

## **RIARP Quality Assurance Statement Overall Opinion on Quality of Analysis**

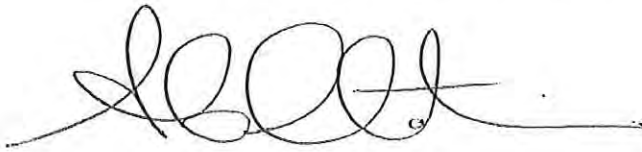
**Title of Paper:** Proposed Amendments to the Electricity (Safety) Regulations 2010 and the Gas (Safety and Measurement) Regulations 2010.

### **RIARP Recommendation:**

RIARP confirms that its feedback is reflected in the RIS submitted to the General Manager, Strategic Policy Branch. The RIS has undergone significant changes as a result of the RIARP process.

RIARP recommends that you authorise the inclusion of the following overall opinion in the Cabinet Paper under the heading *Quality of the Impact Analysis*:

The General Manager, Strategic Policy Branch and the Ministry of Business, Innovation and Employment Regulatory Impact Analysis Review Panel have reviewed the attached Regulatory Impact Statement (RIS) prepared by the Ministry of Business, Innovation and Employment, and consider that the information and analysis summarised in the RIS meets the criteria necessary for ministers to fairly compare the available policy options and take informed decisions on the proposals in this paper.



*RIARP Chair signature*

### **General Manager's Statement:**

I approve the inclusion of the recommended statement in the Cabinet Paper under the heading *Quality of the Impact Analysis*



Bryan Chapple  
General Manager  
Strategic Policy Branch  
Ministry of Business, Innovation and Employment

## **Regulatory Impact Statement**

### **Proposed Amendments to the Electricity (Safety) Regulations 2010 and the Gas (Safety and Measurement) Regulations 2010**

#### **Agency Disclosure Statement**

This Regulatory Impact Statement has been prepared by the Ministry of Business, Innovation and Employment for a series of amendments to the Electricity (Safety) Regulations 2010 (ESRs) and the Gas (Safety and Measurement) Regulations 2010 (GSMRs). A wide range of amendments to the ESRs and the GSMRs have been proposed, mainly clarifying current technical provisions, updating the references to cited AS/NZS standards and correcting minor issues arising from previous amendments.

Three issues are addressed in this RIS. The other proposed amendments are technical revisions or amendments that will not have a more than minor impact on business.

#### ***Analysis of options***

##### **Issue 1: RCDs**

Analysis of options to address the Coroner's recommendation for increased use of RCDs took into account the current regulatory requirements relating to the mandated use of RCDs in residential buildings and schools and specified high-risk situations, the costs associated with extending this requirement to all commercial and industrial premises, the potential benefits that would be created by wider use of RCDs and an analysis of the enforcement options if RCDs were mandated throughout business premises in New Zealand. Continuation of the status quo was also considered.

The analysis considered the balance between increasing requirements for the usage of RCDs in certain, more dangerous than other, situations and the proportion of risk that is appropriate.

A considerable restraint on the analysis was the lack of reliable data on the number of RCDs currently being used in commercial or industrial premises or in mechanical workshops similar to where the fatal accident occurred. The current data collection on the number of accidents and incidents caused by electric shock in those premises has limited validity because of the low numbers and limited reporting of near miss incidents.

##### **Issue 2: Safety under hire and tenancy agreements**

The options available to clarify the ownership responsibilities for the safety of appliances, fixtures, installations and fittings that are subject to a tenancy or hire agreement are fairly limited, given the necessity to avoid the potential negative impacts for any significant policy and regulatory change.

Following the recent media interest in, and potential government consideration of a regulated housing 'warrant of fitness', brief consideration was given to a significant increase in regulation in this area. Whilst electrical and gas safety may well be included as part of the wider examination of that issue any significant changes were not

considered necessary at this time to address particular safety concerns, nor is a significant policy change within the scope of the current amendment. This Regulatory Impact Statement therefore does not include any analysis relating to a potential housing 'warrant of fitness.'

The analysis therefore was limited to continuation of the status quo or providing clarity of the safety responsibilities. The key assumptions are that the underlying policy of ownership responsibility for safety at the commencement of a hire or lease agreement should not be changed and that any changes should not contradict, or have a material affect on, the provisions of the Residential Tenancies Act 1996.

### **Issue 3: Recognition of the EESS**

The options available to recognise the new Australasian Electrical Equipment Safety System (EESS) needed to consider the wider relationship between New Zealand and Australia, the financial support that New Zealand has provided to the development of the EESS and to the jointly managed database of supplier information, how to respond to the staggered implementation of the EESS in the various states and territories in Australia, as well as the current rejection of the EESS by New South Wales. The key assumption was that New Zealand needed to make a regulatory amendment to recognise the EESS to signal New Zealand's support for the new regime and to enable New Zealand businesses to benefit from the new regime.



