
>
> ***structure*** means anything that is constructed, whether fixed or moveable, temporary or permanent, and includes—
>
> (a) buildings, masts, towers, framework, pipelines, transport infrastructure and underground works (shafts or tunnels); and
>
> (b) any component of a structure; and
>
> (c) part of a structure;

Throughout the body of the Act the use of these two terms is considered to be sensible, in that:

- When a requirement is intended to apply to both plant and structure, care has been taken to reference the two terms separately – for example (our highlighting):

> **22 Duties of persons conducting businesses or undertakings that design plant, substances or structures**
>
> (1) This section applies to a person (the ***designer***) who conducts a business or undertaking that designs:
>
> (a) plant that is to be used, or could reasonably be expected to be used, as, or at, a workplace; or
>
> (b) a substance that is to be used, or could reasonably be expected to be used, at a workplace; or
>
> (c) a structure that is to be used, or could reasonably be expected to be used, as, or at, a workplace.

- When a requirement is intended to apply to only one (ie, either plant or structure but not both), only the intended term is used – for example (our highlighting):

> **42 Requirements for authorisation of plant or substance**
>
> (1) A person must not use plant or a substance at a workplace if:
>
> (a) the regulations require the plant or substance or its design to be authorised; and
>
> (b) the plant or substance or its design is not authorised in accordance with the regulations.

[redacted]

For the most part the authors of the Regulations have followed this sensible approach, but confusion emerges when referring to the definitions of the two terms “plant” and “structure” in Part 1.1 Section 5 of the Regulations which don’t mirror those of the Act, but rather provide commentary on their use:

> ***plant,*** *in Chapter 5 Part 2 and Chapter 5 Part 3, includes a structure;*
>
> ***structure,*** *in Chapter 6—see regulation 290;*

If the intent is that in other respects these definitions retain the meaning given in the Act, then it would be better to repeat those definitions, and move the commentary to the relevant Chapters of the Regulations. Specifically:

- The wording of Chapter 5 Plant and Structures, Part 5.1 General Duties for Plant and Structures, Division 1 Preliminary, Item 186 Application of Part 5.1 to structures is problematic. It reads:

  “This Part applies to structures as provided in this Part”

  This seems to mean “when the word structure is used in Part 5.1, it means structure”. There are two confusing issues with this:

  - If the reader refers to the Regulation definition for “structure” (rather than the definition in the Act) they are referred to Chapter 6.
  - Given that the definition of “plant” changes from Part 5.1 to Parts 5.2 and 5.3, it would have been better to remind the reader that “when the word plant is used in Part 5.1 it means plant, unlike in Parts 5.2 and 5.3 where it means “plant and structure”.

- The wording of Part 5.2 Note 3 and the single Note in Part 5.3 is clearer:

  “*In this Part,* ***plant*** *includes a structure (see definition of* ***plant*** *in regulation 5(1))*

  except that the reader needs to refer to the Act to find the meaning of “plant”.

- The wording of Chapter 6 appears to have applied construction industry requirements to the utility and manufacturing industries, in that:
  - Part 6.1 Item 289 (1) relates ***construction work*** to structures, but is silent on plant.
  - Part 6.1 Item 289 (3) specifically excludes (a) the manufacture of plant – and this exclusion should not be required, as (1) above is silent on plant.
  - Part 6.1 Item 290 (1) states that ***structure*** has the same meaning as it has in the Act – and this should not be necessary, as all terms in the Regulations should have the same meaning as those identical terms in the Act.
  - Part 6.1 Item 290 (2) extends Chapter 6 to include aspects of plant yet there is no explanation of which sections of Chapter 6 apply. It cannot be all sections – as for example Item 289 (1) does not.

Industry considers that the confusion surrounding the application of Chapter 6 to plant has been affected by hurried drafting and the inclusion of Item 290 (2) (c):

> *“This Chapter does not apply to plant unless……the plant is fixed plant on which outage work or overhaul work that involves or may involve work being carried out by 5 or more persons conducting businesses or undertakings at any point in time.”*

The predecessors to the Energy Council (namely, that National Generators Forum – NGF - and the Private Generators Group - PGG) have consistently maintained that the application of Chapter 6 to the electricity generation sector is a significant error – for greater detail please refer to attachment 2 - an NGF Briefing paper sent to jurisdictions and regulators (November 2011).

