



CEPU National Office

SUBMISSION TO THE NATIONAL REVIEW into Model Occupational Health and Safety Laws

Introduction

This submission is made by the Communications, Electrical, Electronic, Energy, Postal, Plumbing and Allied Workers Union of Australia (the CEPU). The union broadly supports the aim of the National Review to harmonise occupational health and safety laws and we support the submission of the ACTU with respect to its detailed response to the terms of reference of the Review. Of specific concern to the CEPU is the interplay between harmonised occupational health and safety laws and the specific laws covering the safety of electrical work. Our submission is aimed at this area of concern.

1. About the CEPU

The CEPU is constituted by three Divisions, the Electrical Energy and Services Division, the Plumbing Division and the Communications Division. In some States some Divisions have merged together.

The CEPU Electrical, Energy and Services Division represents the interests of skilled electrical workers in a wide range of industries including electrical contracting, manufacturing and power generation and distribution. Electrical tradespeople form the largest membership group of the Union.

2. The regulation of health and safety of electrical work

2.1 As stated above, the CEPU supports the ACTU submission with respect to the development of harmonised model occupational health and safety laws. Our submission is specifically aimed at the regulation of the health and safety of electrical work.

2.2 The Review Issues Paper (May 2008) states:

“While the focus of the review is on the content of principal OHS Acts, the Panel recognises the interdependence of those OHS Acts with their subordinate regulations, as well as the overlap with other safety laws. These operate in areas such as electrical safety, mining safety; rail safety; road transport safety; maritime safety and dangerous goods.

The review will examine the breadth of regulation to support a model OHS Act, but will not cover the specific detail found in OHS regulations, codes of practice and guidelines. The review will also not cover the content of other safety laws, but will examine the extent to which such laws could be accommodated under a model OHS Act. [emphasis added]

2.3 While we support the ACTU's submission regarding the development of harmonized generic health and safety laws, we note that the comments of the ACTU regarding industry and work specific health and safety laws. The ACTU submission states:

“The ACTU does not advocate for a complete takeover of all other industry-specific health and safety laws, such as electrical and mining. It is an approach that fails to consider:

- *the effectiveness of the existing laws and regulations upon the reduction of deaths and injuries in the industries concerned;*
- *the need for specific and enforceable health and safety laws in those industries, many of which are of a high risk nature;*
- *the harmonisation processes already occurring in those industries particularly for mining through the National Mine Safety Framework (NMSF).”* [emphasis added]

2.4 The CEPU believes that electrical work should not be governed by generic harmonised occupational health and safety legislation but should continue to be regulated by stand alone legislation specific to electrical work.

2.5 We believe this is justified on the grounds that:

- There have been numerous and comprehensive inquiries into the system of electrical safety enforcement in various states which has led to the development of comprehensive laws specifically covering electrical work.

- Existing laws and regulations are custom designed to reduce the incidence of electrical injuries and fatalities in industry;
- Electrical work is high risk work. Of necessity, laws governing electrical work should be more comprehensive and detailed than the more general harmonized occupational health and safety laws.

While we believe harmonisation of State electrical safety laws can be achieved, we believe that electrical work should still be separately regulated. The nature of the work is inherently dangerous and it requires detailed regulation. Separate regulation will continue to ensure better safety outcomes for electrical and non-electrical workers and the general public.

3. Detail about the justification for separate regulation for electrical work

- 3.1 There have been numerous and comprehensive inquiries into the system of electrical safety enforcement in various states which has led to the development of comprehensive laws specifically covering electrical work.

The case of Queensland

Stand alone legislation covering the safety of electrical work in Queensland was enacted in 2002 with the passing of the Electrical Safety Act. This legislation arose from concern over Queensland's higher than average incidence of electrical fatalities and poor safety regulatory performance over the previous 5 years. The poor safety record coincided with criticism by the Ombudsman over the investigation of several fatal electrocutions.

Arising out of the coronial inquiries of these cases, the Queensland Ombudsman released a series of 10 reports into 13 electrical fatalities that occurred between 1995 and 1999. The first report was released in February 2001. The focus of the reports was on the inadequate conduct of the investigations by the (then) Division of Workplace Health and Safety and the Electrical Safety Office. All the reports called for a comprehensive management and strategic review of both agencies

as well as a review of key safety roles and provisions under Queensland's electricity laws.

At the same time the Ombudsman's reports were released, a report of the recommendations from a joint ministerial taskforce into electrical safety recommended an overhaul of electrical safety laws and functions. The Taskforce Report called for stand alone electrical safety legislation.