Mark Wogan  
Manager Energy Safety  
High Hazards and Specialist Services  
Ministry of Business, Innovation and Employment  
Date:

## Summary

1. The following three issues are addressed in this RIS.
  - a. **Issue 1:** Address a Coroner's recommendation<sup>1</sup> to regulate for greater usage of Residual Current Devices (RCDs<sup>2</sup>) or similar safety devices when hand held electrical appliances are used in commercial and industrial sites. The options considered could lead to an increase in costs for some businesses.
  - b. **Issue 2:** Clarify the ownership responsibilities and safety obligations that apply to gas and electrical appliances, fixtures, fittings and gas installations<sup>3</sup> that are, or are included in residential property or a vehicle that is, the subject of a tenancy or hire agreement.
  - c. **Issue 3:** The recognition of compliant electrical products from the new Australian Electrical Equipment Safety System (EESS). The options considered will have an impact on businesses and could lead to an increase or a decrease in compliance costs depending on the option chosen. A new offence provision would also be required to accompany the recognition.

## Overarching Objectives of the ESRs and the GSMRs

2. The ESRs and GSMRs have been designed:
  - a. To provide for electricity and gas to be supplied and used in a way that is safe for the public, safe for property, and safe for workers;
  - b. To be clear and understandable to aid industry compliance; and
  - c. To ensure that regulatory requirements are proportionate to the identified risks associated with gas and electricity.

## Issue 1: Residual Current Devices - RCDs

### Status quo and problem definition

3. Electricity is inherently dangerous and society has a certain tolerance for accidents caused by electricity. However fatalities, especially in workplaces, do cause societal concern. MBIE are constantly assessing the benefits and costs of the regulatory status quo against other options for addressing safety concerns relating to the use of electricity, whether those concerns directly relate to an accident or are brought to MBIE's attention through the industry or a member of the public.
4. Any regulatory responses to safety concerns must be in proportion to the known risks associated with electricity. The current regulations support a risk management approach as to how electricity is managed, with tighter requirements imposed in higher risk situations. There are costs associated with over managing the risks associated with electricity as well as costs associated with the under management of

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<sup>1</sup> Coroner CJ Devonport, 18 September 2012, reference CSU-2011-HAS-2011-000279.

<sup>2</sup> An RCD is an electrical device that disconnects a circuit whenever it detects that the electric current is not balanced between the energized conductor and the return neutral conductor.

<sup>3</sup> Gas installation: an installation, including the pipes, flue, fixed ventilation and any gas appliance, that is connected or intended to be connected with any source from which gas is supplied.

such risks. MBIE must consider whether any increase or decrease in regulatory controls is proportionate to the risk.

5. A Coroner's report dated 18 September 2012 into a mechanic's death the previous year (the mechanic died from an electric shock which he received when the mechanical crawler he was working on touched exposed electrical wiring on a hand-help lamp he was using) recommended that:

*'consideration be given to the inclusion in both AS/NZS3000 and the Electricity (Safety) Regulations for a requirement for the use of RCDs or similar safety devices when hand-held appliances are used in commercial and industrial sites'.*

6. The Coroner's recommendation is intended to lessen the likelihood of a similar fatality occurring in the future. The absence of any government action following the recommendation could lead to further, similar accidents whereas action should lessen the chance of such an accident occurring in the future.
7. The Coroner's recommendation concludes that the current regulatory controls regarding the use of RCDs for hand-held appliances in commercial and industrial sites are not appropriate in proportion to the risks associated with such sites.
8. The Electricity (Safety) Regulations 2010 (ESRs) require RCDs for new work in new installations residential buildings, primary schools and child care facilities.
9. RCDs are not compulsory in commercial or industrial sites nor are they compulsory for handheld appliances used in commercial or industrial sites. RCDs are however compulsory in specified high-risk situations where there is an increased risk of electric shock, such as damp areas and locations where the environment contains extensive amounts of metal or other conductive material.
10. The current relevant Regulation 89 does not require the use of RCDs in the circumstances present in the accident that occurred in 2011.
11. The circumstances of the 2011 fatality did not require the use of an RCD or similar safety devices under the requirements of regulation 89 because the particular high-risk circumstances currently identified in that regulation were not present. The fatality occurred in a severely confined space, where the victim was unable to disengage from the electrical equipment that he was working with because there was no room to do so.
12. Expert advice is that the restriction of movement has a direct impact on the ability of a person to 'let go' in the event of an electrical shock. The longer the electrical shock causes someone to stay attached the electrical equipment the more the severe the injury due to the longer exposure to the current flow. In situations where movement is severely restricted the risk of serious harm or a fatality in an accident are significantly higher than in situations where movement is not restricted.
13. Working with electricity has its inherent risks; particularly in confined spaces where the impact of an electrical shock can be fatal as demonstrated in the 2011 fatality. The Coroner's report on the fatality has lead MBIE to consider whether the risks identified in that report can be better managed to prevent such a fatality occurring in the future.