The Energy Council recommend that:

- The Regulation definitions of plant and structure mirror those of the Act

[redacted]

- Item 186 of Part 5.1 be deleted
- The wording of Part 5.2 Note 3 and the single Note in Part 5.3 be changed to read:

  "*In this Part,* ***plant*** *includes a* ***structure*** *(see also definition of* ***plant*** *and* ***structure*** *in regulation Part 1.1)*

- The previous submission by the NGF and the PGG be reconsidered (greater detail on recommended drafting changes are available on request)

All with the intent of providing more coherent, consistent and sensible model WHS Regulations, which will better support the object of the model WHS Act.

Question 5: Have you any comments on the effectiveness of the model WHS laws in supporting the management of risks to psychological health in the workplace?

The Energy Council considers psychological health in the workplace an important issue and supports the position of groups such as the Safety Institute of Australia (SIA) in their call for more to be done (refer to link below). The provision of further guidance for companies on how to manage the risks in what can be a complex issue would be supported.

https://www.sia.org.au/news-and-publications/news/media-release-call-wider-national-action-harassment-bullying-and-abuse-in

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Question 19: Have you any comments on the role of the consultation, representation and participation provisions in supporting the objective of the model WHS laws to ensure fair and effective consultation with workers in relation to work health and safety?

The Energy Council supports the role of WHS Representatives (WHSR's) in the workplace and considers having trained and effective WHSR's crucial in achieving positive outcomes in the workplace.

The Energy Council suggests defining the competencies to be achieved (example may include Legislation awareness, Risk assessment, communication etc.) in S21 of WHS Regulations rather than a time length for the training (5 days, 1 day annual refresher). The length of time should be an outcome of the competencies.

Question 33: Have you any comments on the effectiveness of the penalties in the model WHS Act as a deterrent to poor health and safety practices?

With regards to the penalties under the WHS Act, The Energy Council would consider the current provisions adequate.

In the discussion paper, there is mention of changes in Queensland in 2017 introducing the industrial manslaughter provisions. The changes occurred in response to highly publicised tragic events in Queensland at Eagle Farm Racecourse and Dreamworld. In the case of the Eagle Farm incident, charges of manslaughter were laid despite the Queensland provisions were not being in force at that time. This would indicate that it is possible for manslaughter charges to be laid without adopting the new Queensland approach. We therefore do not recommend adopting the approach in other jurisdictions.

[redacted]

[redacted]

[redacted]

Question 34: Have you any comments on the processes and procedures relating to legal proceedings for offences under the model WHS laws?

The position of the Energy Council is that the current provisions are adequate and should be retained. It supports the statements within the discussion paper (p37) where "*the model WHS Act reflects the view that all duty of care offences are criminal offences and therefore it was considered appropriate that the burden of proof rest with the prosecutors, particularly given the substantial increase in the size and range of penalties for WHS offences, including imprisonment".*

The Energy Council does not support consideration of restoration of the reverse onus of proof, as noted a consideration in the Queensland review.

Question 36: Have you any comments on the effectiveness of the provisions relating to enforceable undertakings in supporting the objectives of the model WHS laws?

The Energy Council considers that enforceable undertaking provisions can support improvements in health and safety for broader industry and members of the public when they occur beyond enforcement outcomes from a regulator. In order to achieve the broader outcomes and success, it would be considered that there is some improvement, which can be made in the consistent application / scope of activities (or terms) that may be applicable, timeliness in process, assurance that regulators do in fact ensure that their terms are complied with and decision making across and within jurisdictions. Clear guidelines and transparent expectations across and within jurisdictions on such items would be beneficial.

Question 37: Have you any comments on the availability of insurance products, which cover the cost of work health and safety penalties?

The Energy Council does not have a firm view on whether insurance products should or should not be allowed but consider that during any legal proceeding, there should be transparency on whether such a product is in existence, which can be taken into consideration for determining the outcomes of the matter.