In 2001, the Government acted on the Joint Ministerial Report and conducted a ministerial review into the operations of the divisions of Workplace Health and Safety and the Electrical Safety Office.

As a consequence of this work, in 2002 the Queensland Government passed a specific stand alone Act to cover electrical work and safety. All industry parties agreed on the need for stand alone electrical safety laws complementary to other safety legislation.

The Government felt the issue was so serious that it created a Commissioner for Electrical Safety, independent of the industry, to report directly to the Minister. An Electrical Safety Board was established with three committees to oversee licensing, education and equipment standards.

The influence of similar Victorian legislation

In creating an independent regulator, the Queensland Government had regard for the Victorian model with the Office of the Chief Electrical Inspector. At the time Victoria was one of the few States to employ such a system and had one of the best safety records in the country.

The need for an independent regulator was widely supported by the industry parties on the ground that safety considerations and commercial interests should be separate from each other to avoid a conflict of interest.

The Queensland Act created a new expanded inspectorate to increase the monitoring and enforcement procedures.

In introducing the Bill, the Minister stated that the key object of the Bill was to eliminate the human cost to individuals, families and the community of death and injury and the destruction that can be caused by electricity. The purpose of the Bill was to establish a legislative framework for:

- Preventing persons from being killed or injured by electricity; and
- Preventing property being destroyed or damaged by electricity.

Overseen by a new electrical safety regulator directly accountable to the Government, electrical safety was separated from the regulation of the electrical industry for the first time, ensuring greater independence, transparency and accountability for electricity distributors, contractors, employees and the community. All reference to electrical work in Workplace Health and Safety Act was removed.

4. Electrical work is high risk requiring detailed regulation

Electrical workers work in high risk work. Of necessity, laws governing that work should be more comprehensive and detailed than the more general harmonised occupational health and safety laws.

The danger of placing the regulation of electrical work under a broad generic health and safety Act is that much of the detail in the regulation is likely to be lost. The regulation of this work needs to be spelt out and not left to custom and practice.

In Queensland for instance, it was agreed by all the industry parties and the Government that the Workers Health and Safety Act provided inadequate protection for electrical work.

Importantly, specific legislation allowed for more prescriptive regulation of the work. For instance, the definition of “electrical work” was broadened from the existing definition. The new definition took into account the specific concerns of the Electrical Ombudsman about the (then) scope of electrical legislation. It ensured that electrical safety standards would apply to all aspects of electrical work AND was expanded to cover non-electrical workers who may come into contact with electricity as a result of their work.

Expanding coverage of the Act to non-electrical workers and the general public is important when it is realised that the highest incidence of fatal electrocutions occur with respect to non-electrical workers and the general public. For instance, in 2005-2006, 71% of fatal electrocutions in Australia and New Zealand were incurred by non-electrical workers and the general public.¹

Expanding the definition to apply to all aspects of electrical work is also justified on the basis that 67% of fatalities involve customer installations, equipment or appliances².

That specific and prescriptive regulation of electrical work is vital is evidenced by the statistic that a huge 79%³ of deaths due to electrocution occurred at work. With respect to electrical deaths involving customer’s installation or appliances or equipment in 2005/06, the main contributing factors were misuse/interference with wiring (31%), failure or deterioration of equipment or wiring (38%) and work practice (25%). Clearly, laws covering this work have to set out clear guidelines and mandatory regulatory minimums.

¹ Electrical Regulatory Authorities Council (ERAC) Electrical Incident Data 2005-2006. These are draft figures but the trends are clear and damning.

² Electrical Regulatory Authorities Council (ERAC) Electrical Incident Data 2005-2006

³ ERAC draft figures for Australia and New Zealand

5. A national body overseeing the regulation of electrical work already exists

5.1 Electrical Regulatory Authorities Council

5.1.1 In Australia, although the micro-regulation of electrical technical and safety functions are largely the responsibility of state and territory governments, a national body, the Electrical Regulatory Authorities Council (ERAC), is responsible for liaison between the Australian states and territories and New Zealand to coordinate their activities in respect of regulatory strategies, policies and ongoing reforms.

5.1.2 The Council is made up of representatives of the regulatory authorities responsible for electrical safety, supply and energy efficiency in New Zealand and the Australian states, territories.

5.1.3 ERAC liaises with industry stakeholders on regulatory issues with a view to developing recommendations for consistent operational policy across jurisdictions.

5.1.4 ERAC representatives also cover the interests of other members in national forums such as Standards Australia policy boards and technical committees. ERAC also provides a practical single point of regulator contact for unions, industry and other areas of government, at the national level.