## Objectives

14. The objective in considering the increased use of RCDs is to ensure that the ESRs prescribe appropriate safety responses that are in proportion to the risks that have been identified.

## Option analysis

### *Status quo*

15. It is MBIE policy to consider any recommendation from a Coroner that has a potential impact on MBIE policies and regulations, more so where a Coroner has specifically recommended a regulatory change. The Coroner's recommendation identified an area where the risks associated with electricity could be better managed. The status quo does not require the use of RCDs in industrial or commercial premises or in the circumstances present in the 2011 fatality.
16. MBIE considered the costs and benefits of the status quo against both the Coroner's recommendation and the direct cause of the 2011 fatality. In particular, MBIE considered whether the current requirements for the usage of RCDs provide the most appropriate safety responses for the risks associated with using electricity in particular workplace environments.
17. MBIE considers that the regulatory requirements of the status quo were insufficient to manage the risks present in the 2011 fatality and that risks identified by that fatality, and by the Coroner, could be better managed.

### *Use of RCDs for all hand held appliances in commercial and industrial locations*

18. In 2009-10, when preparing proposals that resulted in the current ESRs, MBIE considered mandating RCDs for all locations and concluded that costs would outweigh benefits so did not include it in recommendations put to Cabinet at the time. That position remains the same today; the costs associated with mandating RCDs for all locations outweigh the possible benefits. At that time MBIE recommended increased requirements for the use of RCDs into schools and other high-risk areas. Requiring RCDs in situations where people were working in severely restricted spaces was not specifically considered at that time.
19. The probability of a fatal electric shock with a 230 V supply is higher in circumstances where the victim can't readily disconnect himself or herself. In normal circumstances, where a person can disconnect himself or herself from an electrical source, there is a low probability of an electric shock causing a fatality. Therefore the use of RCDs can be more readily justified on a compliance cost basis where risk of fatal shock is higher. Regulation 89 recognises some of these high-risk circumstances.
20. The Coroner recommended that consideration be given to a requirement for the use of RCDs or similar safety devices to be used when any hand held electrical appliance was used in commercial or industrial sites. Applied literally this recommendation would affect all commercial locations, including all shops and offices. The costs of requiring RCDs to be used in all commercial and industrial locations could not be justified; most commercial and industrial locations are not considered high-risk. The current risk management approach of the ESRs does not support increased regulation in all commercial and industrial locations.

*Preferred option*

21. The incident investigated by the Coroner occurred in a mechanical workshop where it is common for workers to be in a situation where movement is severely restricted.
22. The risk of electric shock in areas where movement is severely restricted are similar to the risks already identified within the ESRs as high-risk areas requiring the use of RCDs.
23. The preferred option is to regulate the increased use of RCDs in high-risk areas where movement is severely restricted, such as mechanical workshops.
24. The requirement to use RCDs in areas where movement is severely restricted would not be limited to mechanical workshops, however that is the most common type of business environment where movement is often restricted.
25. It will be very important for the regulations to clearly define the scope of the additional usage requirement. The requirement will apply to those areas where movement is severely restricted rather than to the wider concept of 'confined spaces.'
26. Whilst the definition of a confined space varies between jurisdictions, it is generally recognised as a space that:
  - a. has limited or restricted means of entry or exit;
  - b. is large enough for a person to enter to perform tasks;
  - c. is not designed or configured for continuous occupancy and
  - d. has the potential for a significant hazard to be present.
27. The high-risk nature of working in confined spaces is already recognised in New Zealand with a general requirement for employers operating in confined spaces to comply with AS/NZS 2865: Safe Working in a confined space.<sup>4</sup>
28. The application of the new RCD usage requirement needs to capture the high-risk associated with spaces that place severe restrictions on movement. MBIE will work with PCO in drafting the new requirement, including recommending the use of an example within the ESRs of a severely restricted working space, to ensure that the definition is accurate.
29. The use of RCDs in these severely restricted movement situations is already good industry practice and the costs and benefits associated with increased regulation in these high-risk areas support this option. It is difficult to provide any numbers for the businesses that already use RCDs in these situations. Consultation comments

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<sup>4</sup> A confined space (includes but is not limited to):

- a. is large enough for a worker to enter and perform assigned work;
- b. has limited entries and exits;
- c. may contain a hazardous atmosphere, arising from chemicals, sludge or sewerage;
- d. is constructed so that anyone who enters could be asphyxiated or trapped by walls or floor that converge to a small cross-section.

received were all in support of increasing regulatory requirements for the usage of RDCs in the circumstances present in the 2011 fatality.