[redacted]

[redacted]

[redacted]

Attachment 2: Briefing Paper - Request for WHS Regulations revision

[redacted]

[redacted]

[redacted]

NATIONAL GENERATORS FORUM

Private Generators:

AGL Energy

Alinta Energy

Energy Brix

InterGen

International Power GDF-Suez

LYMMCo

NRG Gladstone

Origin Energy

TRUenergy

Briefing Paper

Supporting the National Generation Sector request for the removal of "outage or overhaul work on fixed plant" from the Model Work Health and Safety (WHS) Construction Work Regulations before their final approval and implementation

Purpose

1. The objective of this Briefing Paper is threefold:

   - Ensure that all responsible Ministers and Shadow Ministers understand the potential regulatory impact of the inappropriate and unnecessary application of Draft Model WHS 'Construction Work' Regulations to "*outage or overhaul work on fixed plant involving 5 or more persons conducting a business or undertaking*", including potential for significantly increased costs of electricity for consumers;

   - Provide a solution that simply and adequately addresses the perception of some jurisdictional Regulators that an additional level of regulation is needed to ensure effective management of health and safety for such "*outage or overhaul work on fixed plant*";

   - Secure Minister and Shadow Minister support for the modification of the Draft Model WHS 'Construction Work' and 'Plant and Structures' Regulations in line with the provided solution before final jurisdictional approval of the Model WHS Regulations.

   This Briefing Paper is supported by a proposed draft solution document as an attached appendix.

Background

2. The National Generators Forum (NGF) and the Private Generators Group (PGG) represent the market-facing electricity generators in the National Electricity Market (NEM) and the stand-alone WA market. These include some of Australia's largest businesses with diverse electricity generation portfolios involving coal, gas, hydro and a range of other renewables. The annual revenue of the NEM exceeds $12 billion.

3. Generators nationally strongly support the development and consistent implementation of harmonised Model Work Health and Safety legislation across all Australian jurisdictions, and have very actively and substantively contributed to the review and improvement of this legislation.

4. Electricity Generators are fully committed to continuous improvement in the provision of a safe and healthy workplace for all persons on generation sites, and Generators have historically achieved, and are currently continuing to deliver, occupational health and safety (OHS) outcomes significantly better than those achieved by the construction industry sector.

5. This commitment and performance outcome is emphatically and consistently demonstrated by the data below sourced from the '*Compendium of Workers Compensation Statistics Australia*' annually published by Safe Work Australia[1].

   Please note and compare the serious claims incidence rates by the Construction Industry and the Electricity, Gas and Water Supply Industry from 2000 / 2001 through to 2008 / 2009 as detailed below – incidence rates which include claims related to outage and overhaul work on fixed plant.

Serious Claims: Incidence rate by industry per 1000 employees	2000 / 2001	2001 / 2002	2002 / 2003	2003 / 2004	2004 / 2005	2005 / 2006	2006 / 2007	2007 / 2008	2008 / 2009
Construction	32.4	28.6	27.5	28.6	27.3	25.4	22.1	21.6	21.8
Electricity, Gas & Water Supply	15.2	14.1	10.1	10.5	11.6	8.6	9.1	8.1	6.3

From 2000 / 2001 through to 2008 / 2009, the *Electricity, Gas & Water Supply* industry sector sustained 27 compensated fatalities – averaging 3 fatalities a year, and with 3 fatalities in the 2008 / 2009 financial year. For the same period, the *Construction industry* sector sustained 377 compensated fatalities – averaging 42 fatalities a year, with 40 fatalities in the 2008 / 2009 financial year.

(N.B. Most of the compensable claims from the electricity, gas and water supply sector relate to network, pipeline and water infrastructure activities and only a small number relate to the electricity generation sub-sector. Also, there were no fatalities in the generation sub-sector in the last few years)

6. The National Standard for Construction Work on which the revised draft Model WHS Construction Work Regulations are largely based, was never intended to be applied to operation, repair, maintenance and outage / overhaul activities associated with generation assets (or operational assets of other industry sectors) – rather to specifically deliver a needed step change in concerning Construction Industry Sector performance.