5.1.5 Although ERAC exists entirely through cooperative action and has no executive powers, it is recognised throughout the electrical industry as an authoritative voice for electrical regulators.

5.1.6 In 2007, ERAC initiated a review of the consumer electrical equipment safety regime, including the requirements for equipment approval. One of ERAC's main objectives in instituting the Review was to ensure that *'Australia's electrical equipment safety regulation system operates consistently across jurisdictions in a highly harmonised way'*.⁴

⁴ ERAC Electrical Equipment Safety System Review, Final Report, 30 December 2007, p.17

The main reason for raising this review is to demonstrate that there is already in place a system which is concerned with the harmonising the regulation regime for the safety of electrical equipment.

5.2 Licensing of electrical workers is already nationally uniform

- 5.2.1 In addition, harmonisation is already a feature of the regulation of electrical work through the electrical licensing scheme. Oversighted by the National Uniform Electrical Licensing Advisory Council (NUELAC), the licensing of electricians is carried out in a relatively uniform way across all States/Territories of Australia. This is necessary to permit the movement of licence holders both geographically and from industry sector to sector (e.g. from mining electrical maintenance to electrical contracting in the construction industry) from time to time.
- 5.2.2 When an apprentice completes his/her training and applies to the local Licensing Authority for an electrical licence, the key issue that has to be considered in each case is whether or not the applicant has attained sufficient knowledge, comprehension and practical skills to be able to work safely and competently in a variety of industry environments, without supervision. This is to ensure the safety of the licence holder, fellow workers and the end users of the work carried out by the licence holder.
- 5.2.3 Licensing Authorities are responsible for ensuring that persons training as electricians meet national licensing requirements.

5.3 One regulator for all electrical work

Licensing is not divorced from the rest of the regulation of electrical work. In some States the regulation of electrical work is conducted under the auspices of a one stop shop. For instance, Victoria's independent regulator is responsible for the overall safe regulation of electricity and gas and pipeline safety in Victoria. Its

aim is to ensure the safe and efficient supply and use of electricity, gas and pipelines by:

- Developing and communicating safety and efficiency requirements and programs;
- Monitoring, auditing and enforcing compliance with the regulatory regime
- Administering licensing, registration and approval systems which maintain electrical standards and skill.

Also, in Tasmania the Electrical Licensing Board (ELB) assists the Regulator in the administration of the vocational licensing system. It also provides advice to the Electricity Standards and Safety group, which administers the electrical licensing system on behalf of the Energy Regulator. The Board has also been an effective conduit between the licensees and the licensors on matters such as notifications of electrical work, training and competency requirements.

6. Harmonisation

- 6.1 The CEPU believes it is desirable to harmonise State regulation of electrical work. However, we see no problem with the current pattern of monitoring and enforcement with separate State agencies responsible for the micro management of the legislation.
- 6.2 If the outcome of harmonisation was to create one Federal enforcement agency with State inspectorates in each State and Territory, this would be little different to the current system of separate State agencies with a Federal liaison overseeing body.
- 6.3 Creating a Federal agency in each State would be expensive and essentially duplicate the work currently done by existing State and Territory regulatory agencies. If the idea is to avoid duplication by getting rid of State agencies altogether, then the new system would move responsibility from the States to the Federal government.

- 6.4 Where detailed regulation is required, local regulation can work better than macro regulation provided it is oversighted by a single overarching regulatory body subject to appropriate legislation. The focus at the micro level for auditing and inspection of workplaces for instance, justifies continued State regulation of electrical work. These State based agencies currently have the industry and work specific technical knowledge and experience that is required and the systems in place to ensure optimum regulation of electrical work.
- 6.5 Whatever system emerges from the harmonisation process, it will be necessary to ensure there is consistency between the harmonized workplace safety laws and the laws governing the regulation of electrical work. Penalties for breaches of each of the laws should be consistent. Clear lines of authority and cooperation between agencies will be necessary for the smooth operation of the new system.

Conclusion

It would be a backward step for the Model OH&S laws to subsume the regulation of electrical work under generic workplace health and safety laws. In each State jurisdiction it has been the case that detailed and independent regulation of electrical work creates the best safety outcome in terms of reduced injuries and fatalities.

There are good reasons for maintaining industry and work specific health and safety laws. Specific regulation of electrical work has reduced the incidence of electrical fatalities and injury.

The scope of work to be covered by this Review is huge. The work of this Review should progress unhindered by issues concerning industry and work specific regulation. Harmonisation of laws regulating electrical work should be examined separately and not under the umbrella of this Review.