30. The financial burden of complying with a new regulatory requirement to install RCDs in areas where movement is severely restricted or to provide an RCD for each hand held appliance in those circumstances would fall on the owners of those businesses. The cost of installing an RCD in a mechanical workshop, whether new or retrofitted range between \$200 and \$300. A normal workshop would only require one RCD to be installed. An RCD for a hand held in-line cord moulded electrical appliance costs approximately \$180 and each worker would need one.
31. MBIE does not consider that these costs would place a significant additional financial burden on businesses that would be required to use RCDs. It is also proposed that businesses impacted by the new requirement would be given 12 months to comply.
32. Increased use of RCDs in areas where movement is severely restricted, such as mechanical workshops, will prevent similar fatalities or other accidents by causing electrical equipment to disconnect when it detects an unsafe situation rather than creating a dangerous or potentially fatal electric shock. If an RCD had been in use in the mechanical workshop where the 2011 fatality occurred, it is very likely that the victim would have suffered nothing more than a minor electric shock.
33. The mandated increased use of RCDs in this additional high-risk situation will protect workers and workshop owners from the costs associated with workplace injuries, including those associated with worker fatalities. There would be benefits to society, workers, and workplace owners and potentially to the public given the reduction in the likelihood of a significant incident. The international standards cited by the ESRs already specify acceptable RCDs, including criteria for performance and reliability. The use of RCDs in this type of high-risk environment should prevent future fatalities.

## **Issue 2 - Safety Obligations under Lease arrangements**

### **Current Regulatory Requirements**

34. Both the ESRs and the GSMRs prescribe regulatory requirements on people who own, supply, hire or lease out gas and electrical appliances, fixtures, fittings and installations. A full overview of the current provisions is attached as Appendix 1.
35. The Residential Tenancies Act 1986 includes section 45, which sets out landlords' responsibilities. The section requires a landlord to comply with all requirements in respect of buildings, health and safety under any enactment so far as they apply to the premises under rent. The landlord is also responsible for providing and maintaining the premises, including the facilities, in a reasonable state of repair.

### **Problem Definition and Status Quo**

36. Currently the GSMRs do not provide clarity as to
  - a. who is responsible for the safety of appliances and fittings that form part of, or are included in, property that is being hired or leased or
  - b. how the safety responsibilities prescribed by the regulations can be discharged.
37. A secondary problem is that the GSMRs and the ESRs unnecessarily differ in their approach to the provisions that apply to the direct hire and indirect hire of appliances, fittings and installations. The provisions in the ESRs are clearer than those in the



GSMRs but clarification of these provisions within the ESRs is desirable. The lack of alignment between the ESRs and the GSMRs also creates confusion, especially for those people who supply for hire both gas and electrical appliances.

38. The application of the GSMRs to gas appliances, installations, fittings that are included or contained within or form part of a property, including residential rental premises, that is hired out is currently unclear. It is therefore unclear what the safety responsibilities of landlords and lessors are in relation to gas installations and appliances within a property or residential premise under lease, both at the commencement of the lease and throughout the period of the rental agreement.
39. It is also unclear how some of the safety responsibilities can be discharged, ie how owners can ensure that installations and appliances are safe.
40. GSMR 9(5) applies to persons who *own* or *hire* a distribution system, a gas installation, fittings or a gas appliance. GSMR 53(3) applies to every person who *hires out* or *leases out* a gas appliance or fitting. GSMR 75(1) applies to every person who *hires out* or *leases out* a gas installation, fitting or a gas appliance.
41. The equivalent provisions within the ESR are clearer in their application. ESR 26(1)(c) applies to a fitting or appliance that is *in use*, or *available for use* by the occupier of premises that are *rented out* or *leased* from the owner of the fitting or appliance. ESR 77(1) applies to people who *hire* or *lease out* a vehicle, relocatable building or pleasure vessel that contains a connectable installation.
42. In relation to the regulations noted in paragraphs 36 and 37, it has always been the understanding within MBIE that the current regulatory provisions and their similarly worded predecessors were always intended to apply to the owners and lessors, ie that lessors were responsible for the safety of appliances and installations that were included as part of property or residential rental premises that were hired out. However the current provisions do not clearly reflect that understanding.
43. The responsibilities are two tiered:
  - a. Firstly at the commencement of a lease the owner or lessor has responsibility to take all practicable steps to ensure the safety of the gas appliance or installation that is under hire, including those gas appliances and installations that are contained within a property under lease or hire, eg a gas oven contained within a residential rental property or gas fired central heating installed within a residential rental property.
  - b. Secondly, if at any stage during the hire the owner and the hirer become aware that the installation or appliance has become unsafe they have a responsibility not to use or allow anyone else to use that unsafe appliance or installation while it is unsafe. In direct hire situations the hire agreement would usually govern who is responsible for fixing the appliance or installation, the regulations set the safety requirement of not using the unsafe appliance or installation. In an indirect hire situation the tenancy agreement would usually contain relevant responsibility provisions, depending on how the 'unsafeness' was caused. Note that section 45 of the Residential Tenancies Act 1986 requires landlords to maintain the premises, including facilities, in a reasonable state of repair.
44. Over the past few years, during investigations or compliance activity, MBIE have become aware of many potential 'near misses' where there has not been sufficient

care put into the safety of gas installations and appliances within residential rental properties. MBIE has also been asked on many occasions to provide guidance on the interpretation of the current provisions, including how owners can demonstrate that an appliance included in a tenancy agreement is safe. The current regulatory provisions have never been tested through formal enforcement action.