   The generation industry sector (and other 'non-construction' industry sectors) were not consulted during its development, and the NOHSC established 'Construction Reference Group' formed to provide "*technical expertise and guidance for the development of this national standard*" was in fact rightly and exclusively made up of construction industry stakeholders.[2]

7. Where significant '*traditional housing, commercial, and civil engineering construction sector*' works occur within the boundaries of an operating site, Generators accept that Chapter 6 of the Model

[1] "Compendium of Workers' Compensation Statistics 2008 – 09 and previous, Safe Work Australia
[2] National Standard for Construction Work – p1.

Regulations ought to apply. Generators are able to separate such 'construction' works from their existing operating plant.

8. Disappointingly however, regulators in a number of jurisdictions have inconsistently implemented the Construction Work Regulations based on the National Standard, and extended their application illegitimately and inappropriately to the maintenance, repair, and overhaul of fixed operating plant, despite regulators, such as WorkSafe Victoria, acknowledging that "*nearly all construction takes place*" in the "*traditional housing, commercial, and civil engineering construction sectors*"[3].

9. This illegitimate and inappropriate application of the Standard by a number of jurisdictions to activities on *operational generation assets* adds an unnecessary and increased level of regulatory burden and substantial costs to a mature industry sector already performing significantly better than the targeted construction industry.

10. It is in light of the above that Generators nationally repeatedly raised in multiple communications, and through as many avenues as possible, their strong objections to the content of the National Construction Standard being applied in this way by a number of jurisdictions, and subsequently within the initial draft Model WHS Regulation released for public comment, to regulate the *operations, repair, maintenance and outage / overhaul activities on existing electricity generation assets.*

    It has been the National Generators' strong contention that operating generation sites (and other industry sector operating sites) are not construction sites, and associated *operation, repair, maintenance and outage / overhaul work* must not be considered '*construction work*'.

Current Situation

11. The latest version of the draft Model WHS Regulations, currently with jurisdictional Ministers for their final approval / endorsement, appears to have at last acknowledged that the *operation, repair and maintenance work on plant* is predominantly not '*Construction Work*', and it is therefore exempted from Chapter 6 Construction Work regulations. This significant change of position is very much appreciated by Generators nationally.

12. However, it is very concerning, that despite this acknowledgement and associated exemption for most work on plant, the latest draft Model WHS Regulations have still illogically retained the application of Chapter 6 Construction Work regulations to *"fixed plant on which outage work or overhaul work that involves or may involve work being carried out by 5 or more persons conducting businesses or undertakings at any point in time*". This latest development has not been effectively communicated or consulted to impacted industry sectors, and continues to raise significant concerns.

13. A high proportion of Generator maintenance work on plant is outage work or overhaul work that involves or may involve work being carried out by five or more 'persons conducting businesses or undertakings' at any point in time.

    As such, by reason of item 290(2)(c) of the current revised draft WHS Regulations, the most time-critical and costly Generator maintenance work on plant will continue to fall within the definition of

[3] WorkSafe Victoria publication "*Is construction work part of your business?*" found at: http://www.worksafe.vic.gov.au/wps/wcm/connect/WorkSafe/Home/Forms+and+Publications/Publications/Is+construction+work+part+of+your+business

'*Construction Work*' for the purposes of the work health and safety legislative regime if this key issue is not adequately addressed.

14. The Safe Work Australia SIG-OHS (xxiii) meeting minutes on the 29th and 30th of June for Agenda Item 5 '*Outstanding WHS Regulations Issues*' clearly articulate the agreement "*to exclude work on 'fixed plant' from the scope of the construction regulations"*, though also noting the concerns of some regulators that "*there may be a significant regulatory gap in relation to major outage/overhaul work on fixed plant and that further consideration should be given to extending requirements for principal contractor duties and WHS management plans to this kind of work*".