## **Objectives**

45. The objective of this proposal is to ensure that owners, and those who have hired property, have a clear understanding of their safety responsibilities in relation to appliances, fittings and installations that have been hired. The clarity should also provide information about how that safety can be provided.

## **Option Analysis**

### *Status Quo*

46. The current provisions in the GSMRs do not provide the necessary certainty required and do not meet the high standards for regulatory requirements. The current provisions in the ESRs, whilst clearer than the GSMRs, are also confusing and do not provide sufficient certainty. Continuation of the status quo is not considered a viable option.

### *Preferred option*

47. There has always been an assumption by MBIE and its compliance team that the current wording captures appliances and installations, which form part of a property under lease. The provisions of the Residential Tenancies Act 1986 in relation to landlord responsibilities for the safety and maintenance of premises and facilities support that assumption. However the GSMRs are not sufficiently clear on this matter. No new obligations are proposed.
48. The opportunity should also be taken to align the responsibilities of landlords and owners for appliances within their residential rental properties under the GSMRs with their safety obligations under the ESRs. The latter are more clearly stated. There is also a necessity to clearly differentiate the requirements that apply to rental residential accommodation (indirect hire) and rental equipment (direct hire).
49. The preferred option is to amend both the GSMRs and the ESRs to clearly separate the safety requirements that apply in respect of:
  - a. The direct hire of gas or electrical appliances;
  - b. Gas or electrical appliances made available through the hire of a gas or electrical installation;
  - c. The hire of a gas or electrical installation itself.
50. The proposed amendments to the GSMRs and the ESRs would:
  - a. clarify that landlord/owners remain responsible for the safety of gas and electrical installations and appliances that are hired in accordance with a tenancy agreement, consistent with the Residential Tenancies Act 1986.
  - b. Recognise standards for ascertaining the safety of gas and electrical installations as appropriate;

- i. NZS 5255 (safety verification of gas installation including appliances fixed in installations),
    - ii. AS/NZS 3019 (electrical installations), and
    - iii. AS/NZS 3760 (electrical appliances).
  - c. Recognise that the obligation for the safety of electrical appliances can be discharged where RCDs forming part of the installation are installed protecting the socket outlets that supply those appliances.
  - d. Clarify the current obligations, in respect of the hire of electrical or gas appliances, not as part of an installation, the obligation to maintain the ongoing safety of that appliance transfers to the user, provided that;
    - i. The appliance was demonstrated to be safe at the time of hire (AS/NZS 3760 and NZS 5256 – verification of the safety of gas appliances); and
    - ii. Instructions are provided for the safe use of the appliance, including any ongoing safety inspection or maintenance requirements described in the manufacturers instructions.
51. There is a potential cost impact for landlords who, in order to ensure the safety of any appliances and installations within any properties prior to that property being available to lease, could choose to employ a registered tradesperson to check the safety. Depending on the location and size of the property these costs would range between \$300 and \$1000.
52. In relation to (c) above note that all new build residential properties are required to provide safety through RCDs. Owners of older properties can install RCDs for an approximate cost of \$200 to \$300 and their safety responsibilities in relation to most of the electrical aspects of the property would be met.
53. In relation to (d) above there is no evidence that this current obligation is not being complied with. As far as MBIE are aware safety and instruction manuals are being provided and the requirements for electrical warrants of fitness are being complied with. The proposed amendment will update the references to the most current applicable standards.
54. Any increased costs would likely be balanced by the expected increased longevity of appliances and installations, and the reduced exposure to loss and liability due to these safety checks as any required maintenance will be easily identified. Environmentally, regular maintenance of appliances means they are likely to maintain their efficiency, thus reducing unnecessary usage of electricity and gas. It should also see the prevention of damage to the property and people that could be caused by a fault. Safer appliances and installations should also result in a decrease in the risks of and severity of accidents.

### **Issue 3 - Electrical Equipment Safety System**

#### **Status quo and problem definition**

55. On 1 March 2013 Queensland implemented the new Electrical Equipment Safety System (EESS) and by 1 September 2013 harmonisation will see the EESS implemented, or in the process of being implemented, in all other Australian

jurisdictions, excluding New South Wales (NSW). New Zealand has participated, and is a 'shareholder', in the development of the EESS.