    - "*On 7-8 June 2011 SIG-OHS(xxi) agreed—subject to a gap analysis—to exclude work on 'fixed plant' from the scope of the construction regulations, unless the work is undertaken in connection with a construction activity specified in regulation 6.1.1(1) or otherwise covered in subregulation 6.1.1(2)*";
    - "*On 22 June 2011 the Agency asked several Construction Technical Advisory Group (TAG) members to informally discuss the policy implications of this decision to assist the staff instructing on the proposed amendments. Participants included representatives from jurisdictions that have implemented the national construction standard, i.e. New South Wales, Victoria, Queensland and Western Australia*";
    - *"Discussion centred around the definitions of 'structure' and 'plant' under the WHS Act and how the proposed carve out of 'fixed plant' would work";*
    - "*Views were also expressed about possible regulatory gaps associated with the proposed approach although it was noted that:*
        - *regulatory 'creep' had meant that activities that were not intuitively construction activities were now covered by construction regulations in some jurisdictions*
        - *public comment had highlighted difficulties associated with regulating non-construction related activities on 'fixed plant' such as maintenance and repair activities through the construction regulations*
        - *the specific controls in the construction regulations were process-based and of an administrative nature, and*
        - *there may not be any regulatory gap for some facilities otherwise covered by safety management system requirements or similar, for example major hazard facilities and mines*";
    - "*It was submitted that there may be a significant regulatory gap in relation to major outage/overhaul work on fixed plant and that further consideration should be given to extending requirements for principal contractor duties and WHS management plans to this kind of work*";
    - "*The next draft of the construction regulations will reflect the decisions of SIG-OHS(xxi) and include a definition of 'structure' as discussed but excluding plant i.e. whether fixed or otherwise*";
    - "*Recommendation 1[:]That provision be made so that principal contractor obligations, including requirements for WHS management plans apply to major outage/overhaul work on fixed plant valued over a prescribed amount or requiring the co-ordination of five or more PCBUs at the workplace*".

15. That major outage / overhaul works on fixed plant could represent times of heightened risk, Generators are acutely aware, and have consequently for many years developed and implemented effective, targeted industry sector specific safety programs for major outages / overhauls, including:

    - the development and implementation of outage / overhaul safety plans,
    - work permit and isolation systems,
    - risk assessment and subsequent safe work method statements (SWMS's),
    - targeted induction programs and contractor leadership engagement / alignment sessions,
    - initiatives such as daily toolbox talks, pre-job meetings, and ramped up safety observation and inspection processes.

16. While not considered necessary for their industry sector, Generators in fact would not oppose the appropriate application of equivalent principal contractor obligations for major outage / overhaul work (inclusive of requirements for the development and implementation of targeted Safety Management Plans and Safe Work Method Statements for higher inherent risk work), but without calling it 'Construction Work' with all its implications – including the opening up of 'non-construction work' industry sectors to construction industry culture, work practices, and the impacts of their industrial relations environment, instruments and outcomes.

17. What appears to have occurred, in the short timeframe and pressured environment of delivering these Model WHS Regulations to meet the planned 1st of January 2012 implementation date, is the attempted 'convenient / makeshift' but inappropriate and costly application of a set of regulations, specifically designed for the Construction Industry Sector, to other industry sectors in order to quickly cover a perceived regulatory gap. Good regulation would dictate separate regulation needed for effectively managing WHS for major outage / overhaul work on operational fixed plant developed in consultation with the affected industry sectors.

Proposed Solution

18. A simple, effective solution to this problem involves some minor amendments to Chapter 5 '*Plant and Structures*', Division 7 '*General duties of a person conducting a business or undertaking involving the management or control of plant*' (where arguably regulations relating to 'Plant' belong) as following:

    - Incorporate within Subdivision 1 '*Management of risks,*' all equivalent material relating to the '*Meaning of high risk work associated with plant*' and '*Safe work method statements*';
    - Incorporate within new Subdivision 2 '*Control measures for outage or overhaul work on fixed plant,*' all material relating to the '*Meaning of principal contractor*' for outage or overhaul work on fixed plant.

    Subsequent minor adjustments would also need to be made to the definitions, numbering and table of contents, as well as the removal of '*outage or overhaul work on fixed plant*' wording from Chapter 6 '*Construction Work*' (refer the draft of what this proposed solution would look like within the draft Model WHS Regulations in the attached appendix, though re-numbering has not been completed).

Potential Impacts

19. The inappropriate application of construction work regulations to non-construction industry sectors and its roll-on effects will result in unnecessary and significant regulatory, operating and financial burdens on these sectors for no effective workplace health and safety improvement – outcomes which will dilute the focus of the regulations and regulators on improving construction industry sector performance, negatively impact generation operations in many ways and for various reasons including those set out below, and that will in turn significantly impact on costs to end users / consumers.

20. Notwithstanding that the *Electricity, Gas & Water Supply* sector has a comparatively excellent performance history in the areas of work health and safety, the inappropriate application of Construction Work Regulations outside of the conventional construction industry to Generators (and other non-construction industry sectors) nationally will lead to negative impacts for no quantifiable improvement or benefit in safety performance including:

    - The inappropriate and un-necessary application of Construction Work Regulations detracting and distracting from existing, proven industry sector specific prevention focus and safety management systems, and WHS resources being diverted from areas of actual non-construction industry sector priority and need;
    - Wasteful, inefficient and ineffective mandatory application of general construction inductions - a significant proportion of which are inappropriate for maintenance / outage / overhaul work on operational fixed plant, and which do not adequately cover all hazards inherent in operational sites, plant and associated maintenance and repair work. The application of this mandated general construction induction in the draft revised Model WHS Regulations a very good thing for the Construction Industry Sector, but not an appropriate, efficient, or effective mechanisms for non-construction industry sectors – leading to increased costs and waste through duplication of already existing, regular, effective and specific industry sector targeted outage / overhaul induction processes;
    - Greatly inhibited mobility of staff between Generation sites due to the differing induction and training requirements on works considered to be construction and works considered to be non-construction;
    - Increased confusion in the delineation of work on and between Generation sites leading to increased inefficiency and waste;
    - Encouraging Generator plant operators to consider performing significantly more maintenance work on fixed plant outside of outages / overhauls where the proposed Construction Work regulations won't apply. Currently Generators look to avoid as far as is reasonably practicable performing maintenance work on or within functioning (live) 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 re-commissioning, de-isolation and re-start. This preference is exercised despite the length of outage windows being critical in terms of minimising the cost impacts on stakeholders;
    - The subsequent extension of outage / overhaul duration, costs and potential delays in returning Generation vital infrastructure to service, due the forced, inappropriate and un-necessary imposition of Construction Work Regulations and the inevitable follow on influence of Construction Industry Sector culture, work practices, and industrial relations

environment and associated instruments on industry sectors performing work that is not 'Construction Work' and does not take place on a 'construction site'. The current revision of the draft Model WHS Regulations will significantly and unjustifiably increase costs to Generators and in turn, the end consumer.

21. Significant and unjustifiable increased costs to Generators and other non-construction industry sectors are already evident from the current situation in Victoria. Costs and work practices associated with the traditional construction industry already flow to the manufacturing sector, including electricity generation from that State's application of existing Construction Work regulations based on the National Standard. It is anticipated that if maintenance within the electrical generation sector continues to be considered as '*Construction Work*' as part of the national system, generation unit output will not be available for market dispatch for longer periods. Within a few years, this will result in increases in generation maintenance costs of approximately 20%, leading to higher electricity wholesale prices.

22. The following excerpt from the TRUenergy April 2011 submission in relation to the public consultation exposure draft of the Model WHS Regulations provides just one practical example of the potential impacts listed above:

For a 40 day maintenance outage (conducted on each large generating unit every 4 years), if operating under a construction type agreement (as another manufacturing site of similar size already is) the potential impacts for TRUenergy when compared to conducting the work under the long standing current industrial conditions are as follows:

- additional 5-6 work days due to fixed RDO's and lock-down weekends;
- additional 5-6 work days due to restrictive shift arrangements (for example, it is common in construction agreements to operate on 10 hour shifts as opposed to the current practice of 12 hour shifts in the power station environment);
- additional work 2-3 days for inclement weather losses;
- additional work 4-5 days due to losses in productivity due to additional shift crews required by restrictive shift arrangements (e.g. need to run 4 shift crews on a 4 day on 4 day off arrangement at 10 hours per day as opposed to 2 x 12 hour shifts with fatigue management days off in maintenance environment);
- additional shifts imply additional labour requirements which imply less productive (less skilled) labour in resource constricted market; and
- additional shift changeovers are also less efficient.