56. The development of the EESS involved participation of both New Zealand and Australian regulators, and consultation with New Zealand and Australian stakeholders. It has general support from New Zealand industry, in particular those that trade in both the Australian and New Zealand markets.
57. The EESS introduces requirements in Australia for electrical equipment (including a risk-based classification of electrical equipment) that are similar to those currently required in New Zealand under the ESRs. However, it extends the requirements to include:
  - a. the establishment of a national database for all suppliers,
  - b. registration of certain types of equipment, prior to being offered for sale, and
  - c. the compulsory application of a safety symbol – the Regulatory Compliance Mark ('RCM').
58. Whilst the technical safety requirements for electrical equipment will not change under the EESS, some items will require tighter evidence of conformity, with associated increased compliance costs. The EESS is a self-funding, user-pays system where registration fees fund improved compliance, surveillance and post market enforcement activities. Increased pro-active auditing is a key feature of the EESS. NSW are not committed to the EESS due to these increased compliance costs, and there is disagreement whether the new requirements are proportionate to the risk.
59. The database and equipment registration requirements have a compliance cost that Australia (with the exception of NSW) has found justifiable within their marketplace, but which could not be justified for New Zealand to implement alone or for New Zealand to implement before the majority of product in the Australian market is compliant with the EESS at the end of the Australian transition period, currently projected to be three years.
60. The trans-Tasman Mutual Recognition Agreement (TTMRA) provides for the recognition of electrical products exported from or through Australia into New Zealand. Product not coming from or through Australia must comply with all the requirements of the ESRs.
61. New Zealand participated fully in the development of the EESS, including the funding of the Australasian electrical equipment database, and is continuing to assist the States and Territories as they implement the EESS, including continuing discussions with NSW.

### **Problem Definition**

62. The problem for New Zealand is how to recognise the EESS in the ESRs when there is staggered implementation of the EESS in Australia, including the current impasse between NSW and the other States and Territories, and where the increase in risk management and compliance obligations required by the EESS are considerable.

### **Objectives**

63. The objective in relation to the importation and supply of electrical appliances into New Zealand is to ensure adequate safety precautions are taken while minimising costs to New Zealand businesses. A secondary objective is to ensure the relationship between the New Zealand and Australian electricity safety regulators is maintained.

### **Options Analysis**

#### *Status Quo*

64. New Zealand's regulatory framework requires every piece of electrical equipment that is sold or offered for sale to be safe. The equipment must meet the relevant standard and appropriate evidence of conformity must be kept to show this. The responsibility for ensuring this rests with the Responsible Supplier.
65. The framework aligns with the following World Trade Organisation (WTO) requirements:
- a. Performance based;
  - b. Risk driven;
  - c. Aligned with International Standards;
  - d. Inclusive of MRAs.
66. Currently the TTMRA provides for the recognition and acceptance in New Zealand of electrical equipment exported from or through Australia. Product from elsewhere needs to fully comply with the ESRs, including product that is also intended for the Australian and New Zealand markets but does not come to New Zealand via Australia.
67. The benefit to the New Zealand market in recognising EESS compliant products will be through the acceptance in New Zealand of product that complies with the EESS, but does come from or through Australia. For example a manufacturer in China, whose products are EESS compliant, will be able to ship some of that product to Australia and some directly to New Zealand. Currently that manufacturer has to either ship the intended New Zealand product through Australia and then rely on the TTMRA recognition or comply with the Australian requirements for the product intended for Australia and the New Zealand requirements for the product intended for New Zealand.
68. Given the potential access benefits that recognition of the EESS will bring to New Zealand businesses and consumers, together with the significant role that New Zealand has played in the development and implementation of the EESS, continuation of the status quo is not considered a viable option.

#### *Full Recognition*

69. Until all Australian jurisdictions are fully committed to the EESS New Zealand can only partially implement it. This is because New Zealand suppliers would bear a disproportionate compliance cost burden until the point where the majority of suppliers in Australia have registered. MBIE estimates that within the next three years the majority of suppliers in Australia will have registered.

70. Full recognition at this point in time would require New Zealand suppliers, and their product, to be registered on the EESS database system thus incurring associated costs without significant benefits to the New Zealand community.
71. Further consideration of the increased compliance costs for New Zealand market-only electrical equipment would also be required prior to full implementation of the EESS here.

*Preferred Option – Partial Recognition*

72. The preferred option is that the ESRs partially recognise the EESS. This would enable New Zealand to recognise the EESS in the States and Territories that have implemented it, enabling New Zealand suppliers and importers to benefit from the EESS without the increased in compliance costs associated with full recognition. If the electrical products comply with the EESS then those products will be deemed safe to supply in New Zealand, regardless of where those products are coming from.
73. The partial recognition would provide that where the electrical equipment is compliant with the requirements of the EESS for a Level 2 or a Level 3 product and the New Zealand supplier is registered on the EESS supplier database, then the New Zealand supplier's obligations for a supplier declaration for a medium risk declared article under the ESRs will be deemed to be met.
74. In addition, any high risk declared article complying with the requirements of the EESS for a Level 3 product would be deemed to have the required approval and are therefore safe to supply in New Zealand.
75. Whilst the TTMRA provides for the recognition of products exported from Australia, the benefit to the New Zealand market in recognising EESS compliant products will be through the acceptance in New Zealand of product that does not have to come from or through Australia. Regardless of where the electrical product has come from, provided that the equipment is EESS compliant, it will be accepted as complying with New Zealand requirements and therefore safe to supply in New Zealand.
76. To protect the integrity of the regime on both sides of the Tasman, the Australian regulators have requested that a new offence provision accompany the EESS recognition for exporters and suppliers of product falsely purporting to comply with the EESS. This would be a level 2 offence with penalties of up to \$10,000 for individuals and \$50,000 in any other case. This offence is consistent with the other offences with the ESRs for supplying or selling an electrical products using a false supplier declaration or falsely purporting that the product being supplied has been certified safe in accordance with the relevant standards or certification required.
77. Note that because supplier registration and product registration will take place in Australia for product intended for Australian markets, the proposed changes will not increase compliance costs for the New Zealand market at this time.