As a result, a 40 day outage can potentially blow out to become a 60 day outage:

The additional 20 outage days results in:

- 20 days lost generation ($5M - $8M loss);
- 20 days of additional management and overhead ($2m);
- additional insurance costs;
- additional labour costs (shift works only allow 20 work days for 50 workers working 24 hours per day at $100/hour) = $2.5m; and
- payment of all purpose allowances = 150,000 hours by $5.00 per hour = $750k.

The additional maintenance costs represent an increase of ~20% for each major outage. Given that the typical cost for a major outage is $20M, and that there are 18 large brown coal units in Victoria's Latrobe Valley alone, the increased cost for major outage works alone at Victoria's large brown-coal fired power stations will be in the order of $18M/year, with the revenue loss for the additional time these units are out of service being conservatively estimated at $20M/year.

The safety record of the generation sector during these maintenance works is demonstrably superior to that of the construction industry – TRUenergy submit that this safety performance will not be further improved through operating under a construction type agreement.

Note that TRUenergy have made no endeavour to quantify the impact of these extended outages of base load generation on the stability and reliability of the electricity network, which must be impacted through the loss of generating capacity.

23. Multiply the estimated example above for a single outage / overhaul of a single operating unit for a single Generation organisation by the number of regular outages / overalls of the significant number of total generation operating units nationally, and consumers will be faced with a very significant increase in electricity costs from the implementation of this WHS legislation as the draft currently stands - further compounded by increased electricity costs associated with implementation of the impending Clean Energy Future scheme.

24. Generators note that pursuant to draft Model WHS Regulations Part 11.2, the regulator may exempt a person or class of persons from compliance with any of the Revised Model WHS Regulations. We confirm that Generators and other similar businesses are likely to exercise their rights under this regulation in order to seek an exemption from the application of Chapter 6 of the Revised Model WHS Regulations. We note, however, that this will also likely result in an increased burden on

regulators to deal with all such applications for exemption, which in turn could result in additional costs to both regulator and Generators, and the waste of resources better deployed elsewhere.

An issue of this importance should be dealt with prior to the revised Model WHS Regulations coming into effect, and not be the subject of individual exemption applications – particularly when a simple, logical, effective and broadly applicable solution is available.

Conclusion

25. **There is no justifiable reason for expanding work health and safety requirements contained in Chapter 6 *Construction Work* of the current revised draft *Model WHS Regulations* outside of the conventional construction industry. To do so will be very costly, and detract from safety outcomes.**

26. Generators acknowledge that *major outages / overhauls on fixed plant* are times of special risk that require specific management strategies to deliver effective outcomes, and understand why some Regulators have looked to ensure there is some regulation in place to cover this specific vulnerability (though the generation industry sector has had proven and effective systems in place for many years to manage potentially heightened risk during outages / overhauls of operational plant and the performance of associated work).

27. Generators, however, strongly contend that rather than the attempted 'convenient / makeshift', inappropriate and costly application of a set of regulations specifically designed to improve the poor performance of the construction industry sector, to other industry sectors in order to cover a perceived regulatory gap – what is needed is a separate, appropriate and targeted solution for effectively managing WHS for major outage / overhaul work on operational fixed plant developed in consultation with the industry sectors impacted.

28. Such a simple, logical, effective and broadly applicable solution exists (refer paragraph 18 above and the attached appendix).

29. Generators request urgent action to initiate the revisions within the latest draft of the Model WHS Regulations necessary to deliver the proposed solution and associated outcomes before their final jurisdictional approval and endorsement, and these Model WHS Regulations come into effect.

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