**Consultation – Issues 1, 2 and 3**

78. In preparing the proposed amendments to the GSMRs and the ESRs MBIE consulted with key industry stakeholders, including the Electrical Workers Board and the Plumbers, Gasfitters and Drainlayers Board, Housing New Zealand and the Property Investors Federation. 27 submissions were received and a list of the submitters as well as a list of whom the consultation documentation was sent to, is attached as Appendix 2.

79. The technical nature and very limited scope of the amendments was such that MBIE did not consider that wider public consultation was necessary; although information on the proposed amendments was made available through the MBIE website.
80. In relation to the clarification of landlords responsibilities stakeholders from those sectors were consulted.
81. The consultation was primarily in the form of written documentation explaining the proposed amendments. Where requested MBIE provided follow up information and also met with interested parties to discuss the proposals.
82. All comments that were received supported the preferred options. No significant concerns were raised.
83. **Issue 1:** Industry suggested particular wording or phrases that PCO could consider when drafting to ensure the accuracy of what is to be captured in relation to confined/restricted spaces. Those suggestions will be included in drafting instructions for the proposal.
84. **Issue 2:** Submissions supported the clarification of safety responsibilities in relation to properly under hire or lease. Comments focused on two issues. Firstly to ensure that the proposal did not contradict the current provisions in the Residential Tenancies Act 1996; including recognising that section 40 requires tenants to advise landlords of damage or maintenance that is required. Secondly of the need for information and technical guidance to be provided to landlords on their safety responsibilities following the amendments. Housing New Zealand, one of the biggest landlords in New Zealand, noted that since 2012 they have taken a proactive approach to the safety of their housing stock and safety checks of property are now undertaken at least every 24 months and more frequently where necessary.
85. **Issue 3:** Submissions supported the partial recognition of the EESS in the ESRs.
86. Industry raised some broader policy issues that were outside the limited scope of the proposed amendments, including changes to the current regulations as they relate to mining as well as issues relating to the yet to be implemented certification requirements for gas and electrical installation work. None of the issues raised posed significant safety concerns of the level that would require immediate attention MBIE recorded all items not included within the proposed amendments for later consideration.

## Conclusions and recommendations

87. It is recommended that;
  - a. **Issue 1:** Greater usage of RCDs, or similar safety devices, be regulated in environments where movement is severely restricted.
  - b. **Issue 2:** The ESRs and the GSMRs clarify the safety responsibilities that landlords and owners have in relation to electrical and gas appliances, installations and fittings contained within property that is under lease or hire and provide clear guidance as to how the safety responsibilities can be discharged.
  - c. **Issue 3:** the ESRs provide partial recognition of the EESS.

## **Implementation**

88. The proposed options require amendments to be made to the GSMRs and the ESRs. A short transition period of 6 to 12 months for the implementation of the new or clarified obligations will be provided with the GSMRs and the ESRs.
89. In relation to the clarification of the safety responsibilities of lessors the opportunity will be taken to align the relevant provisions within the GSMRs and the ESRs. This will provide even further clarity to lessors and will assist in educational and enforcement activities.
90. MBIE will publicise the new amendments through notification to the industry and industry organisations. A one page information sheet will be prepared for landlords showing the changes and providing technical guidance on how compliance might be achieved including advice on periodicity and safety testing and inspection. These will be widely distributed and information will be included in a regular e-newsletter from MBIE.
91. On obtaining government agreement to this amendment, the requirement for increased usage of RCDs in prescribed circumstances will then be put to the relevant standards committee to be incorporated in provisions for newly constructed mechanical workshops and other similar businesses. Education and advice about the new requirement will initially be provided by MBIE and, from early 2014, the educational and advice aspects of energy safety will become the responsibility of the new Health and Safety entity.
92. To ensure that the application of the new requirement is well understood, MBIE would ask for an example to be included within the ESRs of an area where movement is severely restricted such as a mechanical workshop.
93. MBIE will also report to the Coroner on the proposed amendments in relation to the increased use of RCDs.

## **Monitoring, evaluation and review**

94. MBIE is in very regular contact with regulators and key stakeholders. Industry and the professions are involved in the day-to-day operations of MBIE and, together with the MBIE enforcement team, are expected to bring any issues of effectiveness to the attention of MBIE. A register is maintained for the ESRs and the GSMRs to record all comments and issues as they are received or discovered. Annually, or more frequently if required, these registers are reviewed and a decision made on the necessity of a regulatory amendment.
95. At that stage a full scan of the GSMRs and the ESR is made by MBIE to review the current regulatory requirements as to whether further amendments are required.
96. MBIE proposes to report back to Cabinet in October 2014 on the effectiveness of the new professional certification regime that is due to be implemented by industry in July 2013. That report back is likely to include comment on any amendments that are required to the ESRs and the GSMRs at that point in time.



## Appendix 1

1. GSMR 9(5) places an obligation on people who own, supply, sell, hire or operate a distribution system, gas installation, fitting or gas appliance not to use or allow any other person to use that part of the distribution system, installation, fitting or appliance if that part is unsafe. The level 2 penalty for failure to comply with this requirement by knowing that, or being reckless as to whether, the distribution system, installation, fitting or appliance is unsafe carries with it an individual fine not exceeding \$10,000 or, for a body corporate, a fine not exceeding \$50,000.
2. GSMR 53(2) and (3) require every person who, amongst other things, hires out or leases out a gas appliance or fitting (including gas appliances and fitting that are imported as part of an installation such as a caravan) to take all practicable steps to ensure that the gas appliance or fittings are safe. The associated offence is therefore a strict liability offence, and carries with it the same penalty as GSMR 9(5).
3. GSMR 75(1) applies to every person who hires out or leases out any gas appliance, fittings or gas installation and requires these lessors to take all practicable steps to ensure that any such appliance, fitting or installation is in a safe condition and complete with any safety accessory and instructions to ensure their safe use. Failure to comply with this requirement by knowing that, or being reckless as to whether, GSMR 75(1) has been complied with, carries with it an individual fine not exceeding \$10,000 or for a body corporate a fine not exceeding \$50,000.
4. ESR 26(1)(c) applies to electrical fittings and appliances that are in use, or are available for use by a hirer or lessee under a hire or lease agreement with the owner of the fitting or appliance or by the occupier of premises that are rented or leased from the owner of the fitting or appliance. Any such fitting or appliance is required to be electrically safe, with such safety being provided through a current AS/NZS3760 safety tag or when it is first made available to use it is supplied with electricity through a portable RCD or through an RCD protected electrical circuit. Using or allowing someone else to use an electrically unsafe installation, fitting or appliance, whether the owner knows that it is unsafe or is reckless as to its electrical safety is a level 2 offence.
5. ESR 77 requires a person to ensure that a vehicle, relocatable building or pleasure vessel that contain a connectable installation<sup>5</sup> has a current warrant of fitness prior to hiring or leasing out that vehicle, building or vessel. Failure to comply with this requirement is a level 1 offence with a fine not exceeding \$2000 for an individual and \$10,000 for a corporate.

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<sup>5</sup> "Connectable installation: in relation to a vehicle, a relocatable building, or a pleasure vessel, means an electrical installation of that vehicle, relocatable building, or pleasure vessel that is designed or intended for, or capable of, connection to an external power supply that operates at or above such voltage as is prescribed for the purposes of this definition by regulations made under section 169; and includes any electrical appliance that is connected, or intended to be connected, to any such installation". Section 2, Electricity Act 1992.

## **Appendix 2 – Consultation on Proposed Amendments**

### **List of those whom the consultation documentation was sent to**

New Zealand Electrical Institute Inc.	GTRC
Alan Cuthbert	Eric Palmer
Electricity Engineers' Association	Standards New Zealand
Electrolink	Pat Cunniffe
Electrical Contractors Association of NZ	Gas Equipment Suppliers
Christchurch District Health Board	John Sickels
Electrical Workers Registration Board	Brett Oldfied
Electrical Regulatory Authorities Council	NZ IGE
Electrical Safety New Zealand	Motor Trade Association
Gas Safely Ltd	Master Plumbers Gasfitters & Drainlayers NZ
LPG Association of NZ	Housing New Zealand
Harvey O'Sullivan Consulting Ltd	Property Investors Federation
Plumbers, Gasfitters and Drainlayers Board	

**Comments received from**

NZ Steel	Energy Safety New Zealand
Kiwirail	NZ Property Investors Federation
Energy Safe - Queensland	Standards New Zealand
Genesis Energy	Electrical Workers Registration Board
ECANZ	Gas Safely Ltd
Brett Oldfield	Superlux Lighting
Alan Cuthbert	Real Fires NZ Ltd
Michael Chopping	Housing New Zealand
Electrical Engineers' Association	GANZ
Moffat	LPGNZ
Electricity Authority	Energy Safe Victoria
BALLANCE AGRI-NUTRIENTS	EECA
Vector	EPA
Neil Frank	